Expedited Bill No.: 27-07
Concerning: Personnel – Retirement - Investment Authority
Revised: 10/31/2007 Draft No. 1
Introduced: November 6, 2007
Enacted: December 4, 2007
Executive: December 17, 2007
Effective: December 17, 2007
Sunset Date: None
Ch. 19, Laws of Mont. Co. 2007

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

(1) amend the investment provisions of the Employees' Retirement System and Retirement Savings Plan to conform with the principles governing the investment and management of funds contained in the Uniform Management of 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	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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.

<u>However, an investment manager of an investment vehicle is only a fiduciary if it holds plan assets as defined under the Employee Retirement Income Security Act (ERISA) and its corresponding regulations.</u>

* * *

Investment manager: A person or entity who [is:] <u>exercises discretion to manage all or part of the assets of an institutional investor.</u>

[(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.

(a) General.

* * *

(2) [a.] (A) The board must invest and reinvest, or cause to be invested or reinvested, as authorized in subsection (c)(1), the principal and income of the retirement system and keep the same invested without distinction between principal and income. The 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 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 maturity date, if any; or

(ii) The date it is liquidated under the investment policy of the board[; or

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

*   *   *

(c) Authorized investments.

(1) [Subject to subsection (a)(2) of this section, the] 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. The board must use an investment manager except when investing in any pooled investment vehicle, including any combined, common or commingled trust fund, retirement or annuity contract, mutual fund, investment company, association, or business trust. The board also may authorize the Executive Director to make investments in pooled investment vehicles and transition assets from one investment manager to another investment manager as the board specifies. [, including but not limited to:

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] <u>Article</u>.

(3) The board [and] or an investment manager must not invest [the] any retirement system [assets] asset in any [bonds, notes or debt instruments] bond, note, or debt instrument issued by:

[a.] (A) The [county] County;

[b.] (B) Any political subdivision within the [county] County;

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

[d.] (D) 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)] (c)(1), 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.

(2) Investment contract. Any contract must provide that when the investment manager is making individual investment selections, the investment manager must make the individual investment selections subject to the written policies of the board. In any contract, the board must identify the assets that are the subject to the contract. In any contract, the board may give an investment manager the right to invest the assets of the retirement system specified in the contract without prior notice to or approval by the board. In any contract, the board may limit the investment of a specified portion of the retirement system to a certain type of

property, such as but not limited to common stocks, bonds, or real estate. If a contract only applies to a portion of the assets of the retirement system and specifies the type of property to be invested in, the manager must achieve diversification within the specified category of property, but is not responsible for diversification of investments of the entire retirement system. In any contract, the board may delegate to the investment manager any [of the powers] <u>power</u> or discretion conferred on the board under this [article] <u>Article</u> and may provide that the investment manager must have custody and control of certain assets of the retirement system.

(3) Monitoring of investment manager. The board must monitor the performance of the managers and may terminate any appointment. Monitoring may include any tests or analyses that the board considers prudent in the circumstances to ensure the stability and growth of the retirement system.

33-113. Definitions

* * *

(h) Investment manager means a person or entity <u>who exercises discretion to manage all or part of the assets of an institutional investor. The investment manager is a fiduciary as defined in Section 33-35.</u>

[(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.]

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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. The Board must use an investment manager except when making an investment in any pooled investment vehicle, including any combined, common or commingled trust fund, retirement or annuity contract, mutual fund, investment company, association, or business trust. The Board also may authorize the Executive Director to make investments in pooled investment vehicles and transition assets from one investment manager to another investment manager as the Board specifies. [, 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.

(3) The [Board] board [and] or any investment manager must not invest [the] any retirement savings plan [assets] asset in any [bonds, notes, or debt instruments] bond, note, or debt instrument 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 and any 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.

[(4) 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.]

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 on which it becomes law.

Approved:

Michael J. Knapp — 5 DEC 07

Michael J. Knapp, President, County Council — Date

Approved:

Isiah Leggett — Dec 17, 2007

Isiah Leggett, County Executive — Date

This is a correct copy of Council action.

Linda M. Lauer — Dec. 17, 2007

Linda M. Lauer, Clerk of the Council — Date