



September 9, 2011

The Honorable President and Members
of the Baltimore City Council
Fourth Floor, City Hall
Baltimore, Maryland 21202
c/o: Karen Randle, Executive Secretary

Re: Bill 11-736 {"Retirement Systems - Conflicts"}

You have asked the Ethics Board for its comments on Bill 11-736 {"Retirement Systems - Conflicts"}.

The primary purpose of Bill 11-736 is to establish certain additional ethics standards, restrictions, and requirements for members and staff of the Board of Trustees for the Employees' Retirement System, the Board of Trustees for the Elected Officials' Retirement System, the Board of Trustees for the Fire and Police Employees' Retirement System, and their respective members and staff. The stated goal of these additional standards, etc., is, as stated in the bill's title "the avoidance of improper influence or even the appearance of improper influence".

These Boards of Trustees are, as the name indicates, "trustees of the several funds" placed in their care [Article 22, § 7(a) and § 35(a)]. They are thus subject to various, special fiduciary duties not generally applicable to public servants. These include, among others –

- a. a special, fiduciary duty of loyalty [Article 22, § 7(h)(intro) and § 35(h)(intro) (Trustees to act "solely in the interest of [plan] members and beneficiaries"); and
- b. a special, fiduciary duty of prudence [Article 22, § 7(h)(2) and § 35(h)(2) (Trustees to act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims")].

The special standards, restrictions, and requirements proposed by Bill 11-736 would appear to complement and, indeed, safeguard these special fiduciary duties. And the special standards, restrictions, and requirements are fully consistent with the basic goals and purpose of the Ethics

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Code – that is, “[t]o guard against improper influence or even the appearance of improper influence, and to ensure public trust in the government” [Article 8, § 1-2]. *Cf. also* Article 8, § 2-33(b): “If another applicable law relating to conflicts of interest, financial disclosure, or lobbying is more stringent than this article, that provision also applies.”

Accordingly, the Ethics Board approves Bill 11-736. And, if the Bill is enacted, the Board stands ready to administer and enforce its provisions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Avery Aisenstark', written over a horizontal line.

Avery Aisenstark

xc: The Honorable James B. Kraft
Ms. Angela Gibson