

M E M O R A N D U M

TO: Management and Fiscal Policy Committee

FROM: Robert H. Drummer, Legislative Attorney 

SUBJECT: **Worksession:** Bill 19-09, Board of Investment Trustees - Membership

Bill 19-09, Board of Investment Trustees - Membership, sponsored by the Council President at the request of the County Executive, was introduced on April 14, 2009.

Background

Bill 19-09 results from the most recent collective bargaining agreement between the Executive and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union, Local 1994 (MCGEO). The Bill would create an additional *ex officio* member and delete one member of the Board of Investment Trustees who is currently nominated by an employee organization. The Board of Investment Trustees is responsible for managing the investments in the Employees' Retirement System Trust Fund and the Retiree Health Benefits Trust Fund. The Board is also responsible for selecting the investment choices for employees in the Retirement Savings Plan.

The Board has 13 members. Under current law, the Executive appoints, subject to Council confirmation, 4 *ex officio* members who should be the Directors of Management and Budget, Finance, Human Resources, and the Council Staff. Current law also provides for one member nominated by each of the 3 certified employee organizations. The law also provides for one active unrepresented employee member, one retired employee member recommended by the County Retired Employees Association, and 4 public members. The 4 *ex officio* members serve indefinitely as long as they hold their office. The other 9 members serve a 3-year term, subject to the 2-term limit in Code §2-148.

Bill 19-09 would remove the member nominated by the employee organization certified to represent the Office, Professional, and Technical (OPT) and the Service, Labor, and Trades (SLT) bargaining units. Instead, the employee organization or organizations certified to represent these units would nominate an *ex officio* member for appointment by the Executive and confirmation by the Council, who would serve indefinitely as long as that person remains the employee organization representative.

Public Hearing

The Council held a public hearing on Bill 19-09 on May 5. The only speaker, George Lacy of the Office of Human Resources (OHR), testified in support of the Bill on behalf of the Director of OHR and the Executive. See written testimony of Joseph Adler at ©7-8. Mr. Lacy testified that the Executive has recently reached a similar "concession" agreement with the International Association of Fire Fighters, Local 1664 (IAFF). Mr. Lacy requested the Council

to amend Bill 19-09 to implement the agreement with the IAFF to make their representative on the BIT an *ex officio* member also.

Issues

1. What is the effect of having an *ex officio* BIT member nominated by MCGEO?

Under the Bill, the current members of the Board of Investment Trustees nominated by the union representing the OPT and the SLT bargaining units would be replaced by an *ex officio* member nominated by the same union. This *ex officio* member would not be limited to a 3-year term, as the union representatives now are. Under current law, the Executive could appoint a different representative of the employees in the OPT and SLT units after the member's 3-year term expires. The Executive would no longer have this authority under this Bill. Under the Bill, once an *ex officio* union representative is appointed by the Executive, the member can only be removed by the Executive and the Council for cause under §33-59(j) or by operation of law for missing more than 25% of the meetings over a 12 month period under §33-59(c)(1).

Unlike an *ex officio* union representative, an *ex officio* County official member of the BIT can be removed without cause by either the Executive or the Council and often is replaced when a new administration takes office. Therefore, an *ex officio* union representative would continue to serve on the BIT until the member voluntarily resigns or the union forces the member to resign.¹ We believe that this would be the only *ex officio* member of a County Board or Commission serving without a specific term of office who is not a public official or serving at the pleasure of the Executive or the Council.

The term "*ex officio*" means "by virtue of office or official position." The union representative does not need to hold any office or official position. If the Committee wants to retain the distinction between *ex officio* office holders and the union representatives while still giving the union representatives an indefinite term of office for as long as they remain the union designee, staff amendment 2 at ©11-13 would accomplish this.

