

**Sec. 33-59. Board of investment trustees.**

(a) *Established.*

- (1) The Board of Investment Trustees is established to manage the trust under this Article.
- (2) The Board continues until abolished by law.

(b) *Membership.*

- (1) The Board has 13 trustees.
- (2) The County Executive must appoint 4 voting, *ex officio* members of the Board, subject to County Council confirmation as members, who serve indefinitely while each holds the respective office. These *ex officio* trustees should be:
  - (A) the Director of Management and Budget;
  - (B) the Director of Finance;
  - (C) the Director of Human Resources; and
  - (D) the Staff Director of the County Council.
- (3) The County Executive must appoint 3 voting certified employee organization representatives, subject to County Council confirmation, as members of the Board, who serve indefinitely while each remains the designee of the certified employee representative. These trustees must not vote on any matter involving the County deferred compensation plan. These trustees should be:
  - (A) one representative nominated by the employee organizations certified as the representative of the Office, Professional, and Technical (OPT) and Service, Labor and Trades (SLT) bargaining units;
  - (B) one representative nominated by the employee organization certified as the representative for the fire and rescue employee unit; and
  - (C) one representative nominated by the employee organization certified as the representative for the police employee bargaining unit under Article V.
- (4) The following 6 trustees must be appointed by the Executive and confirmed by the Council:
  - (A) An active County employee who is a vested member of the retirement system and the Merit System, and not a member of a collective bargaining unit. A 3-year term for this trustee ends on March 1 of every third year after the trustee is confirmed by the Council.

- (B) A retired County employee who is a member of the retirement system. Before appointing this trustee, the Executive must consider, and should select from, a list of 3 to 5 individuals recommended by the Montgomery County Retired Employees' Association. The Executive must notify the Council when nominating an individual not recommended by the Association. A 3-year term for this trustee ends on March 1 of every third year after the trustee is confirmed by the Council.
  - (C) Two persons recommended by the Council who are knowledgeable in pensions, investments, or financial matters. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council.
  - (D) Two individuals knowledgeable in pensions, investments, or financial matters. Before nominating these trustees, the Executive must consider, and should select from, individuals recommended by citizens or countywide citizens' groups. An individual recommended by a citizens' group need not be a member of the group. The Executive must notify the Council when nominating an individual not recommended by a citizens' group. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council.
- (5) A trustee appointed under paragraph (3) continues to serve after the trustee's term ends until the Council confirms a successor, but the term for each position is not affected by any holdover. A trustee who, after appointment and before the end of a term, is no longer qualified for the trustee's position is removed from the Board by operation of law.
  - (6) The Executive must not appoint as a trustee any person who furnishes, or is employed by a firm that furnishes, to pension funds and other institutional investors the kind of investment services purchased by the Board.
- (c) *Vacancies.*
    - (1) A trustee may be automatically removed for missing meetings as described in Section 2-148(b).
    - (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 trustees for any expense approved by the Board. A trustee must not receive reimbursement for expenses from any other source.
  - (e) *Acceptance of trust.* Within 10 days after the Council confirms a trustee, the trustee must certify in writing to the Chief Administrative Officer that the trustee accepts the trust and

will administer the affairs of the trust with care, skill, prudence, and diligence.

(f) *Written policies.*

- (1) The Board must establish written policies to administer and invest the funds created by this Article and to transact the business of the trust and the retirement system.
- (2) The Board must apply the policies to all members and beneficiaries of the retirement system and must not discriminate in favor of or against any member or beneficiary of the retirement system.
- (3) Any delegation of duties by the Board under Section 33-60, 33-125, or 33-145 must be specified in written policies and procedures.

(g) *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 on behalf of the Board.
- (2) The vice chair must perform the duties and exercise the powers of the chair when the chair is unavailable, 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.

(h) *Meetings and actions.*

- (1) The Board must meet at least once during each calendar quarter. The chair, or 7 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. Seven trustees constitute a quorum.
  - B. Each trustee has one vote.
  - C. Seven 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.

