Agenda Item 6.3
October 26, 2010
Introduction

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 54-10, Retirement - Investments

Expedited Bill 54-10, Retirement - Investments, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on October 26, 2010. A public hearing is tentatively scheduled for November 23 at 1:30 p.m.

Bill 54-10 would:

(a) allow investments other than mutual and commingled funds in the Retirement Savings Plan (RSP);

(b) update investment provisions in the RSP and Deferred Compensation Plan (DCP) to comply with current procedures;

(c) require automatic distribution of terminated RSP and Guaranteed Retirement Income Plan (GRIP) participant account balances of $1,000 or less; and

(d) allow participants to rollover any eligible retirement plan account into the RSP.

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Expedited Bill No. 54-10
Concerning: Retirement – Investments
Revised: October 21, 2010
Draft No. 1
Introduced: October 26, 2010
Expires: April 26, 2012
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) require an automatic distribution for account balances of $1,000 or less in the Guaranteed Retirement Income Plan and the Retirement Savings Plan;
(2) permit rollover contributions into the Retirement Savings Plan from any eligible retirement plan;
(3) permit additional investment choices in the Retirement Savings Plan;
(4) permit additional investments in the Deferred Compensation Plan; and
(5) generally amend the law regarding the retirement and deferred compensation plans.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-44, 33-113, 33-116, 33-120, 33-121, 33-125 and 33-145

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 33-44, 33-113, 33-116, 33-120, 33-121, 33-125 and 33-145 are amended as follows:

33-44. Pension Payment Options and cost of living adjustments

* * *

(n) Required distribution for guaranteed retirement income plan participants.

(1) The distribution of a participant's guaranteed retirement income plan account balance must be made no later than April 1 of the calendar year after the later of the calendar year in which the participant attains age 70 ½ or the calendar year in which the participant terminates employment. Distributions must be made in accordance with subsection (g). If the participant does not elect a form of distribution, the distribution must be made in a lump sum. If the participant dies before beginning to receive benefits, the participant's designated beneficiary under 33-46(h) must receive a lump sum distribution as soon as practicable after the participant's death, but not later than the December 31st of the year containing the fifth anniversary of the participant's death.

(2) If a participant terminates employment with an account balance of $1,000 or less, the account balance must be automatically distributed in a lump sum as soon as administratively feasible after termination of employment without a request from the participant.

* * *

33-113. Definitions

* * *

(r) *Rollover contributions* means that portion of a participant's account balances in the retirement savings plan that is attributable to any assets transferred or rolled over to the retirement savings plan from another [qualified pension or profit sharing plan] eligible retirement plan as defined in [under] the Internal Revenue Code Section 402(c). No after-tax contributions may be transferred or rolled over into the retirement savings plan.

* * *

33-116. Participant Contributions

* * *

(c) *Participant rollover contributions*. With the Chief Administrative Officer's written consent, a participant may transfer or rollover to the retirement savings plan any interest in any other [qualified] eligible retirement plan [under] as defined in [the] Internal Revenue Code Section 402(c).

* * *

Section 33-120. Distribution of Benefit

* * *

(h) *Benefit distribution date.*

(1) The Chief Administrative Officer must pay a participant who retires by reason of normal, deferred, or disability retirement the participant's account balances in the retirement savings plan. The distribution must begin as soon as administratively feasible after the participant's retirement and after the date elected by the participant, but no later than April 1 following the later of the calendar year in which the participant attains age 70½, or

the calendar year in which the participant's County employment ends.

(2) A participant who has a 100% vested interest in the County contributions account, and whose County employment ends before the participant's death, disability retirement, or normal retirement date, may receive the account balances in the County contribution accounts and the participant contribution accounts before reaching the normal retirement date only upon filing written consent for the distribution with the Chief Administrative Officer. The distribution must be made as soon as administratively feasible after the Chief Administrative Officer receives the written consent for the distribution.

(3) (A) If a participant's County employment ends before the participant has a vested interest in the County contributions and the participant properly completes and submits an application for distribution of the participant's contribution account, the County must distribute the participant's contribution account as soon as administratively feasible.

