

MEMORANDUM

April 12, 2012

TO: Government Operations and Fiscal Policy Committee
FROM: Robert H. Drummer, Senior Legislative Attorney 
SUBJECT: **Worksession:** Expedited Bill 8-12, Retirement Savings Plan - Amendments

Expected attendee: Linda Herman, Executive Director for the Board of Investment Trustees

Expedited Bill 8-12, Retirement Savings Plan - Amendments, sponsored by the Council President at the request of the County Executive, was introduced on March 6, 2012. A public hearing was held on March 27.

Background

Bill 8-12 would amend the Retirement Savings Plan to make changes requested by the Internal Revenue Service in order to obtain a favorable determination letter that the Plan remains tax qualified. The IRS requested the following changes: (a) delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits; (b) insert a provision relating to the definition of compensation in Internal Revenue Code Section 415; and (c) provide the definition of an "eligible retirement plan" for rollover purposes rather than incorporate by reference. The Bill would make these technical changes to the Code provisions establishing the Retirement Savings Plan as requested by the IRS during the review process.

Public Hearing

The only witness at the March 27 public hearing, Linda Herman, Executive Director for the Board of Investment Trustees, supported the Bill on behalf of the Executive (©14).

Issues

The Internal Revenue Service periodically reviews government retirement plans for compliance with the Internal Revenue Code requirements for qualified retirement plans. The County Attorney's Office submitted the RSP to the IRS for review in 2010. The IRS issued a favorable determination letter (©11-13) contingent upon the Council's approval of the technical amendments made in Bill 8-12. These technical amendments would not require changes in the administration or payment of benefits. **Council staff recommendation:** approve the Bill as introduced.

This packet contains:

Expedited Bill 8-12
Legislative Request Report
Memo from County Executive
Fiscal and Economic Impact Statement
IRS Favorable Determination Letter
Testimony of Linda Herman

Circle #

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Expedited Bill No. 8-12
Concerning: Retirement Savings Plan -
Amendments
Revised: March 1, 2012 Draft No. 2
Introduced: March 6, 2012
Expires: September 6, 2013
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 EXPEDITED ACT to:

- (1) amend the Retirement Savings Plan to remain tax qualified under the Internal Revenue Code; and
- (2) generally amend the law regarding the employees' retirement system.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-118 and 33-120

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 33-118 and 33-120 are amended as follows:

33-118. Maximum annual contribution.

(a) Annual Contribution Limitation

* * *

[(4) County contributions that would be allocated to County contributions accounts of participants but for the limitations of this Section must be carried over to subsequent years and allocated in order of time to the County contributions accounts that would have received the contributions but for the limitations in this Section. However, if a participant whose County contributions are carried over is not a participant in the subsequent years, that portion of the carryover contributions attributable to the participant must be allocated to the County contribution accounts of all participants. Amounts carried over must be allocated to a suspense account that must be invested in a fund deemed prudent by the Board. Any earnings of the suspense account must be allocated ratably among the County contributions accounts of all the participants except as otherwise provided in this Section.]

(5)] (4) * * *

[(6)] (5) * * *

(c) Effective July 1, 2007, all contributions made to a participant's account within 2½ months after termination of employment or within the limitation year that contains the termination from employment must be considered compensation for purposes of Internal Revenue Code Section 415, as amended.

33-120. Distribution of Benefit

* * *

(g) *Direct rollover distributions.* Notwithstanding any provision of this Division that would otherwise limit a participant's election under this Section, a participant or beneficiary may elect in any manner prescribed by the Chief Administrative Officer at any time to have any portion of an eligible rollover distribution [(as defined in the Internal Revenue Code)] paid directly to an eligible retirement plan [(as defined in the Internal Revenue Code)] specified by the participant in a direct rollover. [For purposes of]

As used in this subsection[,]:

(1) *direct rollover* [is] means a payment from the retirement savings plan to the eligible retirement plan specified by the participant.

(2) *eligible retirement plan* means:

(A) an individual retirement account described in Internal Revenue Code Section 408(a), as amended;

(B) an individual retirement annuity described in Internal Revenue Code Section 408(b), as amended, (other than an endowment contract);

(C) a qualified trust;

(D) an annuity plan described in Internal Revenue Code Section 403(a), as amended;

(E) an eligible deferred compensation plan described in Internal Revenue Code Section 457(b), as amended, which is maintained by an eligible employer described in Internal Revenue Code Section 457(e)(1)(A), as amended; and

(F) an annuity contract described in Internal Revenue Code Section 403(b), as amended.

(3) eligible rollover distribution means any distribution to a participant of all or any portion of the participant's account balance; except:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made:

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary; or

(ii) for a specified period of 10 years or more; or

(B) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9), as amended.