(i) *Records.*

- (1) The Board must keep investment accounts and records necessary to calculate the value of each retirement system fund and evaluate the experience and performance of the retirement system.
- (2) The Board may designate a person to maintain the records.
- (3) Accounts and records are subject to State law on public records.
- (j) *Removal of trustee.* With the Council’s approval, the County Executive may remove a trustee for violating this Article or other good cause.
- (k) *Legal adviser.* The County Attorney is the legal adviser to the Board.
- (l) In this Section, “retirement system” means the Employees’ Retirement System or the Retirement Savings Plan.

**Sec. 33-60. The board of investment trusteesCPowers and duties.**

- (a) *General.*
  - (1) Except as provided in section 33-47, subsection (a)(2) of this section, and other sections of this chapter, the powers and duties with respect to the administration and the investments of the retirement system are hereby vested in the board of investment trustees. However, the powers and duties of the board must not become effective until all of the trustees have accepted the trust in writing.
  - (2) (A) The board must invest and reinvest, or cause to be invested or reinvested, as authorized in subsection (c)(1), the principal and income of the retirement system and keep the same invested without distinction between principal and income. The board has the exclusive authority to manage the assets of the retirement system. However, any investment of the retirement system in existence on the day before all members have accepted the trust may remain as an investment until the earlier of:
    - (i) Its maturity date, if any; or
    - (ii) The date it is liquidated under the investment policy of the board.

The board must hold the annuities purchased under the Amendment, Settlement and Transfer agreement under Group Annuity Contract #1920 until Aetna Life Insurance Company has completed its performance under that agreement.
  - (B) At any time the board is selecting a new investment manager, the board may have fewer than 3 investment managers.
  - (3) Chapter 11B does not apply to procurement of goods and services for the retirement system by the board.

(b) *Agents for transfer of property.*

- (1) The board may register any securities or other property in its own name or in the name of a nominee. The board may hold any security in bearer form. However, the board or its agent must keep records that show that the investments are part of the trust fund.
- (2) The board may form a partnership under the laws of Maryland for the purpose of holding or transferring securities as the nominee of the board.
- (3) The board may designate in writing a trustee to hold or transfer securities as nominee of the board.
- (4) The board must provide that trustees or a partnership that the board designates must act only as agents of the board. The board may set other conditions that the board considers prudent.
- (5) The trustees of a partnership the board designates may agree with a bank or other financial institution to:
  - a. Guarantee the signatures made as nominee of the board; and
  - b. Conduct settlements and transfers through participation in central security depositories.
- (6) Except as authorized by executive regulation adopted under method (3) that is substantially equivalent to federal ERISA regulations on maintenance of indicia of ownership of plan assets, the board must maintain the indicia of ownership of the assets of the retirement system within the jurisdiction of the district courts of the United States.

(c) *Authorized investments.*

- (1) The board may invest or permit an investment manager to invest the assets of the retirement system fund in any investment it considers prudent within the policies set by the board. The board must use an investment manager except when investing in any pooled investment vehicle, including any combined, common or commingled trust fund, retirement or annuity contract, mutual fund, investment company, association, or business trust. The board also may authorize the Executive Director to make investments in pooled investment vehicles and transition assets from one investment manager to another investment manager as the board specifies.
- (2) If an investment through any combined, common or commingled trust fund exists, the declaration of trust of that fund is a part of the retirement system trust under this Article.
- (3) The board or an investment manager must not invest any retirement system asset in any bond, note, or debt instrument issued by:

- (A) The County;
  - (B) Any political subdivision within the 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 the County.
- (d) *Trustee powers.* Subject to the limitations under subsection (a)(2) of this section, the board has the power to:
- (1) With any cash, purchase or subscribe for any investment, at a premium or discount, and retain the investment.
  - (2) Sell, exchange, convey, transfer, lease for any period, pledge, mortgage, grant options, contract with respect to, or otherwise encumber or dispose, at public or private sale, for cash or credit or both, any part of the retirement system.
  - (3) Except as provided in section 33-61A(h)(2), sue, defend, compromise, arbitrate, compound and settle any debt, obligation, claim, suit, or legal proceeding involving the retirement system, and reduce the rate of interest on, extent or otherwise modify, foreclose upon default or otherwise enforce any debt, obligation, or claim.
  - (4) Retain uninvested that part of the retirement system fund described in subsection (f) without being liable for the payment of interest.
  - (5) Exercise any option on any investment for conversion into another investment, exercise any rights to subscribe for additional investments, and make all necessary payments.
  - (6) Join in, consent to, dissent from, oppose, or deposit in connection with the reorganization, recapitalization, consolidation, sale, merger, foreclosure, or readjustment of the finances of any corporation or property in which the assets of the retirement system are invested, or the sale, mortgage, pledge or lease of that property or the property of any such corporation upon such terms and conditions that the board considers prudent; exercise any options, make any agreements or subscriptions, pay any expenses, assessments, or subscriptions, and take any other action in connection with these transactions that the board considers prudent; and accept and hold any investment that may be issued in or as a result of any such proceeding.
  - (7) Vote, in person or by any proxy, at any election of any corporation in whose stock the assets of the retirement system are invested, and exercise, personally or by any power of attorney, any right appurtenant to any investment held in the retirement system; and give general or specific proxies or powers of attorney with or without power of substitution.

- (8) Sell, either at public or private sale, option to sell, mortgage, lease for a term of years less than or continuing beyond the possible date of the termination of the trust, partition or exchange any real property for such prices and upon such terms as the board considers prudent, and execute and deliver deeds of conveyance and all assignments, transfers, and other legal instruments for passing the ownership to the purchaser, free and discharged of all liens.
- (9) Renew or extend any mortgage, upon such terms that the board considers prudent, and increase or reduce the rate of interest on any mortgage or modify the terms of any mortgage or of any guarantee as the board considers prudent to protect the retirement system or preserve the value of the investment; waive any default or enforce any default in a manner that the board considers prudent; exercise and enforce any right of foreclosure, bid on property in foreclosure, take a deed in lieu of foreclosure with or without paying a consideration, and release the obligation on the bond secured by the mortgage; and exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any mortgage or guarantee.
- (10) Form a corporation or corporations under the laws of any jurisdiction or acquire an interest in or otherwise make use of any corporation already formed to invest in and hold title to any property.
- (11) For the purpose of investing in and holding title to real or personal property or part interests therein, as described in subsection (c)(1)h., including equipment pertaining thereto, leaseholds, and mortgages, to take any action it considers prudent.
- (12) Incur and pay expenses for agents, financial advisors, actuaries, accountants and counsel, if those expenses are incurred solely to perform the board's duties under this article.
- (13) Borrow, raise or lend moneys, for the purposes of the retirement system, in such amounts and upon such terms and conditions as the board in its discretion considers prudent; for any money borrowed, issue a promissory note and secure the repayment of this note by pledging or mortgaging all or any part of the retirement system.
- (14) Hold, buy, transfer, surrender, and exercise all other incidents of ownership of any annuity contract.
- (15) If payments to a member or beneficiary are to be made in the form of an annuity based upon one (1) or more lives or life expectancies, buy from any legal reserve life insurance company a single premium, nontransferable annuity contract providing for the payment of the benefits.
- (16) Do all acts which it considers necessary and exercise any and all powers of this article with respect to the management of the retirement system, and in general, exercise all powers in the management of the assets which an individual could exercise in the management of property owned in the individual's own right

except for making an individual investment selection.

- (e) *Prohibited transactions.* The board must not engage in any transaction between the trust and the county or any entity controlled by the county 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 personal services actually rendered;
  - (3) Makes any part of its services 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.
- (f) *Available cash.* The board may keep cash available in an amount it considers prudent to pay benefits, expenses and other payments. The board may keep cash on deposit in one (1) or more banks or trust companies organized under the laws of any state, or of the United States, but the sum on deposit in any one (1) bank or trust company must not exceed twenty-five (25) percent of the paid-in capital and surplus of that bank or trust company.
- (g) *Investment management agreements.*
  - (1) *Appointment of investment manager.* Except as permitted under subsection (c)(1), the board must appoint investment managers to manage, acquire, or dispose of all or some of the assets of the retirement system. The board may dismiss any manager the board appoints. The fees charged by any manager are expenses of the retirement system.
  - (2) *Investment contract.* Any contract must provide that when the investment manager is making individual investment selections, the investment manager must make the individual investment selections subject to the written policies of the board. In any contract, the board must identify the assets that are the subject to the contract. In any contract, the board may give an investment manager the right to invest the assets of the retirement system specified in the contract without prior notice to or approval by the board. In any contract, the board may limit the investment of a specified portion of the retirement system to a certain type of property, such as but not limited to common stocks, bonds, or real estate. If a contract only applies to a portion of the assets of the retirement system and specifies the type of property to be invested in, the manager must achieve diversification within the specified category of property, but is not responsible for diversification of investments of the entire retirement system. In any contract, the board may delegate to the