(B) If a participant does not properly complete and submit an application for a distribution, the County must distribute the participant's contribution account under the time limits described in this Section.

(4) Notwithstanding any other provision of this subsection, if a participant terminates employment with an account balance of $1000 or less, the account balance must be automatically distributed in a lump sum as soon as administratively feasible

<u>after termination of employment without a request from the participant.</u>

*   *   *

33-121. Investment of contributions to the retirement savings plan.

(a) *Investment [funds] <u>options</u>.*

(1) A participant must direct that contributions allocated to the participant's retirement accounts be invested in one or more of the investment [funds] <u>options</u> selected by the Board. The investment [fund] options selected by the Board must conform to all applicable requirements of the Internal Revenue Code.

(2) A participant must allocate contributions among the investment [funds] <u>options</u> only in percentages of the value of the account balances of the participant, as determined by the Board.

(3) A participant's direction of investment must remain in effect until the participant changes the direction. If a participant does not provide a valid direction of investment, the account balances of the participant, to the extent they are not governed by a valid direction of investment, must be invested in an appropriate investment option selected by the Board.

(b) *Change of allocation.*

(1) A participant or former participant may change the allocation of the participant's account balances among the investment [funds] <u>options</u> [by giving written notice of the requested change at a time] <u>in accordance with procedures</u> set by the Board. The changes [will] <u>must</u> take effect on the date or dates set by the Board.

(2) A participant or former participant may designate that the change of the allocation among investment [funds] options is effective as to one or both of:

(A) the participant's or former participant's account balances on the effective date of the change; and

(B) the participant's contributions and County contributions made after the effective date of the change.

(c) *Gains and losses.* The Board must maintain [pro rata accounts of a commingled fund or] separate and distinct accounts for each participant. [If the Board establishes pro rata accounts, the Board may allocate realized and unrealized gains and losses, using the ratio that the portion of the account balance of a participant allocated to an investment fund bears to the portion of the account balances of all participants allocated to the investment fund as of the previous valuation date. If the Board establishes separate and distinct accounts, the] The Board must determine the value of an individual account solely with respect to the activity within each participant's account and unrealized gains to a participant's account. [The Chief Administrative Officer may deduct operating expenses from the realized and unrealized gains before allocation.]

* * *

33-125. Powers and duties under the retirement savings plan.

* * *

(a) *General*

* * *

(2) The Board must invest and reinvest, or cause to be invested or reinvested, the principal and income of the retirement savings

plan and keep the same invested without distinction between principal and income. The Board has the exclusive authority to manage the assets of the retirement savings plan, but must, to the extent directed by participants, invest each participant's accounts in the manner directed by the participant. [The Board may make or permit an investment manager to make individual investment selections with respect to any investments described in this section.] The Board may select mutual funds, commingled funds, or any combination of [funds] <u>other investments</u> [to provide] <u>as</u> investment options for the retirement savings plan.

* * *

(c) *Authorized investments.*

(1) <u>The Board may select or remove any investment option for the retirement savings plan that the Board finds prudent under the policies set by the Board</u>. [The Board may invest or permit an investment manager to invest the assets of the retirement savings plan in any investment it considers prudent within the policies set by the Board. The Board must use an investment manager except when making an investment in any pooled investment vehicle, including any combined, common or commingled trust fund, retirement or annuity contract, mutual fund, investment company, association, or business trust. The Board also may authorize the Executive Director to make investments in pooled investment vehicles and transition assets from one investment manager to another investment manager as the Board specifies.]

(2) If an investment through any combined, common, or commingled trust fund exists, the declaration of trust of that fund is a part of the retirement savings plan trust.

[(3) The board or any investment manager must not invest any retirement savings plan asset in any bond, note, or debt instrument issued by:

(A) Montgomery County;

(B) any political subdivision within Montgomery County;

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

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

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

* * *

(f) [*Investment management agreements.*

(1) The Board may appoint investment managers to manage, acquire, or dispose of all or some of the assets of the retirement savings plan. The Board may dismiss any manager the Board appoints. The fees charged by any manager are expenses of the retirement savings plan.

