Please retain this packet for Tuesday June 28 Council Session

GO Item 2
June 27, 2011
Worksession

MEMORANDUM

June 23, 2011

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Worksession:** Expedited Bill 17-11, Personnel – Other Post Employment Benefits Trust – County – funded Agency

Expedited Bill 17-11, Personnel – Other Post Employment Benefits Trust – County – funded Agency, sponsored by Council President Ervin, Councilmembers Navarro, Floreen, Andrews, Riemer, Rice, Leventhal, Elrich, and Council Vice President Berliner was introduced on May 26, 2011. A public hearing was held on June 14.

Bill 17-11 would amend the Retiree Health Benefits Trust (RHB) to provide a funding mechanism to pay for other post employment benefits (OPEB) for employees of Montgomery County Public Schools (MCPS) and Montgomery College (College). The Council President described the purpose of the Bill at ©16-17.

Background

The RHB was established by Bill 28-07, enacted on April 1, 2008, to secure funding for all or a portion of certain County benefit plans providing retiree health and life insurance benefits. The RHB resulted from the implementation of Government Accounting Standards Board (GASB) Statement 45, *Accounting and Financial Reporting by Employers for Post-employment Benefits Other than Pensions.* Prior to the issuance of Statement No. 45 by GASB (GASB 45), government financial statements reported the effect of these other retiree benefits when they were paid. Since these retiree benefits are consideration for employee services rendered, GASB 45 directs state and local governments to recognize the cost of these benefits when the related employee services are received instead of when they are paid. GASB 45 became effective for jurisdictions with more than $100 million in revenue in FY08.

GASB 45 does not require funding the accrued expense, but credit rating agencies expect state and local governments to do so. The Council adopted Resolution 16-87 on April 10, 2007, committing to fund the difference between the Other Post Employment Benefits (OPEB) pay-as-you-go contributions and the annual required contribution on an amortized even basis over a five-year period beginning in FY08. The Council appropriated $31.9 million in FY08 for the

RHB. However, due to growing fiscal pressures in FY09, the Council changed the phase-in schedule to eight years. In FY10, the only tax supported OPEB appropriation was $12 million for MCPS.[1] In FY11, there was no tax supported contribution for any agency. The RHB fund is managed by the Board of Investment Trustees (BIT) in the same manner as the Board manages investments for the County retirement plans. The BIT has broad authority to manage the investments of the RHB trust fund through the use of investment managers consistent with the Uniform Management of Public Employee Retirement Systems Act (UMPERSA). The funds placed into the trust fund are held for the exclusive benefit of the participants in the County retiree benefit plans.

Both MCPS and the College created their own separate OPEB Trusts, but funding is subject to Council appropriation. The Bill would expand the RHB to enable funding for retiree benefit plans operated by MCPS and the College. This consolidated approach to pre-funding retiree benefit plans to achieve economies in administration and investment of funds has been adopted in other jurisdictions, including Baltimore, Frederick, and Howard Counties. The Bill would permit the Council to appropriate OPEB funding to the RHB on behalf of MCPS and the College for the exclusive use of their retirees. The County Government Approved FY12 Operating Budget appropriated, in non-departmental accounts (NDA), $20 million for MCPS OPEB funds and $1 million for College OPEB funds. These funds would be placed into the consolidated RHB fund if the Bill is enacted.

The Bill would create a new Board of Trustees to manage the consolidated RHB consisting of the existing 13 member BIT and 1 representative nominated by MCPS and 1 nominated by the College. The 2 additional trustees would be appointed by the Executive subject to Council confirmation.

Public Hearing

All 3 witnesses represented an organization associated with MCPS. Christopher Barclay, President of the Board of Education (©21-22), Dr. Stephen Raucher, Vice President of the MCPS Retirees Association (©23-24), and Doug Prouty, MCEA President (©25-27), each argued that the Bill was a solution to a problem that does not exist, that a consolidated OPEB Trust Fund would increase administrative costs, and that MCPS should have a greater representation on the Board of Trustees. Montgomery College did not testify.

Issues

1. What is the fiscal impact of the Bill?

The OMB Fiscal Impact Statement (©18-20) states that the Bill would have no significant fiscal or economic impact. As OMB points out, the consolidation of the MCPS and College OPEB funds with the County OPEB fund will ultimately reduce administrative and investment fees, but this reduction is not expected to have a significant effect on the County's fiscal resources. MCPS argued in their testimony that the MCPS OPEB fund has no administrative fees and that the Bill would increase their fees. However, the $37 million in the MCPS fund is currently managed by investing in index mutual funds. The County fund is

[1] MCPS diverted the $12 million appropriated for OPEB to fund a savings plan in FY10.

actively managed. An outline of the RHB fund management process and policies is attached at ©20. As the amount in the fund grows, active management is appropriate. It is our understanding that the costs incurred by the current MCPS OPEB fund are not charged to the OPEB trust but are charged instead to other MCPS departments. Administrative costs for the County OPEB fund are charged to the trust. The charges totaled $31,000 in FY10 and are projected at $38,000 in FY11.

2. Does the consolidated trust comply with GASB reporting rules for OPEB liabilities?

MCPS argues that, under GASB 45 reporting rules, the requirement in the Bill for a Council appropriation resolution to pay for MCPS retiree health benefits from the fund may prevent MCPS from showing this fund on its financial statements as available to pay for retiree benefit plans. MCPS argues that they must have control over the funds in order to show these funds as an asset on its Comprehensive Annual Financial Report (CAFR). MCPS financial staff indicated to Council staff that this is currently an unanswered question. However, the answer is unimportant. The MCPS CAFR will either show this fund as an asset or as a footnote to the CAFR explaining that this money is in the Consolidated Retiree Health Benefits Trust and must be used to pay for MCPS retiree health benefits.

GASB 45 does not require pre-funding of OPEB expenses. Pre-funding these future expenses is important to demonstrate financial stability to the credit rating agencies. The County issues bonds for MCPS capital expenses, not MCPS. It is the County's credit that is rated for these bonds. Pre-funding OPEB expenses is only critical to the County's credit rating.

3. Will the Bill reduce MCPS retiree health benefits?

MCPS, MCEA, and MCPS Retirees Association all argued at the public hearing that the Bill would reduce MCPS retiree health benefits. Council staff disagrees. Under current State law, the Council does not have line item appropriation authority. The Council appropriates funds for MCPS in broad statutory categories. Retiree health expenses are part of Category 12, Fixed Charges, which is defined as "Costs not readily allocable to other categories." It includes primarily health insurance and benefits for active and retired employees, loan interest, tuition reimbursement for staff, and salary and other costs for employees directly related to benefit plan administration. MCPS can move funds between these line items within Category 12 without Council approval. In FY10, the Council included $12 million in the Category 12 appropriation for the MCPS OPEB trust, but MCPS used the funds for its savings plan. The Bill would permit the Council to ensure that OPEB funds are in fact placed in the OPEB trust. All funds placed by the Council in the Consolidated RHB must be used for MCPS retiree benefit plans.

MCPS, MCEA, and MCPS Retirees Association also object to the language in the Bill stating that the creation of the trust does not create an obligation of the County to provide retiree benefit plans. This provision is only intended to prevent an argument that the Bill creates a County contractual duty to fund MCPS retiree benefit plans. This statement does not increase or decrease any contractual rights MCPS employees or retirees may have for these benefits.

4. Does the Board need to adopt different investment strategies for different groups of employees?

MCPS also argued that the consolidated trust would need to adopt different investment strategies for different groups of employees. Again, Council staff disagrees. MCPS points out that the MCPS benefit plan is different from the County plans. While this may be true, the investment strategy for any retiree benefit plan would be similar. The RHB currently invests funds for several participating agencies with different retiree benefit plans, including the County Revenue Authority, Strathmore Hall Foundation, Montgomery County Employees Credit Union, Department of Assessments and Taxation, Housing Opportunities Commission, Washington Suburban Transit Commission, and the Village of Friendship Heights. In addition, the County Retirement fund manages investments for different County employee groups with vastly different retirement plans. The different retiree benefit plans would not change the benchmark rate of return for the fund – currently 7.5%. The fund actuary considers the different retiree benefit plan components when calculating the required annual contribution.