investment manager any power or discretion conferred on the board under this Article and may provide that the investment manager must have custody and control of certain assets of the retirement system.

- (3) *Monitoring of investment manager.* The board must monitor the performance of the managers and may terminate any appointment. Monitoring may include any tests or analyses that the board considers prudent in the circumstances to ensure the stability and growth of the retirement system.
- (h) (1) Except as provided in subsection (d)(12), the board must pay all benefits and expenses of the retirement system as directed by the chief administrative officer.
- (2) If the board approves a contract for delegation of the custodial functions as provided in section 33-61, the board must coordinate the payment of benefits and must monitor the timeliness and accuracy of such benefit payments.
- (3) The board is entitled to rely on the decision of the chief administrative officer as to the proper recipient of benefit payments.
- (i) *Delegation of duties.* The Board may delegate its duties to the Executive Director or a similarly situated County employee as it deems appropriate and consistent with its fiduciary duties in a written policy and procedure. If the Board has prudently delegated its duties and monitored the delegation, the trustees must not be liable for an act or omission made by its delegate.

### **Sec. 33-60A. Sudan Investments Restrictions**

- (a) *Definitions.* In this Section, the following words have the meanings indicated:

*Actively managed separate account* means assets held in a separate account by an investment manager hired by the Board. *Actively managed separate account* does not include an indexed fund, private equity fund, real estate fund, mutual fund, or other commingled or passively managed fund.

*Board* means the Board of Investment Trustees established by Section 33-59.

*Company* means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including any wholly-owned subsidiary, majority-owned subsidiary, and parent company of any of them, or business association, that exists for profit-making purposes.

*Divestment action* means selling, redeeming, transferring, exchanging, or otherwise disposing of, and refraining from further buying of, certain investments.

*Doing or does business in Sudan* means maintaining equipment, facilities, personnel, or other apparatus of business or commerce in Sudan, including ownership of real or personal property in Sudan:

- (1) for the purpose of:
  - (A) engaging in any business activity with the Government of Sudan; or
  - (B) conducting business with any company in which the Government of Sudan has a direct or indirect equity share; or
  - (C) participating in a Government of Sudan-commissioned consortium or project; and
- (2) if the business operation includes:
  - (A) supplying military equipment in Sudan; or
  - (B) oil-related activities constituting more than 10% of the entity's operations in Sudan; or
  - (C) mineral extraction activities constituting more than 10% of the entity's operation in Sudan; or
  - (D) power production activities constituting more than 10% of the entity's operations in Sudan.

*Government of Sudan* means the government in Khartoum, Sudan, led by the National Congress Party (formerly known as the National Islamic Front), or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan).

*Government of Sudan* does not include the regional government of southern Sudan.

*Marginalized populations of Sudan* means adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Public Law 109-344) or areas in Northern Sudan described in section 4(9) of that Act.

*Military equipment* means:

- (1) weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles; or
- (2) supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

*Mineral extraction activity* means exploring, extracting, processing, transporting, or wholesale selling or trading any elemental mineral or associated metal alloy or oxide (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

*Oil-related activity* means exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading oil; or constructing, maintaining, or operating a pipeline, refinery, or other oilfield infrastructure. *Oil-related activity* does not include the retail sale of gasoline or related consumer products in Sudan or leasing or owning rights to

an oil block in Sudan.

