COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

(1) allow the County to sponsor additional deferred compensation plans under collective bargaining agreements with employee representatives;

(2) revise the membership of the Board of Investment Trustees by adding certain public members and representatives of certain employee organizations; and

(3) generally amend the law concerning deferred compensation plans and the composition of the Board of Investment Trustees.

By adding

Montgomery County Code
Chapter 33, Personnel and Human Resources
Article IX. Deferred Compensation.
Section 33-146B, Collectively Bargained Plans.

By amending

Chapter 33, Personnel and Human Resources
Section 33-59, Board of Investment Trustees.
Section 33-141, Definitions.

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 33-59 and 33-141 are amended and Section 33-146B is added as follows:

33-59. Board of investment trustees.

* * *

(b) Membership.


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(3) The following [5] 9 trustees must be appointed by the Executive and confirmed by the Council:

(A) [An] Three active County employees, [in] each of whom is a member of a different collective bargaining unit, and who are vested members of the retirement system, or individuals recommended by each employee organization certified under Articles V, VII, or X. Each employee organization may recommend 3 to 5 individuals for the respective trustee position. Before appointing these trustees, the Executive must consider, and should select from, the individuals recommended by the employee organizations. The Executive must not appoint more than one person from each employee organization. The Executive must notify the Council when appointing an individual not recommended by an employee organization. A 3-year term for these trustees ends on March 1, [2001, and] of every third year [thereafter] after each trustee is confirmed by the Council.
Any trustee appointed under this subparagraph must not vote on any matter involving the County deferred compensation plan.

(B) An active County employee who is a vested member of the retirement system and the Merit System, and not a member of a collective bargaining unit. A 3-year term for this trustee ends on March 1[[, 1999, and]] of every third year [[thereafter]] after the trustee is confirmed by the Council.

(C) A retired County employee who is a member of the retirement system. Before appointing this trustee, the Executive must consider, and should select from, a list of 3 to 5 individuals recommended by the Montgomery County Retired Employees' Association. The Executive must notify the Council when nominating an individual not recommended by the Association. A 3-year term for this trustee ends on March 1[[, 2000, and]] of every third year [[thereafter]] after the trustee is confirmed by the Council.

(D) Two representatives of the Council who are knowledgeable in pensions, investments, or financial matters. Before appointing each of these trustees, the Executive must consider, and should select from, a list of 3 to 5 individuals recommended by the Council. A 3-year term for these trustees ends on March 1[[, 2000, and]] of every third year [[thereafter]] after each trustee is confirmed by the Council.
(E) [An] [Three] Two individuals knowledgeable in pensions, investments, or financial matters. [[The Executive must not appoint a person who furnishes, or is employed by a firm that furnishes, to pension funds and other institutional investors the kind of investment services purchased by the Board.]] Before nominating [this] these trustees, the Executive must consider, and should select from, individuals recommended by citizens or countywide citizens’ groups. An individual recommended by a citizens’ group need not be a member of the group. The Executive must notify the Council when nominating an individual not recommended by a citizens’ group. A 3-year term for [this] these trustees ends on March 1[,] [1999, and] of every third year [thereafter] after each trustee[‘s appointment] is confirmed by the Council.

33-141. Definitions

(b) Collectively Bargained Plan means a plan established under Section 33-146B.
Collectively Bargained Plans.

The County may [sponsor] establish and maintain one or more additional deferred compensation plans for employees covered by a collective bargaining agreement. In the case of any collectively bargained plan:

(a) The [employee] certified representative must assume the duties and responsibilities of the Board, except for the requirements of Section 33-61(a), and the [employee] certified representative must assume the duties and responsibilities of the Chief Administrative Officer and the County under this Article.

(b) The Board, Chief Administrative Officer, and County have no fiduciary or other responsibility for a collectively bargained plan except as required by federal law, including any regulation, ruling, or other guidance issued under that law.

(c) The [employee] certified representative must indemnify the County and provide fiduciary liability insurance protecting itself and the County in an amount agreed to by the County and [employee] certified representative through collective bargaining.

(d) The officers of the [employee] certified representative who have direct responsibility for plan administration, and the trustees of any trust established under this Section, must:

(1) provide financial disclosure to the participants of the plan in a form and manner [similar to] at least as stringent as that required of the Board; and

(2) establish and conform to a code of ethical conduct, approved by participants in the plan, [similar to] at least as stringent as that
required of the Board.

(e) The collectively bargained plan, and its separate trust, custodial account or annuity contract, must meet, in form and operation, all applicable requirements of the Internal Revenue Code and any regulation, ruling, or other guidance issued under that law.

((f) The plan must allow each participant annually, during a certain time period, to transfer assets from this plan to any other plan for which the participant is eligible, or from that plan to this plan.)

((g) Within two months after any plan begins operations under this Section, and by January 15 of each year thereafter, the plan trustees must transmit to the Chief Administrative Officer and Council a report that documents and certifies that the trustees, as fiduciaries of the plan:

1. are in compliance with the prudence and duty of loyalty standard of care codified in Section 33-61C, the prohibited transaction provisions in Section 33-60(e), and the self-dealing prohibitions in Section 33-61D;

2. have met their obligations to obtain fiduciary liability insurance, retain a trustee acceptable to the County, and retain an independent investment consultant; and

3. have retained an independent auditor that has provided (or, in the case of the first report, will provide) an annual report to the Council, as the Board does for the County Plan, and have fully addressed all issues raised in each audit report;

4. have retained all providers and contractors for the plan (for any transaction greater than $25,000) through an open competitive bidding process; and
(5) included in the audit report a list of any rebates, and any direct or indirect compensation, received by the plan or any trustee or fiduciary.]

[(h) The Chief Administrative Officer must report by January 15 of each year to the Council:

(1) specific data on fund options and fees in any collectively bargained plan and how they compare to the County Plan; and

(2) on coordination between the County Plan and any collectively bargained plan on contribution limits, tax information, and provisions such as normal retirement age, catch-up rules, and excess deferrals, that are essential to avoid violations of the Internal Revenue Code.]

(f) Any trustee or fiduciary of a collectively bargained plan must not accept any direct or indirect compensation from any person who does business with that plan.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This act takes effect on the date when it becomes law.

Approved:

George Leventhal, Vice President, County Council

Date

Approved:

Douglas M. Duncan, County Executive

Date
This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

Date

12/17/04