2. Should the Bill be amended to provide for an *ex officio* member nominated by the IAFF?

The Executive and the IAFF agreed to submit legislation to the Council creating a similar *ex officio* BIT member nominated by the IAFF after Bill 19-09 was introduced. The Executive requested an amendment to this Bill instead of a new Bill to accomplish this. The purpose clause of Bill 19-09 is broad enough to permit this amendment without re-advertisement and a new public hearing. **Council staff recommendation:** if the Committee recommends enactment, amend the Bill to add an *ex officio* IAFF representative. See staff amendment 1 at ©9-10.

3. Technical amendment.

The long title of the Bill states that it would "create an additional *ex officio* member and delete an employee member of the Board of Investment Trustees." Although the position

¹ The Bill does not provide a mechanism for the union to nominate a replacement *ex officio* member without a resignation. Presumably, the authority to require an *ex officio* union member to resign would be contained in the union's own rules.

replaced by the new *ex officio* member can be an employee nominated by the union, the union is now free to nominate a member who is not an employee.² **Council staff recommendation:** amend the long title to read: “create an additional *ex officio* member and delete [[an employee]] a member of the Board of Investment Trustees.”

<u>This packet contains</u>	<u>Circle</u>
Bill 19-09	1
Legislative Request Report	4
Memo from County Executive	5
Fiscal Impact Statement	6
Testimony of Joseph Adler	7
Staff amendment 1	9
Staff amendment 2	11

F:\LAW\BILLS\0919 Board Of Investment Trustees\MFP Memo.Doc

² The current BIT member nominated by MCGEO, Gino Renne, is not a current County employee.

Bill No. 19-09
Concerning: Board of Investment
Trustees - Membership
Revised: April 8, 2009 Draft No. 2
Introduced: April 14, 2009
Expires: October 14, 2009
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) create an additional *ex officio* member and delete an employee member of the Board of Investment Trustees;
- (2) amend the law establishing the Board of Investment Trustees; and
- (2) generally amend the law regarding the employees' retirement system.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-59

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

28 recommended by each employee organization certified
 29 under Articles V, [VII, or] and X. Each employee
 30 organization may recommend 3 to 5 individuals for the
 31 respective trustee position. Before appointing these
 32 trustees, the Executive must consider, and should select
 33 from, the individuals recommended by the employee
 34 organizations. The Executive must not appoint more
 35 than one person from each employee organization. The
 36 Executive must notify the Council when appointing an
 37 individual not recommended by an employee
 38 organization. A 3-year term for these trustees ends on
 39 March 1 of every third year after each trustee is
 40 confirmed by the Council. Any trustee appointed under
 41 this subparagraph must not vote on any matter involving
 42 the County deferred compensation plan.

* * *

44 *Approved:*

45
46

Philip M. Andrews, President, County Council Date

47 *Approved:*

48

Isiah Leggett, County Executive Date

49 *This is a correct copy of Council action.*

50

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 19-09, Board of Investment Trustees

- DESCRIPTION:** The requested expedited legislation amends the law regarding the composition of the Board of Investment Trustees.
- PROBLEM:** The proposed legislation accomplishes the changes contained in the Memorandum of Agreement between the Montgomery County Government and the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994 that was negotiated pursuant to concession agreements for the current collective bargaining agreement.
- GOALS AND OBJECTIVES:** To designate a representative of the UFCW Local 1994 as an *ex officio member* to the Board of Investment Trustees
- COORDINATION:** Office of Human Resources
- FISCAL IMPACT:** Office of Management and Budget
- ECONOMIC IMPACT:** n/a
- EVALUATION:** n/a



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

April 1, 2009

TO: Philip M. Andrews President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Bill to Amend the Composition of the Board of Investment Trustees

The attached expedited bill would establish a fifth *ex officio* member to the Board of Investment Trustees. This bill would allow for a representative to be selected by the Office, Professional, and Technical (OPT) and Service, Labor, and Trades (SLT) bargaining units to be designated as *ex officio*. This bill stems from a negotiated agreement with the Municipal & County Government Employees Organization/United Food and Commercial Workers Union Local 1994.