*Power production activity* means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or any similar Government of Sudan entity whose purpose is to facilitate power generation and delivery, including establishing any power-generating plant or hydroelectric dam, selling or installing components of any such plant or dam, or providing service contracts related to installing or maintaining any such plant or dam.

Substantial action means:

- (1) adopting, publicizing, and implementing a formal plan to cease business operations in Sudan within one year and to refrain from any such new business operations;
- (2) undertaking significant humanitarian efforts in conjunction with an international organization, the Government of Sudan, the regional government of southern Sudan, or a non-profit entity that is evaluated and certified by an independent third party to be substantial in relationship to the company's business operations in Sudan and of benefit to one or more marginalized populations of Sudan; or
- (3) engaging the Government of Sudan for the purpose of materially improving conditions for the victimized populations in Darfur.

*Trust funds* means the assets held for the Employees' Retirement System and the assets held for the Retiree Health Benefits Trust.

- (b) *Review of investments.* The Board must review the investment holdings in each actively managed separate account of the trust funds and identify each investment in any company that does business in Sudan. The Board must review its investment holdings in these accounts periodically and update the list of companies doing business in Sudan at least every 6 months.
- (c) *Divestment.* The Board:
  - (1) must take divestment action with regard to investments in any company doing business in Sudan within 12 months after the Board finds that the company is doing business in Sudan; and
  - (2) must not make any new investments in an actively managed separate account in any company that does business in Sudan.
- (d) *Research.* In determining if any company does business in Sudan, the Board may:
  - (1) retain a professional consultant; and
  - (2) review publicly available information regarding companies doing business in Sudan, including information provided by a non-profit organization, research firm, international organization, or government.

- (e) *Exemption.* The divestment or investment prohibition under this Section must not apply to a company that can demonstrate that its business operations in Sudan:
- (1) are conducted under contract directly and exclusively with the regional government of southern Sudan;
  - (2) are conducted under a license from the federal Office of Foreign Assets Control, or are expressly exempted under Federal law from the requirement to be conducted under such a license;
  - (3) consist of providing goods or services to marginalized populations of Sudan for at least 75% of its business operations in Sudan;
  - (4) consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
  - (5) consist of providing goods or services that are used only to promote health or education; or
  - (6) have been voluntarily suspended.
- (f) *Notice.* The Board:
- (1) before taking any divestment action under this Section, must provide written notice and an opportunity to comment in writing to each company subject to the action;
  - (2) must not take the divestment action until 90 days after written notice is provided to the company; and
  - (3) must not take the divestment action if the company shows that it:
    - (A) is not doing business in Sudan;
    - (B) has taken substantial action, as defined in subsection (a); or
    - (C) is exempt from divestment under subsection (e).
- (g) *Report.* The Board must report annually to the Council and Executive on the operation of and compliance with this Section. The report must:
- (1) identify each investment in a company doing business in Sudan held in an actively managed separate account of the trust funds;
  - (2) list each divestment action taken under this Section; and
  - (3) calculate the administrative cost of compliance.
- (h) *Sunset.* This Section expires 30 days after the President of the United States certifies to

Congress that the government of Sudan has honored its commitments to:

- (1) abide by United Nations Security Council Resolution 1769 (2007);
- (2) cease attacks on civilians;
- (3) demobilize and demilitarize the Janjaweed and associated militias;
- (4) grant free and unfettered access for delivery of humanitarian assistance; and
- (5) allow for the safe and voluntary return of refugees and internally displaced persons.

**Sec. 33-60B. Emerging Investment Managers.**

(a) *Legislative findings.*

- (1) Emerging investment managers, including businesses owned by women, minorities and disabled individuals, should receive an equal opportunity to provide investment management services to the Board of Investment Trustees.
- (2) The Board of Investment Trustees has adopted a policy requiring its staff to identify qualified emerging investment managers to participate in an investment manager search, including regular monitoring of investment managers.
- (3) Expanding opportunities for emerging investment managers will increase competition.

(b) *Definitions.*

As used in this Section:

*Assets* means total client assets managed by an investment manager.

*Emerging investment manager* means:

- (1) an investment manager with assets or product assets below the 75<sup>th</sup> percentile of their respective peer group; or
- (2) a new or developing investment manager.