5. Should MCPS and the College have greater representation on the Board of Trustees?

MCPS, MCEA, and MCPS Retirees Association all argue that MCPS should have greater representation on the Board of Trustees. The Bill would create a Board that includes the current 13 members of the Board of Investment Trustees and one additional member from MCPS and one additional member from the College. While this is not proportional to the percent of assets in the trust designated for each County-funded agency, all of the funds in the trust are appropriated by the Council. As described above, pre-funding of OPEB benefits is most important to the County's credit rating. In addition, expanding the Board beyond 15 members could make the Board's operation unwieldy. **Council staff recommendation:** do not expand the Board to add more members representing MCPS and the College.

6. Should the Bill expressly include prescription drug plans?

OHR representatives noted that the definition of retiree benefit plan does not expressly include a prescription drug plan. Although some health plans include prescription drug benefits, some do not. The County provides separate prescription drug plans to supplement the health plans that do not include these benefits. OHR recommended that the Bill be amended to expressly add "prescription drug plan" on line 23 of the Bill. **Council staff recommendation:** amend line 23 to expressly include "prescription drug plan."

7. Should the Executive be permitted to appoint a representative for a County funded agency even if the agency does not nominate a candidate?

The Bill would require the Executive to appoint a member nominated by MCPS and a member nominated by the College. The Bill does not contain a default mechanism for an appointment of a County-funded agency representative if the agency fails to nominate a candidate. Although unlikely, this could prevent the Executive from appointing anyone. **Council staff recommendation:** amend the Bill to make the nomination by a County-funded agency permissive, but not mandatory. The following amendment would accomplish this:

Amend lines 87-95 as follows:

(2) The County Executive must appoint, subject to County Council confirmation, 1 voting member who may be nominated by the

Montgomery County Board of Education, who must serve indefinitely while remaining the designee of the Montgomery County Board of Education.

(3) The County Executive must appoint, subject to County Council confirmation, 1 voting member who may be nominated by the Board of Trustees of Montgomery College, who must serve indefinitely while remaining the designee of Montgomery College.

8. Should the Council adopt the Bill?

MCPS, MCEA, and MCPS Retirees Association all vigorously oppose the Bill. The College has not taken a position. The major arguments expressed by the opponents have been described above. The Bill would create a consolidated trust to include OPEB pre-funding for all County-funded agencies. This is the only method under current State law for the Council to ensure that all funds appropriated for OPEB pre-funding are used for this purpose. Despite the protests from MCPS, the Bill would enhance funding for MCPS retiree benefit plans. The current $38,000 annual administrative cost to operate the RHB should not increase due to the additional funds designated for the County-funded agencies. **Council staff recommendation:** enact the Bill with the amendments proposed above.

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Expedited Bill No. 17-11
Concerning: Personnel – Other Post Employment Benefits Trust – County-funded Agency
Revised: 5-23-11 Draft No. 8
Introduced: May 26, 2011
Expires: November 26, 2012
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Ervin, Councilmembers Navarro, Floreen, Andrews, Riemer, Rice, Leventhal, Elrich, and Council Vice President Berliner

AN EXPEDITED ACT to:

(1) amend the Retiree Health Benefits Trust to provide a funding mechanism to pay for other post employment benefits for employees of certain County-funded agencies; and

(2) generally amend the law governing post employment benefits.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-158, 33-159, 33-160, 33-161, 33-162, 33-165, 33-166, and 33-168

By adding

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-169

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 33-158, 33-159, 33-160, 33-161, 33-162, 33-165, 33-166, and 33-168 are amended and Section 33-169 is added as follows:

33-158. Definitions.

In this Article, the following words and phrases have the following meanings:

[(a)] *Board*: The Consolidated Retiree Health Benefits Trust Board [of Investment Trustees] established under [Article III] Section 33-160.

[(b)] *Contribution*: payment made to the Trust Fund by the County to pay benefits for County retiree benefit plans or a County-funded agency retiree benefit plan.

County: Montgomery County Government.

County-funded agency: Montgomery College and Montgomery County Public Schools.

[(c)] *Custodian*: The County Director of Finance.

[(d)] *Investment manager*: a person or entity who exercises discretion to manage all or part of the assets of an institutional investor.

[(e)] *Participating Agency*: an agency eligible to participate in County benefit plans under Section 20-37(b) which elects to participate in any County retiree benefit plan.

[(f)] *Retiree benefit plan*: any retiree medical plan, dental plan, vision plan, or life insurance plan maintained by the County and administered by the Chief Administrative Officer. Depending on the context, *retiree benefit plan* may also refer to a retiree medical plan, dental plan, vision plan, or life insurance plan established and maintained by a County-funded agency.

[(g)] *Trust Fund*: the Consolidated Retiree Health Benefits (RHB) Trust Fund established to pay all or part of the benefits provided under any retiree benefit plan, including a County-funded agency retiree benefit plan.

33-159. Establishment of Trust.

(a) *County Retiree Benefit Plans*. The Chief Administrative Officer must include the terms of any County retiree benefit plan, including eligibility and benefits, including those benefits collectively bargained, in a plan document. All benefits must meet any applicable Federal or State requirement. Subject to the County's obligations under collective bargaining agreements and the collective bargaining laws, to the extent applicable, the Chief Administrative Officer may amend a plan document at any time. Subject to the County's obligations under collective bargaining agreements and the collective bargaining laws, to the extent applicable, any retiree benefit plan may be terminated at any time for any reason. No retiree benefit is guaranteed, except as expressly provided by a contract entered into by the County.

(b) *Establishment of Trust*. An Other Post Employment Benefits Trust, known as the Consolidated Retiree Health Benefits (RHB) Trust, [effective July 1, 2007,] is established to fund all or a portion of benefits provided under the County retiree benefit plans or a County-funded agency retiree benefit plan. The Trust is intended solely as a funding mechanism to pay for County or County-funded agency retiree benefits provided under the terms of any applicable retiree benefit plan, and does not create any obligation by the County to provide any benefit listed in any County or County-funded agency retiree benefit plan. Any participant in a retiree benefit plan, any current or former County or a County-funded agency employee, or any current or former participating agency employee, has no right to any asset in the Trust fund. The Trust Fund may be, but is not required to be, the sole source of funding for any County or County-funded agency retiree benefit plan.

(c) *Type of Trust*. The County intends that the Trust Fund:

(1) be used to perform its essential government function of providing benefits, including health and life insurance benefits, to participants and eligible dependents; and

(2) qualify as a tax exempt trust under Internal Revenue Code Section 115.

(d) *Assets of Trust Fund*. All contributions and all earnings and other additions, less payments, constitute the assets of the Trust Fund.

(e) *County-funded agency Participation.* A County-funded agency may participate in the Trust Fund as a funding mechanism for its retiree benefit plans. A participant in any County-funded agency retiree benefit plan, or any current or former employee of a County-funded agency, has no right to the assets in the Trust Fund. The County is not responsible for establishing, maintaining, or providing any benefit for any County-funded agency retiree benefit plan.

[(e)] (f) *Exclusive Benefit*. The Trust Fund must be held for the exclusive benefit of participants in retiree benefit plans and eligible dependents, and used only to provide benefits and defray reasonable expenses of administering retiree benefit plans. Trust Fund assets must not revert to the County or a County-funded agency unless the County or the County-funded agency terminates all retiree benefit plans. Some funds may partially revert to the County if at least one benefit plan is terminated under Section 33-166.

33-160. Board of Trustees.

(a) *Establishment.* The Consolidated Retiree Health Trust Board of Trustees is established to manage the Trust. The Board has 15 members.

(b) *Membership.*

(1) Each member of the Board of Investment Trustees established under Section 33-59 is also a member of the Board.

(2) The County Executive must appoint, subject to County Council confirmation, 1 voting member nominated by the Montgomery County Board of Education, who must serve indefinitely while remaining the designee of the Montgomery County Board of Education.

(3) The County Executive must appoint, subject to County Council confirmation, 1 voting member nominated by the Board of Trustees of Montgomery College, who must serve indefinitely while remaining the designee of Montgomery College.

(c) *Vacancies.*

(1) A trustee who is absent from more than 25 percent of the scheduled meetings of the Board during any 12-month period has resigned from the Board. Scheduled meetings mean meetings held at least 7 days after notice of the meeting.