Attachments

IL: stc

2009 APR 1 10 40 AM
MONTGOMERY COUNTY

BILL



OFFICE OF MANAGEMENT AND BUDGET

041545

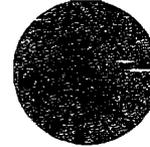
Isiah Leggett
County Executive

Joseph F. Beach
Director

NAN
CC
SBF
LL
BD
MF
AM

MEMORANDUM

April 7, 2009



APR 7 2009
11:00 AM

TO: Phil Andrews, President, County Council
FROM: Joseph F. Beach, Director
SUBJECT: Expedited Bill, Board of Investment Trustees

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The proposed legislation designates a representative of the Office, Professional, and Technical (OPT) and Service, Labor and Trades (SLT) bargaining units as an ex officio member of the Board of Investment Trustees. This trustee may not vote on any matter involving the County deferred compensation plan.

FISCAL SUMMARY

There is no fiscal impact due to the proposed legislation. Linda Herman, Board of Investment Trustees, contributed to and concurred with this analysis.

JFB:lob

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Dee Gonzalez, Office of the County Executive
- Linda Herman, Board of Investment Trustees
- Brady Goldsmith, Office of Management and Budget

Office of the Director

6



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

MEMORANDUM

May 5, 2009

TO: Philip Andrews, President
Montgomery County Council

FROM: Joseph Adler, Director 
Office of Human Resources

SUBJECT: Testimony for Public Hearing on Tuesday, May 5, 2009

Thank you for the opportunity to testify. I am here to express my support for Expedited Bill 18-09 and Bill 19-09. These two bills are necessary to implement the agreements between the County and MCGEO, UFCW Local 1994, the exclusive representative of the OPT/SLT bargaining units, and between the County and the Fraternal Order of Police Montgomery County Lodge #35.

In the concession agreement between the County and MCGEO, the Union agreed to postpone the 4.5 percent general wage adjustment that would have gone into effect for bargaining unit employees in July 2009. Similarly, in the concession agreement with the FOP, the Union agreed to postpone the 4.25 percent wage increase scheduled to take effect in July 2009. The purpose of Expedited Bill 18-09 is to treat for retirement purposes Group A, E, F, and H Members of the Employees' Retirement System as though they received the scheduled general wage adjustment in their gross pay effective in July 2009.

Bill 19-09 amends the law regarding the composition of the Board of Investment Trustees by providing that the representative selected by MCGEO, and approved by the County Executive, to the Board of Investment Trustees be designated as an *ex-officio* member. Currently, under the statute, the Directors of OMB, Finance, and OHR, and the Council Staff Director have *ex-officio* status. From MCGEO's perspective, this change would provide a measure of continuity since *ex-officio* members are not subject to a three-year term like other members of the Board of Investment Trustees.

The recently concluded bargaining agreement between the Montgomery County Government and the Montgomery County Career Fire Fighters Association, International

Association of Fire Fighters, Local 1664 provides that Group G Members of the Employees' Retirement System be treated for retirement purposes as though they received the scheduled general wage adjustment in their gross pay effective in July 2009. The IAFF agreement also includes a proviso that the Employer will submit legislation to the Council providing the representative selected by the IAFF, and approved by the County Executive, to the Board of Investment Trustees be designated as an *ex-officio member*. Since these negotiated items are identical to that contained in Expedited Bill 18-09 for the FOP and MCGEO, and Bill 19-09 for MCGEO, the County Executive has recommended that the Council consider amending these bills to include the applicable provisions in the IAFF agreement rather than by acting through separate legislation.

Thank you for your time and attention. I would be pleased to answer any questions you may have.

Staff Amendment 1

Amend lines 4-42 as follows:

(b) Membership.

