COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

(1) amend the Employees’ Retirement System and the Retirement Savings Plan to [[comply]] conform with the Uniform Management and Public Employee Retirement Systems Act and the Pension Protection Act of 2006; and

(2) generally amend County law governing retirement and investments.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-35, 33-60, 33-113, and 33-125

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The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 33-35, 33-60, 33-113, and 33-125 are amended as follows:

33-35. Definitions.

* * *

Fiduciary: A person who:

(1) exercises discretionary authority to manage a retirement system;
(2) exercises authority to invest or manage assets of a retirement system;
(3) renders investment advice for a fee or other compensation about assets of a retirement system or has authority or responsibility to render that advice; or
(4) is a trustee on the Board of Investment Trustees.

However, an investment manager of an investment vehicle that does not hold plan assets as defined under the Employee Retirement and Income Security Act (ERISA) and its corresponding regulations is not a fiduciary under this Act.

* * *

Investment manager: A person or entity who is a professional who manages the assets of an institutional investor. An investment manager is a fiduciary and is responsible for choosing and managing investments prudently.

(1) Registered as an investment adviser under the Investment Advisers Act of 1940; or
(2) A bank, as defined in that act; or
(3) An insurance company qualified to do business in more than one state; and who acknowledges in writing that it is a fiduciary with respect to the assets of the retirement system that it is managing. However, an insurance company will be deemed to be an investment manager...
without meeting the provisions of this definition solely with respect to
contracts with the insurance company in existence on the day before the
day all of the trustees have accepted the trust in writing.]

* * *

33-60. [The board of investment trustees-] Powers and duties - Board of
Investment Trustees.

(a) General.

* * *

(2) a. The [board] Board must invest, [and] reinvest, or cause to
be invested or reinvested, [[with an investment manager,]]
the principal and income of the retirement system and keep
the same invested without distinction between principal
and income. The [board] Board has the exclusive authority
to manage the assets of the retirement system. [The board
may make or permit an investment manager to make
individual investment selections with respect to
investments described in subsections (c)(1) d., e., f., and g.
of this section and with respect to personal property
described in subsection (c)(1) h. The board must select
investment managers to make individual investment
selections with respect to investments described in
subsection (c)(1) a., b., and c. of this section and with
respect to real property described in subsection (c)(1) h.]  
[However, any] Any investment of the retirement system
in existence on the day before all members have accepted
the trust may remain as an investment until the earlier of:

(i) [Its] its maturity date, if any; or
(ii) The date it is liquidated under the investment policy of the Board.

[(iii) The date it is liquidated under subsection (c)(6).]

The Board must hold the annuities purchased under the Amendment, Settlement and Transfer agreement under Group Annuity Contract #1920 until Aetna Life Insurance Company has completed its performance under that agreement.

b. The Board must appoint at least two [(2)] investment managers as soon as possible after all of the members of the Board have accepted the trust. Within one [(1)] year of the date all of the trustees have accepted the trust in writing, the Board must have appointed at least three [(3)] investment managers. The investment manager which has contracts for the investment of the retirement system’s assets as of the date the council adopts this article may be one of these investment managers.

c. At any time the Board is selecting a new investment manager, the Board may have fewer than three [(3)] investment managers.

* * *

(c) Authorized investments.

(1) [Subject to subsection (a)(2) of this section, t] The Board may [invest or] permit an investment manager to invest the assets of the retirement system fund in any investment it considers prudent within the policies set by the Board, [,
a. Bonds, debentures, notes, savings accounts, certificates of deposit, variable note arrangements, obligations of the United States Government, commercial paper, money market certificates, bankers' acceptances or other evidence of indebtedness;

b. Mortgages, certificates of mortgage pools and guaranteed mortgage pass-through certificates or other similar investments in mortgages;

c. Stocks (regardless of class), or other evidence of ownership, in any corporation, mutual fund, investment company, association, or business trust;

d. Combined, common or commingled trust funds;

e. Retirement or annuity contracts;

f. Guaranteed investment contracts;

g. Group annuity contracts; and

h. Real and personal property of all kinds, including leaseholds on improved or unimproved real estate, oil, mineral or gas properties, or royalty interests or rights. However, any investment in real property is limited to a pooled investment arrangement in which the board has no power or right to manage the real estate property, provided that the pooled arrangement does not invest more than 10% of its assets in real property located in Montgomery County.