* * *

Sec. 3. 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. The amendments to Section 33-118 in Section 1 are effective on July 1, 2007.

Approved:

Roger Berliner, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 8-12
Retirement Savings Plan – Amendments

DESCRIPTION: The County submitted the Retirement Savings Plan (RSP) to the IRS in order to receive a determination letter that the RSP remains tax qualified.

PROBLEM: In connection with the determination letter request, the IRS requested several technical changes. The IRS requested that the RSP be amended to include and delete specific provisions of the Internal Revenue Code.

The IRS requested the following changes: (a) delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits; (b) insert a provision relating to the definition of compensation in Internal Revenue Code Section 415; and (c) provide the definition of an “eligible retirement plan” for rollover purposes rather than incorporate by reference.

GOALS AND OBJECTIVES: To amend the Retirement Savings Plan as requested by the IRS in connection with receiving a favorable IRS determination letter.

COORDINATION: Office of Human Resources, County Attorney

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Office of Management and Budget

EVALUATION: N/A

EXPERIENCE ELSEWHERE: N/A

SOURCE OF INFORMATION: Joseph Adler, Office of Human Resources
Amy Moskowitz, Office of the County Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

January 30, 2012

TO: Roger Berliner, President, County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Legislation relating to Retirement Savings Plan

I am transmitting for Council introduction a bill to update the Retirement Savings Plan (RSP), as well as the Legislative Request Report and Fiscal and Economic Impact Statement for the bill. In order for Montgomery County to receive a determination letter from the Internal Revenue Service (IRS) that the RSP remains tax qualified, the County must make several technical amendments to the RSP.

In a recent letter, the IRS requested the following changes: (1) delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits; (2) insert a provision relating to the definition of compensation in Internal Revenue Code Section 415; and (3) provide the definition of an "eligible retirement plan" for rollover purposes rather than incorporate by reference. The attached bill makes all of these changes.

Thank you for your consideration of this matter.

Attachments: (Determination letter from the IRS)
(Draft legislation with technical changes to the RSP)

c: Joe Adler, Director, OHR
Joe Beach, Director, Finance
Marc Hansen, County Attorney
Jennifer Hughes, Director, OMB



ROCKVILLE, MARYLAND

MEMORANDUM

March 21, 2012

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Expedited Bill 8-12 - Retirement Savings Plan – Amendments

Attached please find the fiscal and economic impact statements for the above-referenced legislation.

JAH:hv

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Linda Herman, Executive Director, Board of Investment Trustees
Alex Espinosa, Office of Management and Budget
Blaise DeFazio, Office of Management and Budget
Helen P. Vallone, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Expedited Bill 8-12 - Retirement Savings Plan – Amendments

1. Legislative Summary

Expedited Bill 8-12 would amend the Retirement Savings Plan to make changes requested by the Internal Revenue Service in order to obtain a favorable determination letter that the Plan remains tax qualified. The IRS requested the following changes: (a) delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits; (b) insert a provision relating to the definition of compensation in Internal Revenue Code Section 415; and (c) provide the definition of an "eligible retirement plan" for rollover purposes rather than incorporate by reference. The Bill would make these technical changes to the Code provisions establishing the Retirement Savings Plan as requested by the IRS during the review process.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The proposed legislation is a technical amendment. There are no changes to County revenues or expenditures related to the legislation.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

This bill has no impact to County revenues or expenditures.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

This change will not result in subsequent County action that will impact future revenues and expenditures.

6. An estimate of the staff time needed to implement the bill.

Not applicable.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

No change in staff responsibilities.

8. An estimate of costs when an additional appropriation is needed.

Not applicable.

9. A description of any variable that could affect revenue and cost estimates.

Not applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

There is no fiscal impact because the bill amends the Retirement Savings to retain tax-qualified status under the Internal Revenue Code. There are no changes to plan design or employer contributions to the plan resulting from this proposed legislation.

12. Other fiscal impacts or comments.

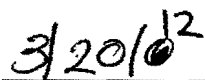
Not applicable.

13. The following contributed to and concurred with this analysis:

Linda Herman, Executive Director, Board of Investment Trustees
Helen P. Vallone, Office of Management and Budget
Blaise DeFazio, Office of Management and Budget
Naeem Mia, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget



Date

Economic Impact Statement
Council Bill 8-12, Retirement Savings Plan - Amendments

Background:

This proposed legislation would amend the Retirement Savings Plan to make changes requested by the Internal Revenue Service (IRS), U.S. Department of the Treasury, in order to obtain a favorable determination letter that the Plan remains tax qualified. The changes are technical changes that include or delete specific provisions of the Internal Revenue Code. Those changes include (a) delete outdated references to IRS Code Section 415, which limits contributions and benefits; (b) insert a provision relating to the definition of compensation in IRS Code Section 415, and (c) provide the definition of an "eligible retirement plan" for rollover purposes rather than incorporate by reference.