- (1) The Board has 13 trustees.
- (2) The County Executive must appoint [4] ~~[[5]]~~ 6 voting, *ex officio* members of the Board, subject to County Council confirmation as members, who serve indefinitely while each holds the respective office. These *ex officio* trustees should be:
 - (A) the Director of Management and Budget;
 - (B) the Director of Finance;
 - (C) the Director of Human Resources; [and]
 - (D) the Staff Director of the County Council[.]; ~~[[and]]~~
 - (E) one representative nominated by the employee organizations certified as the representative for the Office, Professional, and Technical (OPT) and Service, Labor and Trades (SLT) bargaining units. This trustee ~~[[may]]~~ must not vote on any matter involving the County deferred compensation plan; and
 - (F) one representative nominated by the employee organization certified as the representative for the fire and rescue employee unit. This trustee must not vote on any matter involving the County deferred compensation plan.
- (3) The following [9] ~~[[8]]~~ 7 trustees must be appointed by the Executive and confirmed by the Council:

(A) [~~Three~~] [~~Two~~] One active County [~~employees, one~~ [~~each~~] of whom]] employee who is a member of [a different collective bargaining unit] an employee organization certified under Article V [~~and one of whom is a member of an employee organization certified under Article X~~]], and who [~~are~~] is a vested [~~members~~] member of the retirement system, or [~~individuals~~] an individual recommended by [~~each~~] the employee organization certified under [~~Articles~~] Article V[[, [VII, or] and X]]. [~~Each~~] The employee organization may recommend 3 to 5 individuals for the respective trustee position. Before appointing [~~these trustees~~] this trustee, the Executive must consider, and should select from, the individuals recommended by the employee [~~organizations~~] organization. [~~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~~] this trustee ends on March 1 of every third year 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.

Staff Amendment 2

Amend lines 4-42 as follows:

(b) Membership.

- (1) The Board has 13 trustees.
- (2) The County Executive must appoint [4] ~~[[5]]~~ 4 voting, *ex officio* members of the Board, subject to County Council confirmation as members, who serve indefinitely while each holds the respective office. These *ex officio* trustees should be:

- (A) the Director of Management and Budget;
- (B) the Director of Finance;
- (C) the Director of Human Resources; [and] and
- (D) the Staff Director of the County Council~~.[;]]~~ ~~[[and]]~~;

- (3) The County Executive must appoint 2 voting certified employee organization representatives, subject to County Council confirmation, as members of the Board, who serve indefinitely while each remains the designee of the certified employee representative. These trustees must not vote on any matter involving the County deferred compensation plan. These trustees should be:

- ~~[[E]]~~ (A) one representative nominated by the employee organizations certified as the representative for the Office, Professional, and Technical (OPT) and Service, Labor and Trades (SLT) bargaining units ~~[[This trustee may not vote on any matter involving the County deferred compensation plan]]~~; and

~~[(F)]~~ (B) one representative nominated by the employee organization certified as the representative for the fire and rescue employee unit.

~~[(3)]~~ (4) The following [9] ~~[(8)]~~ 7 trustees must be appointed by the Executive and confirmed by the Council:

(A) [Three] ~~[(Two)]~~ One active County ~~[[employees, one [each] of whom]]~~ employee who is a member of [a different collective bargaining unit] an employee organization certified under Article V ~~[[and one of whom is a member of an employee organization certified under Article X]],~~ and who ~~[[are]]~~ is a vested ~~[[members]]~~ member of the retirement system, or ~~[[individuals]]~~ an individual recommended by ~~[[each]]~~ the employee organization certified under ~~[[Articles]]~~ Article V, [VII, or] and X. ~~[[Each]]~~ The employee organization may recommend 3 to 5 individuals for the respective trustee position. Before appointing ~~[[these trustees]]~~ this trustee, the Executive must consider, and should select from, the individuals recommended by the employee ~~[[organizations]]~~ organization. ~~[[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]]~~ this trustee ends on March 1 of every third year

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.