

Bill No. 30-06
Concerning: Personnel – Retirement – Investments
Revised: 2/9/2007 Draft No. 4
Introduced: June 27, 2006
Expires: December 27, 2007
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) 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

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:

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 ~~[[individual or]]~~ 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

55 (ii) [The] the date it is liquidated under the investment
 56 policy of the [board; or] Board.

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

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

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

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

75 * * *

76 (c) **Authorized investments.**

77 (1) [Subject to subsection (a)(2) of this section, t] The [board] Board
 78 may [invest or] invest or permit an investment manager to invest
 79 the assets of the retirement system fund in any investment it
 80 considers prudent within the policies set by the [board] Board. [,
 81 including but not limited to:

- 82 a. Bonds, debentures, notes, savings accounts, certificates of
83 deposit, variable note arrangements, obligations of the
84 United States Government, commercial paper, money
85 market certificates, bankers' acceptances or other evidence
86 of indebtedness;
- 87 b. Mortgages, certificates of mortgage pools and guaranteed
88 mortgage pass-through certificates or other similar
89 investments in mortgages;
- 90 c. Stocks (regardless of class), or other evidence of
91 ownership, in any corporation, mutual fund, investment
92 company, association, or business trust;
- 93 d. Combined, common or commingled trust funds;
- 94 e. Retirement or annuity contracts;
- 95 f. Guaranteed investment contracts;
- 96 g. Group annuity contracts; and
- 97 h. Real and personal property of all kinds, including
98 leaseholds on improved or unimproved real estate, oil,
99 mineral or gas properties, or royalty interests or rights.
100 However, any investment in real property is limited to a
101 pooled investment arrangement in which the board has no
102 power or right to manage the real estate property, provided
103 that the pooled arrangement does not invest more than
104 10% of its assets in real property located in Montgomery
105 County.]
- 106 (2) If an investment through any combined, common or commingled
107 trust fund exists, the declaration of trust of that fund is a part of
108 the retirement system trust under this article.

109 (3) The [board] Board ~~[[and]]~~ or an investment manager must not
110 invest the retirement system assets in any bonds, notes or debt
111 instruments issued by:

- 112 a. [The county] the County;
- 113 b. [Any] any political subdivision within the [county]
114 County;
- 115 c. [Any] any agency supported or financed wholly or partly
116 by taxes levied by the [county council] County Council; or
- 117 d. [Any] any agency supported by bond issues underwritten
118 by the [county] County.

119 * * *

120 (g) **Investment management agreements.**

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

127 * * *

128 **33-113. Definitions.**

129 * * *

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

134 [(1) who is:

- 135 (A) registered as an investment adviser under the Investment
- 136 Advisers Act of 1940;
- 137 (B) a bank, as defined in that act; or
- 138 (C) an insurance company qualified to do business in more
- 139 than one state; and
- 140 (2) which acknowledges in writing that it is a fiduciary with respect
- 141 to the assets of the retirement savings plan that it is managing.]

142 * * *

143 **33-125. Powers and duties – [of the] Board of Investment Trustees.**

144 * * *

145 (c) **Authorized investments.**

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

- 150 (A) bonds, debentures, notes, savings accounts, certificates of
- 151 deposit, variable note arrangements, obligations of the
- 152 United States government and other sovereign
- 153 governments, commercial paper, money market
- 154 certificates, bankers' acceptance or other evidence of
- 155 indebtedness;
- 156 (B) mortgages, certificates of mortgage pools and guaranteed
- 157 mortgage pass- through certificates, or other similar
- 158 investments in mortgages;
- 159 (C) stocks (regardless of class), or other evidences of
- 160 ownership, in any corporation, mutual fund, investment
- 161 company, association, or business trust;

- 162 (D) combined, common or commingled trust funds;
163 (E) retirement or annuity contracts;
164 (F) guaranteed investment contracts;
165 (G) group annuity contracts; and
166 (H) real and personal property of all kinds, including
167 leaseholds on improved or unimproved real estate, oil,
168 mineral or gas properties, or royalty interests or rights.
169 However, any investment in real property is limited to a
170 pooled investment arrangement in which the Board has no
171 power or right to manage the real estate property, provided
172 that the pooled arrangement does not invest more than 10
173 percent of its assets in real property located in
174 Montgomery County. The percentage limitation must be
175 calculated by applying the percentage to the market value
176 of the total assets as of the close of the preceding June 30.
177 If the market value of the assets of the retirement savings
178 plan exceeds the percentage limitation of this subparagraph
179 as a result of market forces, the Board or the investment
180 manager, without direction from the Board, is not required
181 to sell any existing equity investments. The Board may
182 obtain valuations and take appropriate steps to comply
183 with this percentage limitation.]
- 184 (2) If an investment through any combined, common, or commingled
185 trust fund exists, the declaration of trust of that fund is a part of
186 the retirement savings plan trust.

187 (3) The Board ~~[[and]]~~ or ~~[[any]]~~ an investment manager must not
188 invest the retirement savings plan assets in any bonds, notes, or
189 debt instruments issued by:

- 190 (A) [Montgomery] the County;
- 191 (B) any political subdivision within [Montgomery] the County;
- 192 (C) any agency supported or financed wholly or partly by taxes
193 levied by the County Council; or
- 194 (D) any agency supported by bond issues underwritten by
195 [Montgomery] the County.

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

200 [(4) The Board may invest and may permit an investment manager to
201 invest the assets of the retirement savings plan fund in any
202 combination of the investment vehicles in this subsection as the
203 Board considers prudent.]

204 * * *

205 *Approved:*

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

207 *Approved:*

208 _____
[[Douglas M. Duncan]] Isiah Leggett, County Executive Date

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

210

Linda M. Lauer, Clerk of the Council

Date