1. The sources of information, assumptions, and methodologies used.

Not applicable.

2. A description of any variable that could affect the economic impact estimates.

Not applicable.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

The legislation has no economic impact, it is administrative

4. If a Bill is likely to have no economic impact, why is that the case?

The legislation is administrative only—it deals only with updates to IRS definitions and code citations.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance



Joseph F. Beach, Director
Department of Finance

3/16/12
Date

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: DEC 20 2010

MONTGOMERY COUNTY MARYLAND
C/O COUNTY ATTORNEY'S OFFICE-3RD FL
101 MONROE ST
ROCKVILLE, MD 20850-2540

Employer Identification Number:
52-6000980
DLN:
17007036078019
Person to Contact:
JENNIFER M THIMMADASIAH ID# 31316
Contact Telephone Number:
(513) 263-4613
Plan Name:
MONTGOMERY COUNTY RETIREMENT
SAVINGS PLAN
Plan Number: 002

Dear Applicant:

We have made a favorable determination on the plan identified above based on the information you have supplied. Please keep this letter, the application forms submitted to request this letter and all correspondence with the Internal Revenue Service regarding your application for a determination letter in your permanent records. You must retain this information to preserve your reliance on this letter.

Continued qualification of the plan under its present form will depend on its effect in operation. See section 1.401-1(b)(3) of the Income Tax Regulations. We will review the status of the plan in operation periodically.

The enclosed Publication 794 explains the significance and the scope of this favorable determination letter based on the determination requests selected on your application forms. Publication 794 describes the information that must be retained to have reliance on this favorable determination letter. The publication also provides examples of the effect of a plan's operation on its qualified status and discusses the reporting requirements for qualified plans. Please read Publication 794.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other federal or local statutes.

This determination letter gives no reliance for any qualification change that becomes effective, any guidance published, or any statutes enacted, after the issuance of the Cumulative List (unless the item has been identified in the Cumulative List) for the cycle under which this application was submitted.

This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. This letter expires on January 31, 2014. This letter considered the 2007 Cumulative List of Changes in Plan Qualification Requirements.

COUNTY ATTY. This determination letter is applicable for the amendment(s) executed

29 JUL 11 2:46

Letter 2002 (DO/CG)

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MONTGOMERY COUNTY MARYLAND

on 2/9/09 and 7/7/08.

This determination letter is also applicable for the amendment(s) dated on 6/28/08 and 12/17/07.

This determination letter is also applicable for the amendment(s) dated on 7/6/06 and 8/9/04.

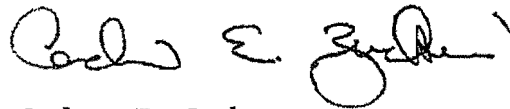
This determination is subject to your adoption of the proposed amendments submitted in your letter dated 11/4/10. The proposed amendments should be adopted on or before the date prescribed by the regulations under Code section 401(b).

This determination letter is based solely on your assertion that the plan is entitled to be treated as a Governmental plan under section 414(d) of the Internal Revenue Code.

The information on the enclosed addendum is an integral part of this determination. Please be sure to read and keep it with this letter.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely,



Andrew E. Zuckerman
Director, EP Rulings & Agreements

Enclosures:
Publication 794
Addendum

MONTGOMERY COUNTY MARYLAND

This letter is also applicable for the amendment(s) executed 12/1/03,
7/10/03 and 3/24/03.

Letter 2002 (DO/CG)

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TESTIMONY FOR EXPEDITED BILL 8-12, COUNTY'S RETIREMENT LAW

Good afternoon, for the record, I am Linda Herman, Executive Director for the Board of Investment Trustees which oversees the assets of the County's three retirement plans. I am here today on behalf of the County Executive to testify in support of Bill 8-12, Chapter 33 – Retirement & Investments.

The proposed Bill will amend the County's retirement law related to the Retirement Savings Plan based on changes requested by the Internal Revenue Service to obtain a favorable determination letter reflecting that the Retirement Savings Plan remains tax qualified. The IRS has requested the following changes: (a) delete outdated references to Internal Revenue Code Section 415, which limits contributions and benefits; (b) insert a provision relating to the definition of compensation in Internal Revenue Code Section 415; and (c) provide the definition of an "eligible retirement plan" for rollover purposes rather than incorporate by reference.

The amendments to the County Code are technical and do not require changes in the administration or payment of benefits.

We look forward to working with the Council in its deliberations on this legislation.