(2) A vacancy on the Board must be filled for the unexpired term in the same manner as the previous trustee was appointed.

(d) *Compensation.* The trustees must serve without compensation from any source for service rendered to the Board, except that an active employee trustee may receive administrative leave to serve on the Board. The Board must reimburse a trustee for any expense approved by the Board. A trustee must not receive reimbursement for expenses from any other source.

(e) *Written policies.* The Board must establish written policies to administer and invest the funds created by this Article and to transact the business of the Trust Fund.

(f) *Officers.* The Board must select a chair, vice chair, and secretary from the Board's members.

(1) The chair must preside at meetings of the Board and may take administrative action, including executing an instrument, on behalf of the Board. A person may rely in good faith on an act of the chair as legally valid.

(2) The vice chair must perform the duties and exercise the powers of the chair when the chair is absent from the County or disabled, or the Board determines is otherwise unable to perform the duties of the chair.

(3) The secretary must record the proceedings and actions of the Board and may certify a document or action of the Board. A person may rely in good faith on the secretary's certification as proof of the document or action.

(g) *Meetings and actions.*

(1) The Board must meet at least once during each calendar quarter. The chair, or 8 members of the Board, may call a meeting of the Board, in the manner and at times and places

provided under the policies of the Board. The Board is a public body under the State Open Meetings Act.

(2) A. Eight trustees constitute a quorum.

B. Each trustee has one vote.

C. Eight trustees must agree for the Board to act.

(3) The Board may act without a meeting. All of the trustees must concur in writing for the Board to approve any action the Board takes without a meeting.

(4) The Board may adopt procedures consistent with this Section.

(5) The Board may authorize a trustee to execute instruments on behalf of the Board. The authority must be in writing and specifically describe the instrument and how the trustee must execute the instrument.

(h) *Records.*

(1) The Board must keep investment accounts and records necessary to calculate the value of each retiree health benefit trust fund and evaluate the experience and performance of the Trust Fund.

(2) The Board may designate a person to maintain the records.

(3) Accounts and records are subject to State law on public records.

(i) *Removal of trustee.* With the Council's approval, the County Executive may remove a trustee for violating this Article or other good cause.

(j) *Legal adviser.* The County Attorney is the legal adviser to the Board.

(k) *Management.* [The Board of Investment Trustees established under Section 33-59 is responsible for managing the Trust Fund.] The Board must hold legal title to all assets of the Trust Fund, but may transfer some incidents of ownership to the Board's agents as provided in this Article. The powers and duties of the Board under this Article are not effective until the Board members have accepted the Trust Fund in writing. Within 10 days after the Council confirms a Board member, the member must certify in writing to the Chief Administrative Officer that the member accepts the Trust Fund and will administer its affairs with care, skill, prudence, and diligence.

33-161. Contributions and payments.

(a) *County Contributions*. The County may contribute to the Trust Fund those amounts that the Council appropriates. The County is not required to make any contribution to the Trust Fund unless a written contract with one or more beneficiaries so requires.

(b) *County-funded Agency Contributions.* The County may contribute to the Trust Fund, on behalf of a County-funded agency, those amounts that the County Council appropriates. A County-funded agency may also make contributions to the Trust Fund in its discretion. Notwithstanding the preceding sentence, the County must make any contribution necessary to pay a County-funded agency's pro rata cost of the expenses of the Trust Fund. Contributions to the Trust Fund made on behalf of a County-funded agency or by a County-funded agency must be attributed to the County-funded agency for actuarial valuation and financial reporting.

[(b)] (c) *Acceptance of Contributions*. The Board must accept all contributions deposited in the Trust Fund and held by the custodian as Trust Fund property. The Board is not responsible for calculating or collecting any contribution, but is only responsible for contributions deposited to the Trust Fund and amounts held in the Trust Fund. The

Board must separately account for any contribution made on behalf of a County-funded agency and earnings and expenses attributable to that contribution.

[(c)] (d) *Payments.*

(1) *Payments for County Retiree Benefit Plans.* Payments may be made from the Trust Fund attributable to the County in those amounts directed by the Chief Administrative Officer only to pay for all or part of the benefits provided by any County retiree benefit plan, administrative expenses relating to a retiree benefit plan, and expenses of the Trust Fund. The Board is not liable for any payment directed by the Chief Administrative Officer and is not required to confirm compliance with any retiree benefit plan.

(2) *Payments for a County-funded Agency Retiree Benefit Plan.* The Chief Administrative Officer may direct that payments be made from the Trust Fund attributable to a County-funded agency as authorized by a County Council appropriation resolution. Payments from the Trust Fund must be used to pay for all or part of the benefits provided by a County-funded agency retiree benefit plan and expenses of any County-funded agency retiree benefit plan. The Board is not liable for any payment made under the direction of the Chief Administrative Officer and has no responsibility to confirm compliance with any retiree benefit plan.

[(d)] (e) *Expenses.* The Board must be reimbursed for expenses solely incurred in the administration of the Trust Fund and must pay from the Trust Fund expenses reasonably incurred by the Chief

Administrative Officer to administer any County retiree benefit plan to the extent that those expenses have not been paid by the County. The Board may pay expenses incurred under Section 33-162(h)(11) without direction of the Chief Administrative Officer. The Chief Administrative Officer may direct the Board to pay expenses reasonably incurred by a County-funded agency to administer its retiree benefit plans.

33-162. Trust Fund management.

* * *

(i) Prohibited Transactions. The Board must not engage in any transaction between the Trust and the County or any entity controlled by the County, including a County-funded agency, or a participating agency in which the Board:

(1) lends any part of its income or corpus without receiving adequate security and a reasonable rate of interest;

(2) pays any compensation more than a reasonable allowance for salaries or other compensation or services actually rendered;

(3) makes any service available on a preferential basis;

(4) makes any substantial purchase of securities or other property for more than adequate consideration;

(5) sells any substantial part of its securities or other property for less than adequate consideration; or

(6) engages in any transaction which results in a substantial diversion of its income or corpus.

(j) To comply with Section 315 of the County Charter, a firm of certified public accountants, under contract with the Council, must complete an annual independent audit of the Trust Fund. The complete audit must be filed with the Council <u>and each County-funded agency</u>, and copies made available for public inspection.

33-165. Indemnification of Board Members.

* * *

(h) *County Attorney.*

(1) The County Attorney must determine whether a Board member is eligible for indemnification with respect to any matter and the reasonableness of any fee, expense, or settlement.

(2) Unless the County Attorney approves the settlement, a Board member cannot settle a claim against another Board member using:

(A) County funds;

(B) funds of a participating agency;

<u>(C) County-funded agency funds;</u>

[(C)] <u>(D)</u> funds provided by a self-insurance program of the County; or

[(D)] <u>(E)</u> funds provided under a policy the County has with an insurance company.

33-166. Amendment and Termination.

(a) *Termination.* Except on termination, no part of the Trust Fund may revert to the County or a participating agency or be used for any purpose other than the exclusive benefit of participants of a retiree benefit plan. If all County retiree benefit plans are terminated and all benefit claims and expenses are paid, any remaining assets in the Trust Fund relating to contributions made by the County and participating agencies must revert to the County and the participating agencies. The Trust Fund must terminate in its [entirely] <u>entirety</u> on the earlier of the termination of all County retiree benefit plans or the depletion of the Trust Fund. Funds may partially revert to the County or participating agencies if one or more retiree benefit plans is terminated. When a County or a County-funded agency retiree benefit plan is terminated, the assets in the Trust Fund attributable to that plan after expenses and benefits have been paid must revert to the County and the participating agencies as provided in the adoption agreement. If the County terminates all of its retiree benefit plans and a County-funded agency continues to maintain at least one retiree benefit plan, the assets attributable to each County-funded agency retiree benefit plan must be transferred to a trust which meets the requirements of Internal Revenue Code Section 115.

(b) *Amendments*. Any provision of this Article may be amended at any time. No amendment may:

(1) authorize any part of the Trust Fund to be used for any purpose other than the exclusive benefit of participants of retiree benefit plans and eligible dependents; or

(2) cause or allow any part of the Trust Fund to revert to or become the property of the County or a County-funded agency, except as provided in Sections 33-166(a), [or] 33-167, or 33-169.

* * *

33-168. Protection from Creditors.