(2) If an investment through any combined, common or commingled trust fund exists, the declaration of trust of that fund is a part of the retirement system trust under this article.
(3) The board or an investment manager must not invest the retirement system assets in any bonds, notes or debt instruments issued by:

a. [The county] the County;

b. [Any] any political subdivision within the [county] County;

c. [Any] any agency supported or financed wholly or partly by taxes levied by the [county council] County Council; or

d. [Any] any agency supported by bond issues underwritten by the [county] County.

* * *

(g) Investment management agreements.

(1) Appointment of investment manager. [Except as permitted under subsection (a)(2), t] The board must appoint investment managers to manage, acquire, or dispose of all or some of the assets of the retirement system. The board may dismiss any manager the board appoints. The fees charged by any manager are expenses of the retirement system.

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33-113. Definitions.

* * *

(h) Investment manager means a person or entity who is a professional who manages the assets of an [individual or] institutional investor. [The investment manager is a fiduciary and is responsible for choosing and managing investments prudently.]]

[(1) who is:
(A) registered as an investment adviser under the Investment Advisers Act of 1940;
(B) a bank, as defined in that act; or
(C) an insurance company qualified to do business in more than one state; and

(2) which acknowledges in writing that it is a fiduciary with respect to the assets of the retirement savings plan that it is managing.

33-125. **Powers and duties – [of the] Board of Investment Trustees.**

(c) **Authorized investments.**

(1) The Board may [invest or] permit an investment manager to invest the assets of the retirement savings plan in any investment it considers prudent within the policies set by the Board, including but not limited to:

(A) bonds, debentures, notes, savings accounts, certificates of deposit, variable note arrangements, obligations of the United States government and other sovereign governments, commercial paper, money market certificates, bankers' acceptance or other evidence of indebtedness;

(B) mortgages, certificates of mortgage pools and guaranteed mortgage pass-through certificates, or other similar investments in mortgages;

(C) stocks (regardless of class), or other evidences of ownership, in any corporation, mutual fund, investment company, association, or business trust;
(D) combined, common or commingled trust funds;

(E) retirement or annuity contracts;

(F) guaranteed investment contracts;

(G) group annuity contracts; and

(H) real and personal property of all kinds, including leaseholds on improved or unimproved real estate, oil, mineral or gas properties, or royalty interests or rights. However, any investment in real property is limited to a pooled investment arrangement in which the Board has no power or right to manage the real estate property, provided that the pooled arrangement does not invest more than 10 percent of its assets in real property located in Montgomery County. The percentage limitation must be calculated by applying the percentage to the market value of the total assets as of the close of the preceding June 30. If the market value of the assets of the retirement savings plan exceeds the percentage limitation of this subparagraph as a result of market forces, the Board or the investment manager, without direction from the Board, is not required to sell any existing equity investments. The Board may obtain valuations and take appropriate steps to comply with this percentage limitation.

(2) If an investment through any combined, common, or commingled trust fund exists, the declaration of trust of that fund is a part of the retirement savings plan trust.
The Board or an investment manager must not invest the retirement savings plan assets in any bonds, notes, or debt instruments issued by:

(A) Montgomery County;

(B) any political subdivision within Montgomery County;

(C) any agency supported or financed wholly or partly by taxes levied by the County Council; or

(D) any agency supported by bond issues underwritten by Montgomery County.

However, the Board or an investment manager may invest plan assets in such bonds, notes, and debt instruments if held indirectly through a mutual fund, subject to any limit in the Internal Revenue Code.

The Board may invest and may permit an investment manager to invest the assets of the retirement savings plan fund in any combination of the investment vehicles in this subsection as the Board considers prudent.

Approved:

[[George L. Leventhal]] Marilyn J. Praisner, President, County Council

Approved:

[[Douglas M. Duncan]] Isiah Leggett, County Executive
This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council       Date