(2) In any contract with an investment manager, the Board must identify the assets that are subject to the contract. The Board may give an investment manager the right to invest the assets of the retirement savings plan specified in the contract without

prior notice to or approval by the Board. The Board may limit the investment of a specified portion of the retirement savings plan to a certain type of property. If a contract with an investment manager only applies to a portion of the assets of the retirement savings plan and specifies the type of property to be invested in, the manager must achieve diversification within the specified category of property, but is not responsible for diversification of investments of the entire retirement savings plan. The Board may delegate to the investment manager any power or discretion conferred on the Board under this Division and may provide that the investment manager must have custody and control of certain assets of the retirement savings plan.

(3) The Board must monitor the performance of any investment manager. Monitoring may include any tests or analyses that the Board considers prudent in the circumstances.]

The Board must monitor the performance of investment options. Monitoring may include any tests or analyses that the Board finds prudent.

33-145. Powers and duties of the board.

* * *

(d) *Authorized investments.*

(1) The Board must invest each participant's account in one or more of the Board-designated investment options in the manner directed by the participant.

(2) The Board may select or remove any investment options for the deferred compensation plan that the Board **[**considers**]** finds

prudent [within] <u>under</u> the policies set by the Board [, except real property investments described in this subsection].

(3) [The Board must not invest in real property unless the investment is a pooled investment in which the Board has no power or right to manage the real estate property. The pooled investment must not invest more than 10 percent of its assets in real property located in Montgomery County. The 10-percent limitation applies to the market value of the total assets on the preceding June 30. If the market value of investments in real property in the County exceeds the 10-percent limitation as a result of market forces, the Board, or the investment manager without direction from the Board, is not required to sell an existing equity investment. The Board may obtain valuations and take appropriate steps to comply with the 10-percent limitation.]

[(4)] If an investment through any combined, common, or commingled trust fund exists, the declaration of trust of that fund is a part of the deferred compensation plan trust.

[(5) The Board and any investment manager must not invest the deferred compensation plan assets in any bonds, notes, or debt instruments issued by:

(A) Montgomery County;

(B) a political subdivision in Montgomery County;

(C) an agency that receives support or funds from taxes levied by the County Council; or

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

The Board and any investment manager may invest plan assets in bonds, notes, and debt instruments of these entities if the investment is held indirectly through a mutual fund and complies with any limit in the Internal Revenue Code.]

* * *

(g) [Investment management agreements. Section 33-60(g) (Investment management agreements) applies to the Board with respect to its responsibilities under the deferred compensation plan.] <u>The Board must monitor the performance of each investment option. Monitoring may include any tests or analyses that the Board finds prudent.</u>

* * *

Sec. 2. Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

Nancy Floreen, 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 54-10
Retirement - Investments

DESCRIPTION: The bill amends the County's retirement law to: (a) allow investments other than mutual and commingled funds in the Retirement Savings Plan (RSP), (b) update investment provisions in the RSP and Deferred Compensation Plan (DCP) to comply with current procedures, (c) require automatic distribution of terminated RSP and Guaranteed Retirement Income Plan (GRIP) participant account balances of $1,000 or less, and (d) allow participants to rollover any eligible retirement plan account into the RSP.

PROBLEM: (1) RSP participants may only invest in mutual and commingled funds.

(2) Several of the investment provisions in the RSP and DCP are not applicable.

(3) There is a significant cost associated with maintaining small account balances for terminated participants of the RSP and GRIP. Plan costs will be reduced if these participant accounts are involuntarily distributed.

(4). RSP participants may not currently rollover accounts from certain types of retirement plans (e.g., 403(b), 457, IRAs).

GOALS AND OBJECTIVES: To: (a) allow investments other than mutual and commingled funds in the Retirement Savings Plan (RSP), (b) update investment provisions in the RSP and Deferred Compensation Plan (DCP), (c) permit automatic distributions to terminated RSP and Guaranteed Retirement Income Plan (GRIP) participants who have accounts of $1,000 or less, and (d) allow participants to rollover any eligible retirement plan account into the RSP.