Any asset held by the Trust Fund is not subject to any creditor of the County or a County-funded agency and is exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of any creditor or third person.

33-169. County-funded Agency Participation.

(a) *County Liability.* Except for any obligation to refund or transfer assets under subsection (b) or (c), no legal liability for benefits must accrue to the County by including a County-funded agency in the Trust Fund.

(b) *Termination of Participation by a County-funded Agency.* Any Trust Fund assets must not revert to a County-funded agency. Assets may partially revert to the County if a County-funded agency terminates at least one retiree benefit plan. Only funds attributable to the terminated retiree benefit plan, after benefits and expenses have been paid, may revert to the County.

(c) *Transfer of Trust Fund:* If the County decides to terminate a County-funded agency's participation in the Trust Fund, the County must notify the County-funded agency in writing. If the County-funded agency continues to maintain a retiree benefit plan, assets must be transferred to a trust which meets the requirements of Internal Revenue Code Section 115. Any transfer of assets from the Trust Fund resulting from the termination of participation in the Trust Fund must comply with the Internal Revenue Code.

Sec. 2. Transition.

The Consolidated Health Benefits Trust Fund mentioned in County Code §33-159, as amended by Section 1 of this Act, does not create a new trust. The Trust Fund is the same legal entity first created in County Code §33-159 and inserted by Chapter 3, Laws of Montgomery County 2008. Any reference to the Retiree Health Benefits Trust in any document produced before the effective date of this Act must be treated as referring to the Consolidated Retiree Health Benefit Trust referenced in County Code §33-159, as amended by Section 1 of this Act.

Sec. 3. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on July 1, 2011.

Approved:

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Valerie Ervin, President, County Council   Date

Approved:

____

Isiah Leggett, County Executive   Date

This is a correct copy of Council action.

____

Linda M. Lauer, Clerk of the Council   Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 17-11
Personnel – OPEB Trust – County-funded Agency

DESCRIPTION:	Amend the Retiree Health Benefits Trust to provide a funding mechanism to pay for other post employment benefits for employees of the Montgomery County Public Schools and Montgomery College.
PROBLEM:	Small OPEB Trust funds created by each County-funded agency require a duplication of effort to manage. Each separate OPEB Trust is funded by Council appropriation.
GOALS AND OBJECTIVES:	To consolidate the separate OPEB Trusts created by the County, MCPS and the College to achieve economies in administration and management.
COORDINATION:	Finance, County Attorney, OMB, OHR
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	Baltimore, Frederick, and Howard Counties created similar consolidated OPEB Trusts.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Not applicable.

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

OFFICE OF THE COUNCIL PRESIDENT

MEMORANDUM

May 16, 2011

TO: County Council

FROM: Valerie Ervin, Council President

SUBJECT: Pre-funding Retiree Health Benefits

Starting in 2003, the Council has focused on the importance of pre-funding retiree health benefits, or OPEB (Other Post Employment Benefits). Actuarial advisers for the four County tax supported agencies have estimated the total liability associated with providing these benefits for current and future retirees at $3.6 billion. As both health care costs and the number of retirees continue to rise sharply, the agencies will not be able to cover the annual expense on a pay-as-you-go basis, as they have done to date.

To meet the Annual Required Contribution (ARC) needed to meet future obligations, pre-funding through a trust vehicle is essential. The agencies have all established retiree health benefits trusts, but the severe fiscal pressures of the past several years have sharply restricted funding for the trusts. For FY08 the Council set a five-year schedule for the agencies to phase in their pre-funding and budgeted $31.9 million for the first year. For FY09, in view of growing fiscal pressures, the Council extended the phase-in schedule to eight years. For FY10 the only tax supported OPEB appropriation was $12 million for MCPS. For FY11, an extremely difficult year, there was no tax supported contribution for any agency.[1]

For FY12 the Executive proposed to resume tax supported funding at a total level of $49.8 million: $26.1 million for County Government, $20.0 million for MCPS, $1.0 million for Montgomery College, and $2.7 million for M-NCPPC. This funding would represent a start toward returning to a clear phase-in schedule for all agencies.

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[1] If the County had followed the five-year phase-in schedule that was approved four years ago, the total FY11 tax supported contribution for all four agencies would have been $149 million. Non-tax supported contributions from proprietary funds and participating outside agencies, however, have consistently been made. On May 9 the Council supported $12.1 million in FY12 funding for this purpose.

Based on the Council's recent discussions of this issue, I suggest two steps:

First, to provide a more coherent and consistent approach to pre-funding retiree health benefits starting in FY12, I will introduce legislation to enable MCPS and Montgomery College to participate in a consolidated County retiree health benefits trust.[2] Many jurisdictions, including Baltimore, Frederick, and Howard County, have adopted a consolidated approach to achieve economies in administration and investment of funds, including lower fees and access to investment managers with minimum asset requirements. Such an approach will also make the Council's annual OPEB funding decisions clearer and more transparent. This will benefit both the agencies and their retirees.

Second, I suggest that we place the proposed FY12 OPEB contributions for MCPS ($20.0 million) and the College ($1.0 million) in separate County Government Non-Departmental Accounts, one on behalf of each agency, for transfer to the consolidated trust after the bill has been enacted.

I believe that these steps will help all agencies meet their commitments to their retirees in a fiscally responsible way.

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[2] The legislation would provide representation on the consolidated trust's governing board and would base each agency's share of trust assets on its contributions and on earnings on the contributions. The existing trusts of both agencies would continue to be a source of future funding of retiree health benefits. Since M-NCPCC is a bi-county agency, its participation would require collaboration with Prince George's County.

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

June 10, 2011

TO: Valerie Ervin, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Expedited Bill 17-11, Personnel – Other Post Employment Benefits Trust – County-funded Agency

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

LEGISLATION SUMMARY

The proposed legislation amends the Retiree Health Benefits Trust to provide a funding mechanism to pay for other post employment benefits for employees of the Montgomery County Public Schools and Montgomery College. The legislation also changes the composition of the Trust's governing board by adding two representatives, one representative nominated by the Montgomery County Board of Education and one nominated by the Board of Trustees of Montgomery College, in addition to the existing 13 members of the County's Board of Investment Trustees, which currently oversee the investment of the Trust assets. These two additional members would be appointed by the County Executive subject to Council confirmation. The name of the Trust, as well as the governing board, will change to the Consolidated Retiree Health Benefits Trust.

Funding of the Trust is subject to Council's appropriation and each agency's share of Trust assets is allocated based on their contributions and earnings, less applicable expenses. In addition, the existing trusts of both the Montgomery County Board of Education and Montgomery College would continue to be a source of future funding of their retiree health benefits.

FISCAL AND ECONOMIC SUMMARY

Neither the establishment of the consolidated trust nor the larger size of the Consolidated Retiree Health Trust Board of Trustees is expected to have a significant fiscal impact on the County. Increased Trust Fund assets will provide economies of scale resulting in the Board gaining exposure to investment managers that have minimum asset size requirements and should result in lower investment fees due to the larger size of the asset pool. The current 8-year retiree health benefits funding schedule is attached.

The legislation has no significant economic impact; any reduction in fee payments or administrative cost savings would be small relative to the Montgomery County economy as a whole.

The following contributed to and concurred with this analysis: Linda Herman, Board of Investment Trustees, Michael Coveyou, Department of Finance, and Lori O'Brien, Office of Management and Budget.