*New or developing investment manager* means an investment manager:

- (1) raising its first or second private institutional investment fund; or
- (2) creating its first institutional product.

*Product Assets* means client assets managed by an investment manager in a single strategy.

- (c) Consistent with the fiduciary duties established in Section 33-61C, the Board must make a good faith effort to remove any barriers that limit participation by qualified emerging investment managers to manage funds for the Employees' Retirement System.
- (d) The Board must adopt guidelines to identify and evaluate qualified emerging investment managers. The guidelines must include procedures for:
  - (1) identifying possible firms;
  - (2) reviewing, evaluating and interviewing emerging investment managers on an ongoing basis; and
  - (3) maintaining research files on emerging investment managers.
- (e) The Board must report annually to the Council and the Executive on compliance with this Section on or before September 1 for the prior fiscal year. The report must:
  - (1) identify each emerging investment manager used during the fiscal year;
  - (2) list the percentage and dollar value of the assets of the trust fund, by investment sector, managed by each emerging investment manager; and
  - (3) describe the good faith effort made to include qualified emerging investment managers in the procurement process during the fiscal year.

**Sec. 33-61. Custodian.**

- (a) The director of finance is the custodian of the retirement system assets. The director must give bond with such surety and for such periods and in such amount as the board determines. All payments from the retirement system assets must be made by (i) the director of finance, (ii) a designee of the director of finance, or (iii) two (2) persons designated by the board, acting jointly. The board must file a duly attested copy of the resolution of the board designating the two (2) persons, with specimen signatures of those persons, with the director of finance to indicate their authority for making payments.
- (b) If the board approves, the director of finance may make written contracts with banks, trust companies, insurance companies or investment companies authorized to do business in any state for the safe custody of investments, banking services, the payment of benefits and expenses and any other function necessary for the management and safeguarding of the assets of the retirement system. The contract may provide that a bank, trust company, insurance company, or investment company may invest assets of the retirement system in:
  - (1) Money market funds;
  - (2) A short-term investment fund of a bank, trust company, or insurance company; or
  - (3) Their substantial equivalent. As soon as possible after all members of the board have accepted the trust, the board must approve a written contract for the

investment purposes described in this subsection.

- (c) If the board approves, the director of finance may direct the payment of benefits and expenses from a trust account of the board.
- (d) Chapter 11B does not apply to the procurement of goods and services for the retirement system by the director of finance.

**Sec. 33-61A. Indemnification of trustees.**

- (a) *Authorized.* The County must indemnify every member of the Board who is or may become a party to any action, suit, or proceeding, including administrative and investigative proceedings, because of service as a member of the Board, including any action taken to comply with Section 33-60A, subject to the conditions stated in this section.
- (b) *Standards for indemnification.*
  - (1) The county must indemnify a member of the board:
    - a. With respect to civil matters, if the member acted in good faith and in a manner that the member reasonably believed to be in the best interest of the retirement system; and
    - b. With respect to criminal matters, if the member had no reasonable cause to believe that the member's conduct was unlawful.
  - (2) If the county must indemnify a member of the board under this article, the county must indemnify the member for expenses when the member incurs the expense, including but not limited to:
    - a. Reasonably attorney fees;
    - b. Judgments;
    - c. Damages;
    - d. Fines; and
    - e. Settlements.
- (c) *Effect of termination of any suit or proceeding.* The termination of any suit or proceeding does not, by itself, create a presumption that a trustee did not act in good faith and in a manner reasonably believed to be in the best interest of the retirement system. The termination of a criminal action or proceeding does not, by itself, create a presumption that a trustee had reasonable cause to believe that the conduct was unlawful.
- (d) *Exceptions to indemnification.* The county must not indemnify any member of the board if:

- (1) The member of the board is found by a court or other tribunal to be liable for gross negligence or willful and wanton misconduct in the performance of a duty to the retirement system; or
  - (2) Liability arises from action that occurred before the date on which all the trustees have accepted the trust in writing.
- (e) *Recovery of payments.* If the county attorney determines that indemnification payments have been made that are outside the scope of indemnification, the county attorney must take appropriate action, on behalf of the county, to recover the payments.
  - (f) *Insurance provided.* The county must provide insurance for each member of the board against any liability asserted against or incurred by the member of the board with respect to service on the board. Premiums for any insurance must not be paid with assets of the retirement system. The county may self-insure for this purpose, wholly or partly. If the county does not provide adequate insurance coverage or indemnification under this section, a member of the board need not pay any amount attributable to liability incurred by serving on the board, and the county must pay any amount due.
  - (g) *Defenses.* The county may assert the defense of governmental immunity, or any other defense available to the county, in suits or other actions brought against the county.
  - (h) *County attorney.*
    - (1) The county attorney must make the final determination of eligibility of a member of the board for indemnification with respect to a matter, and of the reasonableness of all fees, expenses, and settlements.
    - (2) Unless the county attorney approves the settlement, a trustee must not use:
      - a. County funds;
      - b. Funds provided by a self-insurance program of the county; or
      - c. Funds provided under a policy the county has with an insurance company; to settle a claim against the trustee.

**Sec. 33-61B. Accounts and records of the board of investment trustees.**

- (a) *Maintenance of records and accounts.* The board must keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions, including any specific records that are required by law and any additional records it considers necessary. All accounts, books and records are subject to state law on public records.
- (b) *Annual accounting by board.* The fiscal year of the retirement system is the same as the fiscal year of the county. On or before January 1 of each year, the board must file with the chief administrative officer a written account, listing all investments, receipts, disbursements, and other transactions during the preceding fiscal year or during the period



from the close of the last preceding fiscal year to any interim date that the board selects. This account must describe all securities and investments bought and sold, with the cost or net proceeds of each purchase or sale, and must list all cash, securities, and other property held at the end of that period. The account must include a list of the retirement system assets and the current fair market value of each asset at the end of that period. If a current fair market value is not available for a particular investment or is not applicable to a particular investment, the board must assign a value to that investment. The board must apply the investment valuation method on a consistent basis. If the board changes the investment valuation method, the board must notify the council of the change.

- (c) *Reporting and disclosure.* The board must prepare for the chief administrative officer any documents required by law.

**Sec. 33-61C. Standard of care.**

A fiduciary must discharge the fiduciary's duties regarding the retirement systems:

- (a) only in the best interest of the participants and their beneficiaries;
- (b) only to provide benefits to the participants and their beneficiaries, and defray reasonable expenses of administering the retirement systems;
- (c) with the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a similar capacity and familiar with the same matters would use to conduct a similar enterprise with similar purposes;
- (d) by diversifying the investments of the retirement systems to minimize the risk of large losses, unless it is clearly not prudent to diversify under the circumstances;
- (e) according to a good faith interpretation of the law governing the retirement systems;
- (f) according to a good faith interpretation of the documents and instruments governing the retirement systems, if they comply with this Article.

**Sec. 33-61D. Ethics; conflict of interest.**

- (a) Members of the board are subject to the provisions of chapter 19A, "Ethics," of the Montgomery County Code.
- (b) Except as otherwise provided in this section, members and employees of the board must not:
  - (1) Be a party to any transaction engaged in by the board or an investment manager involving the assets of the retirement system;
  - (2) Use the gains or profits of the system for any purpose except to make investments or payments that are authorized by the board;
  - (3) Deal with the assets of the retirement system for their own interest or account;

- (4) Act in any transaction involving the retirement system on behalf of a party whose interests are adverse to the interests of the retirement system or the interests of the members or beneficiaries of the retirement system; or
  - (5) Become an endorser or surety, or in any manner an obligor, for moneys loaned to or borrowed from the board.
- (c) In this section, nothing prohibits a member or employee of the board from:
- (1) Being a member of the retirement system;
  - (2) Receiving a benefit the member or employee of the board is entitled to as a member or beneficiary in the retirement system so long as the benefit is computed and paid on a basis that is consistent with the terms of the retirement system as applied to all other members or beneficiaries; or
  - (3) Serving as a trustee or employee of the board in addition to being an officer, employee, agent, or other representative of a party in interest.