COORDINATION: Board of Investment Trustees

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Office of Management and Budget

EVALUATION: N/A

EXPERIENCE ELSEWHERE: N/A

SOURCE OF INFORMATION: Board of Investment Trustees
Office of the County Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 21, 2010

TO: Nancy Floreen, President, County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Legislation to amend the County's Retirement Law

I am attaching for the Council's consideration a bill requested by the Board of Investment Trustees (BIT) which would amend the County's retirement law to: (a) allow investments other than mutual and commingled funds in the Retirement Savings Plan (RSP); (b) update investment provisions in the RSP and the County's Deferred Compensation Plan (DCP); (c) permit automatic distributions to terminated participants the RSP and Guaranteed Retirement Income Plan (GRIP) who have account balances less than $1,000; and (d) allow participants to rollover any eligible retirement plan account into the RSP.

The County Code allows RSP participants to invest in mutual and commingled funds. The bill replaces the terms "mutual fund" and "fund" with "investment option" to allow the BIT to expand the investment options available to RSP participants.

In many respects, the County Code provisions relating to RSP and DCP investments mirror the County Code provisions relating to the Employees' Retirement System (ERP). However, because the RSP and DCP are participant directed retirement plans, some aspects of those County Code provisions are not applicable to the RSP and DCP (e.g., investment manager agreements). The bill amends current law to clarify current administrative and investment procedures for the RSP and DCP.

Under current law, the BIT cannot distribute RSP or DCP account balances to terminated participants unless the participant first submits a request for the distribution to the BIT. The Internal Revenue Code (IRC) allows a plan sponsor to distribute account balances of less than $1,000 even without a request from the participant. In light of the administrative costs associated with maintaining small accounts, the BIT has recommended that current law be modified to conform to the IRC provision (i.e., to allow the BIT to distribute terminated participant account balances of less than $1,000 even when the participate has not requested the distribution).

Federal law allows participants to roll over accounts from most types of retirement plans (e.g., 403(b), 457, 401(k), IRA) into the RSP. However, under County law, the only qualified plans (e.g., 401(k)) can be rolled over into the RSP. The bill amends current law to allow participants to roll over retirement accounts from most types of retirement plans.

Thank you for your prompt consideration of this bill. Please contact BIT Executive Director Linda Herman 240-777-8224 if you have any questions about this bill.

Attachments

cc: Linda Herman, Executive Director, Board of Investment Trustees

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

October 20, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Expedited Bill – Amendments to the County's Retirement Law

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

LEGISLATION SUMMARY

This bill amends the County's retirement law to:

- allow investments other than mutual and commingled funds in the Retirement Savings Plan (RSP);
- update investment provisions in the RSP and County's Deferred Compensation Plan (DCP) to comply with current procedures;
- permit automatic distribution of terminated RSP and Guaranteed Retirement Income Plan (GRIP) participant account balances of less than $1,000; and
- allow participants to rollover any eligible retirement plan account into the RSP.

FISCAL AND ECONOMIC SUMMARY

The Board of Investment Trustees estimates that the annual cost of administering RSP and GRIP participant accounts for terminated employees whose balances are below $1,000 is about $22 per account. There are currently about 400 terminated participants with balances at this level, so the proposed legislation would result in administrative savings of about $8,800 in FY11. There is no fiscal impact to the County since the savings would be used to lower the investment management fees charged to participants for investment options and/or to provide additional services to participants. Plan participants would continue to benefit in future years, but savings are indeterminate as they are dependent on the number of employees who terminate with balances lower than $1,000.

The legislation has no significant economic impact; it affects very few people and any savings would be small relative to the Montgomery County economy as a whole.

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

JFB:lob

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Jennifer Barrett, Director, Department of Finance
Linda Herman, Board of Investment Trustees
Patrick O'Brien, Board of Investment Trustees
Michael Coveyou, Department of Finance
Lori O'Brien, Office of Management and Budget
John Cuff, Office of Management and Budget