JFB:lob

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Karen Hawkins, Acting Director, Department of Finance
Linda Herman, Director, Board of Investment Trustees
Michael Coveyou, Department of Finance
Lori O'Brien, Office of Management and Budget
John Cuff, Office of Management and Budget
Amy Wilson, Office of Management and Budget

Fiscal Update: OPEB Valuation
June 30, 2010

	Actuarial Valuation As of June 30, 2010 (2)		Eight -Year Phase In (3)									
			Actual			Budgeted		Projected				
	Actuarial Accrued Liability (AAL)	Annual Required Contribution (ARC)	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015 (4)	FY2016	FY2017
County	$1,737,436,000	$147,582,000	$14,020,000	$19,700,000	$ 3,308,070	$7,288,290	$38,173,430	$ 69,480,000	$ 73,119,000	$ 69,262,000	$ 68,382,000	$ 68,068,000
Public Schools	1,360,980,000	131,690,000	16,060,000	18,300,000	12,000,000	-	20,000,000	78,296,000	90,589,000	101,363,000	98,009,000	94,183,000
College	69,049,415	5,696,322	606,400	700,000	-	-	1,000,000	2,368,000	2,738,000	3,054,000	2,894,000	2,685,000
M-NCPPC (1)	128,681,685	11,779,785	1,210,500	1,900,000	-	-	2,559,850	6,286,000	7,074,400	7,704,800	7,226,500	6,779,200
Total Tax-Supported	$3,296,147,100	$296,748,107	$31,896,900	$40,600,000	$15,308,070	$7,288,290	$61,733,280	$156,430,000	$173,520,400	$181,383,800	$176,511,500	$171,715,200

(1) Montgomery County portion is 45% of total plan.
(2) Represents amounts projected as of July 1, 2010 (FY11).
(3) Additional prefunding amounts, above and beyond pay-as-you-go, to fully fund the ARC by FY2015.
(4) First year of full prefunding of the ARC.

Board of Education
MONTGOMERY COUNTY BOARD OF EDUCATION
850 Hungerford Drive ◆ Rockville, Maryland 20850

Testimony of Montgomery County Board of Education
before the County Council
Expedited Bill 17-11, Personnel—Other Post Employment Benefits Trust—
County-Funded Agencies

June 14, 2011

Good afternoon. I am Christopher S. Barclay, president of the Montgomery County Board of Education. I am here to provide testimony regarding Bill 17-11 to "amend the Retiree Health Benefits Trust to provide a funding mechanism to pay for other post employment benefits for employees of certain County-funded agencies."

The memorandum from Council President Ervin to the Council states that the purpose of the proposed bill is to "achieve economies in administration and investment of funds, including lower fees and access to investment managers with minimum asset requirements." There is no evidence, however, that this legislation can achieve that laudable goal or that it is even needed. The guiding question should be this: What problem are you trying to solve with this legislation?

The proposed legislation is lacking in detail. There have been no inquiries regarding the costs of the various agencies to manage funds or if there are opportunities regarding access to managers at lower fees. In the case of Montgomery County Public Schools (MCPS), our investment officer is already managing a $1 billion pension fund and the previous contributions to the Other Post-Employment Benefits Plan (OPEB Trust). We already have low cost management fees and access to investment managers. I would remind Council members that our trust was set up in collaboration with all other county agencies, at the request of the Council, in order to have a prudent, consistent approach to the funding of these liabilities.

There are serious legal issues that must be carefully considered and addressed. The OPEB Trust created by MCPS four years ago, at the request of the Council, is the subject of a private letter ruling by the IRS. The private letter ruling approves the OPEB trust as meeting the IRS requirements for such a plan. It is our understanding that the rules and regulations governing OPEB Trusts *require* the trust to fund ***a*** plan. We believe that there are serious questions about whether an OPEB trust for payment of benefits to satisfy the plan of a different governmental entity satisfies tax requirements. In the public interest and in the interest of 22,000 MCPS employees and more than 7,400 MCPS retirees, we urge the Council to take the time to assure us, MCPS employees and retirees, and the public that the entity created by this bill meets all legal requirements for all employees and retirees who are relying on it to fund their future benefits.

Phone 301-279-3617 ◆ Fax 301-279-3860 ◆ boe@mcpsmd.org ◆ www.montgomeryschoolsmd.org

The funding of an OPEB Trust is governed by the particular employee benefit plan. The Board of Education is required by State law to negotiate employee benefits with each of our unions. The benefits are negotiated in the context of the mutual responsibilities and benefits that MCPS and its employees undertake in these agreements. We believe we have handled our legal responsibilities in this area in a reasonable and prudent fashion. The bottom line, however, is that our employee benefit plan is different from the County's. Therefore, there are different liabilities based on plan designs and populations with different experience and growth rates. These differences require a trustee to employ different investment strategies to match the liabilities they are to fund. Even if permitted by the IRS, having funds in trust run under one unified management entity will complicate required actuarial studies and increase costs.

In addition, and again assuming that this proposal meets all legal requirements, the trust will likely incur additional expenses to maintain very detailed accounting to accurately attribute both income and expenses to each agency and the different features of each plan, especially as agencies begin to draw down the funds at different rates. This must happen as public safety employees retire at significantly younger ages than teachers, especially given the recent changes to the pension plans offered to MCPS employees. The FY 12 county OPEB trust budget will increase costs over MCPS' current costs. Also, through March 2011, the MCPS trust has experienced better investment returns as well.

The bill proposes a trust that is overseen by a Board with only one MCPS representative out of 15 members, even though approximately forty percent (40%) of the funds will be held for the benefit of MCPS retirees. Proportionately, MCPS should have at least six members on the Board, not one.

The bill as drafted does not mandate the chief administrative officer to make payments for beneficiaries as requested by county-funded agencies. This could complicate the prompt payment of required benefits. Additionally, it sets up additional hurdles for reimbursement of MCPS for OPEB expenses such as the actuarial study costs. The bill also implies that the chief administrator officer has the authority to unilaterally change or cancel the health benefits of MCPS retirees. This is completely unacceptable and incongruent with the Board of Education's requirement to negotiate with our employee associations.

I am unaware of any study or assessment of the cost impact of this proposal substantiating that it accomplishes the goal of reducing administrative costs—a goal we both share. I am unaware of any study showing that the performance of the MCPS OPEB trust is deficient in any way or would benefit from this proposal. I am unaware of any ruling or opinion confirming that the changes proposed in this bill will meet all legal requirements—an obligation we both have to the public and to our employees.

The Council has been diligent in attempting to address the issue of structural budget deficits by directing the Office of Legislative Oversight (OLO) to study such important issues. The proposal offered by this bill should be treated no differently and should receive the same prudent study from the OLO. As you consider such an important structural change, let's deal with facts; let's deal with data; let's not rush into such a complex issue without more information.

Montgomery County Public Schools Retirees
Association, Inc.
Post Office Box 4367
Rockville, Maryland 20849-4367

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Testimony on Expedited Council Bill 17-11 – Personnel – OPEB

Dr. Stephen M. Raucher, Vice President
Montgomery County Public Schools Retirees Association

Madame President and Members of the County Council, I'm Dr. Stephen Raucher, representing the Montgomery County Public Schools Retirees Association. Our Association has about 2,700 members. In addition to providing travel, news, and social opportunities for our members, we have raised over $200,000 during the last eight years for our Books and Toolkits Project for Title I children enrolled in summer school. And, again this year, we were pleased to present $1,000 scholarships to 15 active MCPS employees to help them pay for further education or skill training. But our main purpose is to monitor and protect our pension and health benefits, the most important current assets for any retiree. Ladies and gentlemen of the Council, we urge you to rethink this bill. It is a solution in search of a problem

In the early 2,000's we worked for three years with staff to correct inconsistencies in the MCPS retiree health plan. To implement these changes, we increased our contribution to plan costs from 30% to 36%--a higher percentage than retirees in other agencies contributed.

We supported the creation of the current MCPS OPEB Trust in 2007. Its investments are supervised by the MCPS Retirement and Pension System Board of Investment Trustees, on which there is a retiree member. Over the past four years, contributions of $34,280,000 invested in various low-cost index funds have increased to nearly $40 million as of May 31. With one board managing both Trusts, a single investment manager, and investing in low-cost index funds, the OPEB Trust is already efficiently and professionally managed.

What are our concerns about this bill?

- The Memorandum from the Council's senior legislative attorney says this bill achieves economies in administration and investment of funds and cites several other Maryland counties who have created combined OPEB trusts. But those jurisdictions **didn't already have a local retirement board**—they use the State Retirement and Pension systems. Therefore, this bill **adds costs** by duplicating services already provided.
- The bill provides for only one MCPS appointee to a 15-member investment board. Even though the majority of assets [95% in FY 12 alone] would be invested for MCPS retirees, we will have little or no say in investment policies or decisions. At a minimum, membership on an OPEB Board should be proportional to the relative number of retirees to be covered by each agency.
- Beginning on line 36 of the bill, it speaks to the County's obligations under collective bargaining agreements . . . and states that **any retiree benefit plan may be terminated at any time for any reason**. That's not very reassuring. MCPS retirees have no collective bargaining rights with the Board of Education, so our future health benefits appear to be entirely in the hands of the County's Chief Administrative Officer.
- Beginning on line 69, "The County is not responsible for establishing, maintaining, or providing any benefit for any County-funded agency retiree benefit plan." There we go again; our benefits can evaporate in a moment. **We thought long-term funding was the purpose of an OPEB Trust.**

- Beginning on line 144, "The Board must keep investment accounts and records necessary to calculate the value of each retiree health benefit trust fund . . ." **With the current separate funds, none of that administrative and accounting work is required. This increases administrative costs when the purpose should be cost reduction!**

Ladies and gentlemen of the Council, we urge you rethink this bill. Again, it is **a solution in search of a problem.** It is based on solutions to problems in other counties that we have already solved. We already have OPEB Trusts. For MCPS, its Board already existed. It takes only a few hours each year for the Board to manage the Trust so costs are absolutely minimal. With a retiree member on the current OPEB Board, we feel well-informed and involved in the funding of our retiree health benefits. There is nothing in this bill that will result in any cost-savings. To the contrary; this bill is unnecessary because the County Council will always control the appropriations to all publicly-funded OPEB Trusts in Montgomery County.

Thank you for considering our thoughts.

June 14, 2011

Montgomery County Council

Public Hearing on Expedited Bill 17-11 Other Post-Employment Benefits Trust

June 14, 2011

Testimony of Doug Prouty, MCEA President

Good afternoon, Council President Ervin and members of the County Council. I am Doug Prouty, president of the Montgomery County Education Association. I am here today on behalf of the 12,000 members of the Montgomery County Education Association. We have a number of fundamental questions and concerns relative to Bill 17-11 and its intent to merge the MCPS OPEB Trust Fund into a single, multi-agency trust fund.

1. What is the problem that this bill is designed to address?

To the best of our knowledge, no one has adequately explained what the problem is that this bill is designed to fix. Several years ago, the county government, the school system and the college all set up OPEB Trust Funds to meet the new Government Accounting and Standards Board requirements relative to accounting for post-retirement health benefits. We have heard that consolidation will save administrative expenses, but we have seen no analysis to support that claim.

We have heard that the County Council doesn't "trust" the Board of Education to fund the Trust Fund. This claim rings particularly hollow, since for Fiscal Year 2011, the Board of Education's approved budget (after final Council budget action) included $31 million in funding for the OPEB Trust Fund while the County Government provided no funding for its OPEB Trust Fund.

Additionally, more than 15 years ago, the Board of Education had, on its own volition, created and funded for many years a Retiree Health Insurance Trust Fund. This was before there was any GASB requirement. While current Council members may not remember this; it is the County Council itself that required the Board of Education to terminate and spend down its Retiree Health Insurance Trust Fund.

What we draw from that history is that the Board of Education has been quite responsible and trustworthy in attempting to set aside resources to fund its commitments for retiree health care. We would like the Council to explain why they believe it is now necessary to consolidate the OPEB Trust Funds. Without a legitimate explanation, this change cannot be justified.

2. How do we know the funds will be used for MCPS retiree health care?

In our view, the commitment by our employer to help fund the cost of health insurance during retirement amounts to deferred compensation. In the alternative, our members would rightly expect higher compensation now, so that they could save individually for the costs of retiree health care.

We are seriously troubled by the proposed consolidation of the OPEB Trust Funds because we see no language in the Bill that guarantees that the assets of the Trust Fund will actually be spent to help offset the costs of our members' health care in retirement. The Bill grants sole and unilateral control over expenditures from the Trust Fund to the County's Chief Administrative Officer (CAO). There are no provisions specifying when or how payments from the Trust Fund will be made. In future years there will be hundreds of millions of dollars locked up in this Trust Fund. When will those Funds be used?

How can our members be assured that the funds ostensibly set aside for their retiree health insurance costs will be used for them, and not for the employees of other agencies? Does our employer not have any role in deciding how those set-aside assets will be used? What is to prevent a situation in the future where the CAO allows use of the Fund's assets for health insurance costs for county government retirees but refuses to allow the assets to be used at the same time or at the same rate for school system employees?

The lack of specificity in the proposed Bill is an invitation for conflict between future county executives and boards of education. Unless the proposal is amended to provide for specific guarantees that our employer is able to control use of the assets, it is not in the interests of school system employees.

3. Why is there such limited MCPS representation on the Board?

Were the Trust Funds to be consolidated, it would be holding assets in trust for approximately 22,000 MCPS, 8,000 county government employees, and fewer than 2,000 College employees. Yet, as proposed, the 15 Board of Trustees for the Fund includes only one (1) representative from the school system. How can that possibly be justified? School system employees would constitute 69% of the Trust Fund's beneficiaries, but school system representatives would constitute less than 7% of the Board members responsible for the Fund.

We are equally troubled by the apparent fact that there would be no MCPS employee representative on the Board of Trustees. This too seems inappropriate given the legitimate interest that the 22,000 employees of MCPS have in the proper administration of hundreds of millions of dollars being set aside, ostensibly in their name, to help offset the costs of health insurance in retirement.

4. Why control with no responsibility?

Finally, we are at a loss to understand how the county government can assert control over the assets being set aside to help pay for the cost of health insurance for MCPS retirees, yet at the same time disavow any responsibility for "*maintaining or providing any benefit for any (MCPS) retiree benefit plan*" (p. 4 lines70-71 of the Bill).

It seems to us, and we believe to any reasonable observer, that if you are assuming responsibility for the assets being set aside to pay for our benefits, you are by definition also assuming responsibility for providing for those benefits.

If the County Council wants to assume full responsibility for providing retiree health insurance for MCPS retirees, then we should have that conversation. Since the Council provides more generous health insurance benefits to county retirees than the Board of Education does for school system employees, we would welcome the opportunity to have parity with the benefits you provide.

However, it seems both illogical and inappropriate for the county government to assert control over the assets being set aside to help pay for the cost of health insurance for MCPS retirees, yet at the same time disavow any responsibility for providing those benefits. Quite frankly, we are at a loss to explain that distinction to our members – or to the public. And we would ask the Council to provide a satisfactory explanation.

Conclusion

Given these concerns, we believe it is premature to rush to judgment on this question. There are far too many outstanding questions that must be answered before a reasoned conclusion can be reached. Therefore we would encourage the Council to defer any action on this proposed consolidation in order to provide time to answer the many unanswered questions, and to provide time for the parties involved to discuss all the potential implications.

Let's not forget that this decision will affect hundreds of millions of dollars in funds in the coming years. The Council would be doing our county a disservice to take rushed action on such a significant issue, given the long-term interests of the county and its employees who devote their careers to public service.

Thank you.

Retiree Health Benefits Trust

Overview - May 31, 2011

Background

The County Council approved legislation in April 2008 to establish the Retiree Health Benefits Trust (RHBT) and granted the Board the authority to invest the assets of the Trust. The Board developed an initial asset allocation and selected BGI (BlackRock) to provide passive investment exposure. The Board also hired Northern Trust as the custodian.

In addition, the Board approved the following policies and processes for the governance and investment of Trust assets including:

- Investment Policy *(attachment 1)*
- Investment Policy – Commingled/Mutual Funds *(attachment 2)*
- Investment Policy – International *(attachment 3)*
- Derivatives – Statement of Investment Program *(attachment 4)*
- Fund Overlay Rebalancing Program *(attachment 5)*
- Board Bylaws *(attachment 6)*
- Service Provider Procurement Policy *(attachment 7)*
- Due Diligence & Continuing Education Policy *(attachment 8)*
- Standards of Professional & Ethical Conduct *(attachment 9)*
- Fiduciary Acknowledgement *(attachment 10)*
- Annual Trust Declaration *(attachment 11)*

The RHBT is comprised of the following participating agencies: *Montgomery County Govt , Revenue Authority, Strathmore Hall Foundation, Credit Union, Dept of Assessments & Tax, HOC, WSTC, Village of Friendship Heights*

Asset Allocation Considerations

The RHBT has a long-term funding requirement for benefits which may not be payable for many years. Therefore, prudent and reasonable risk can be taken with the objective of increasing long-term investment returns. Due to liabilities being linked to high healthcare inflation costs, the asset allocation also contains a significant inflation-linked bond allocation. and the real estate securities exposure serves as a diversified source of return.

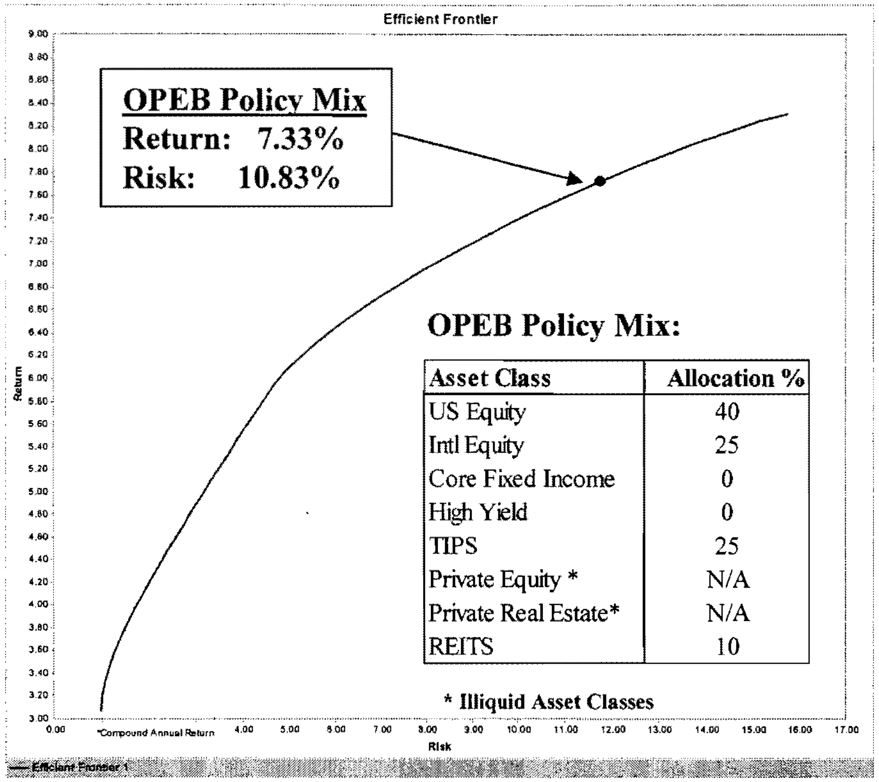
Return - Reduced actuarial rate of return assumption on investments from 8.0% to 7.5% in November 2010.
Beta Risk - The risk in a portfolio that arises from passively holding asset classes (market risk).
Alpha Risk - The risk taken by active managers above and beyond their passive, benchmark-replicating positions (manager risk).
Risk Budget - A target level of tracking error – taking the appropriate amount of risk. An appropriate and reasonable level will be determined based on current market conditions. The current risk level is approximately 11%.

Asset size relative to liability - As of May 31 2011, the RHBT had assets of $53,289,944 versus an Actuarial Accrued Liability (AAL) liability of $1.4bn. There is such a mismatch in terms of assets and liabilities that we considered assets in isolation (i.e. ignore the liability from an asset allocation modeling perspective). Thus the efficient frontier asset mix does not take liabilities into consideration but does target a beta return of 7.0%

Beta/market exposures constraints - With a small asset base, we are limited to investments that are liquid, such as domestic and international equities, core and high yield fixed income and inflation-linked bonds. Private Equity, Private Real Estate, and other illiquid asset classes are inappropriate for the RHBT at this time. Since initial funding in 2008 we have broadened our asset allocation to include emerging market equities and high yield fixed income.

Alpha/active management constraints - We are also limited in our ability to pursue alpha due to our small asset base. Though some active managers are willing to accept smaller mandates, those mandates tend to have higher fees, which must be weighed against a manager's ability to generate excess return. The current allocation utilizes passive mandates and one active manager – Loomis Sayles – to manage the high yield asset class.

2008 Efficient Frontier



OPEB Policy Mix:

Asset Class	Allocation %
US Equity	40
Intl Equity	25
Core Fixed Income	0
High Yield	0
TIPS	25
Private Equity *	N/A
Private Real Estate*	N/A
REITS	10

*** Illiquid Asset Classes**

The efficient frontier shows the highest expected return portfolio for a given level of risk. The efficient frontier to the left was generated by utilizing our consultant's (Wilshire), 2008 risk/return assumptions. Given the growth objective, a major asset class breakdown of 75% Equity (including REITs) and 25% Fixed Income was decided. This efficient portfolio was expected to return 7.33% with a 10.83% risk level.

Wilshire 2008 Capital Market Risk/Return Assumptions

Asset Class	U.S. Equity	International Equity	Private Equity	Core Fixed Income	High Yield Fixed Income	Real Estate (REITs)	Inflation Protected Bonds	Cash
Return	8.25	8.25	11.25	5.00	7.00	5.75	4.00	3.00
Risk	16.00	17.00	26.00	5.00	10.00	15.00	6.00	1.00
Correlation								
U.S. Equity	1.00							
International Equity	0.80	1.00						
Private Equity	0.75	0.65	1.00					
Core Fixed Income	0.29	0.05	0.32	1.00				
High Yield Fixed Income	0.48	0.35	0.34	0.28	1.00			
Real Estate (REITs)	0.35	0.25	0.35	0.15	0.30	1.00		
Inflation Protected Bonds	-0.05	0.05	0.01	0.20	0.01	0.15	1.00	
Cash	0	-0.09	0	0.2	0	0	0.15	1

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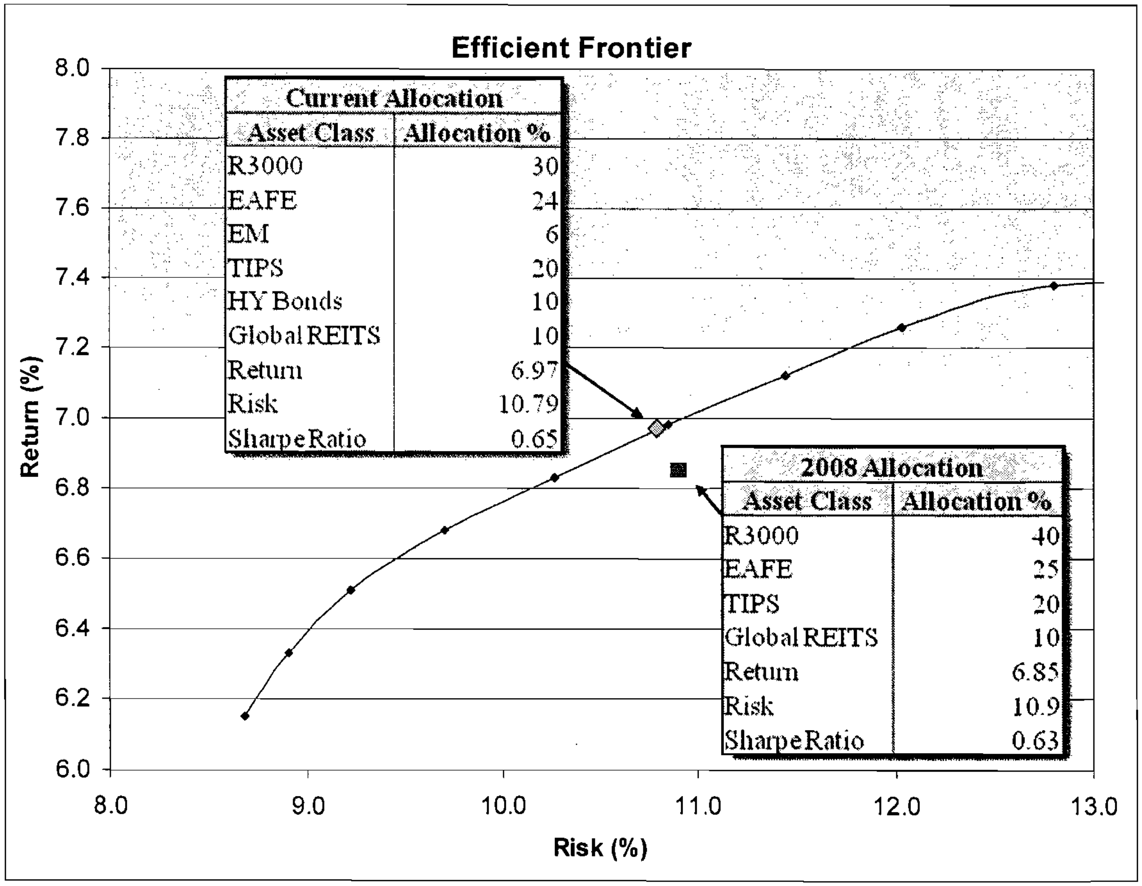
2010 Updated Efficient Frontier

In January 2010, Staff prepared an updated asset allocation using Wilshire's 2010 risk/return assumptions with a broadened asset mix to include high yield bonds and emerging market equities. Our 2010 constraints and Wilshire's assumptions are shown in the Appendix for reference.



Points of note:

- Wilshire 2010 return assumptions are considerably lower than the 2008 return assumptions.
- The 2010 efficient frontier includes emerging market equities and high yield bonds that were not included in the 2008 efficient frontier.
- The current efficient frontier is significantly flatter than the original efficient frontier indicating that increasing risk does not increase return as much as in the past.
- By broadening our asset mix selection to include assets with lower correlations, we increased return expectations and simultaneously reduced our risk level.
- Current major asset allocation is 70% equities and 30% fixed income with an expected return of 6.97% and a risk level of 10.79%.

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Current Allocation & Performance – 5/31/11

Rates of Return By Manager

	Ending Market Value	% Wt	Target Wt	One Month	Three Months	Fiscal YTD	Calendar YTD	One Year
Montgomery County Ret. HB Trust	**53,227,178**	**100.0**	**100.0**	**-0.94**	**2.97**	**26.87**	**7.09**	**23.82**
RHBT Policy Benchmark				*-1.06*	*2.64*	*26.41*	*6.63*	*23.54*
BlackRock Russell 3000 Fund	**15,855,482**	**29.8**	**30.00**	**-1.13**	**2.28**	**34.88**	**8.35**	**27.19**
Russell 3000				*-1.14*	*2.26*	*34.79*	*8.30*	*27.04*
BlackRock EAFE Fund	**12,471,603**	**23.4**	**24.00**	**-2.88**	**0.66**	**32.20**	**6.46**	**30.64**
MSCI EAFE ND				*-2.95*	*0.54*	*32.01*	*6.31*	*30.69*
BlackRock Emerging Markets Fund	**3,299,181**	**6.2**	**6.00**	**-2.64**	**6.26**	**29.66**	**2.43**	**30.02**
MSCI Emerging Markets ND				*-2.62*	*6.30*	*29.79*	*2.45*	*28.84*
BlackRock U.S. TIPS Fund	**10,715,964**	**20.1**	**20.00**	**0.32**	**3.90**	**6.97**	**5.02**	**8.50**
BC U.S. TIPS				*0.31*	*3.87*	*6.88*	*4.97*	*8.40*
Loomis Sayles High Yield	**5,382,113**	**10.1**	**10.00**	**0.35**	**4.08**	**20.58**	**7.71**	**19.59**
Merrill Lynch High Yield II Constrained				*0.49*	*2.44*	*16.48*	*6.00*	*16.03*
BlackRock REIT	**5,498,000**	**10.3**	**10.00**	**1.52**	**6.37**	**39.33**	**10.97**	**36.25**
MCHBT Real Estate				*1.53*	*6.26*	*38.83*	*10.72*	*36.04*
Cash	**4,836**	**0.0**		**0.00**	**0.26**	**0.30**	**0.26**	**0.31**
90 Day T-Bill				*0.01*	*0.02*	*0.13*	*0.05*	*0.14*

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Pro-Rata Portion of Allocation by Participating Agency

The allocation to each agency is based on their prior month balance plus any new contributions made during the current month. Gains, losses and expenses are allocated based on each agency's pro-rata share in the Trust.

Agency		Dollar Amount	Percentage
Montgomery County Govt	$	50,327,860	94.44%
MontCo Revenue Authority	$	484,109	0.91%
Strathmore Hall Foundation	$	26,807	0.05%
Credit Union	$	171,033	0.32%
Dept of Assessments & Tax	$	8,574	0.02%
HOC	$	2,200,386	4.13%
WSTC	$	23,415	0.04%
Village of Friendship Heights	$	47,760	0.09%
Total	**$**	**53,289,944**	100.00%

Current Efforts

Staff is reviewing the current asset allocation to analyze the addition of other asset classes and active strategies due to the proposed legislation resulting in a substantial increase in assets, including:

Asset Classes

- Currencies
- Fixed Income
  - Long Duration
  - International
  - Emerging Market

Active Management

- Global Inflation Linked Bonds
- Global REITS
- Public Equities
  - Domestic
  - International
  - Emerging Market

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Board Staff

The Staff's time is split between overseeing the investment programs for the County's three retirement plans, $3b defined benefit, $200 defined contribution, and $300m deferred compensation plan, along with the assets of the RHBT. Staff has on average 18 years of investment experience.

Linda A. Herman
Executive Director

Marc Esen, CIMA
Portfolio Manager
Public Equities and Commodities

Brad Stelzer, CFA
Senior Portfolio Manager
Private Real Assets and Private Equity

Stuart Potter, CFA
Senior Portfolio Manager
Fixed Income and Currencies

John Feketekuty, CFA
Investment Analyst

Akiko Kawashima
Compliance Analyst

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Appendix

Risk/Return Assumptions

	US Equity	EAFE	Emerging Mkts	ACWI ex US	Bond Aggregate	L/T Bond	US TIPS	High Yield	US REIT	Non-US REIT	Commodities
Return	7.50	7.50	7.50	7.50	4.25	5.25	3.50	6.00	7.25	7.25	4.50
Risk	16.00	17.00	24.00	17.25	5.00	10.00	6.00	10.00	15.00	13.00	13.00
Yield	2.75	3.50	3.25	3.45	4.25	5.50	3.50	6.75	5.95	5.95	2.25
Corr											
US Equity	1.00										
MSCI - EAFE Index ($Net)	0.80	1.00									
MSCI - Emerging Markets Index ($ Net)	0.70	0.68	1.00								
MSCI - AC World Ex-US Index ($Net)	0.83	0.98	0.80	1.00							
Barclays Capital - Aggregate Bond Index	0.29	0.05	0.00	0.04	1.00						
Barclays Capital - Govt/Credit Long-Term Index	0.30	0.09	0.01	0.08	0.95	1.00					
Barclays Capital - U.S. Tips Index	-0.05	0.05	0.00	0.04	0.20	0.15	1.00				
Barclays Capital - High Yield Index	0.48	0.35	0.35	0.37	0.28	0.30	0.01	1.00			
Wilshire - REIT Index	0.35	0.25	0.30	0.28	0.15	0.15	0.15	0.30	1.00		
Wilshire - Global ex US REIT Index	0.50	0.65	0.60	0.68	0.10	0.10	0.15	0.40	0.50	1.00	
Dow Jones - UBS Commodity Index (Total Return)	0.00	0.20	0.24	0.22	0.00	0.00	0.20	0.08	0.20	0.25	1.00

Constraints

Asset Class	Weights Min	Weights Max
Wilshire - 5000 Composite Index	20	50
MSCI - EAFE Index ($Net)	20	50
MSCI - Emerging Markets Index ($ Net)	0	50
MSCI - AC World Ex-US Index ($Net)	0	0
Barclays Capital - Aggregate Bond Index	0	0
Barclays Capital - Govt/Credit Long-Term Index	0	0
Barclays Capital - U.S. Tips Index	10	50
Barclays Capital - High Yield Index	0	10
Wilshire - REIT Index	0	5
Wilshire - Global ex US REIT Index	0	5
Dow Jones - UBS Commodity Index (Total Return)	0	0

Additional Constraints / Considerations:

- US and Non-US Equities set to be equal weighted
- Within Non-US Equities, the mix between EAFE and Emerging markets was set to 80% / 20% respectively
- High Yield capped at 10%
- Long –Term Bonds capped at zero out of preference for maintaining higher exposure to TIPS, due to link between RHBT obligations and CPI / Inflation
- BGI has no Global REIT product available. Therefore equal-weight applied to US / Non-US REITs.

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