

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney 

SUBJECT: **Introduction:** Expedited Bill 22-08, Retirement – Elected Officials

Expedited Bill 22-08, Retirement – Elected Officials, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on June 10. A public hearing is tentatively scheduled for June 24 at 1:30 p.m.

Bill 22-08 would allow an active member of a County retirement plan who becomes an elected official to choose to continue to participate in that plan instead of the elected officials' plan. Bill 22-08 clarifies the disability retirement provisions applicable to members of the elected officials' plan and repeals certain obsolete provisions relating to an elected official's eligibility to participate in certain retirement plans. It would also correct certain cross-references and make technical amendments to the law relating to retirement plans.

<u>This packet contains:</u>	<u>Circle #</u>
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Expedited Bill No. 22-08
 Concerning: Retirement - Elected
Officials
 Revised: 5/27/08 Draft No. 3
 Introduced: June 10, 2008
 Expires: December 10, 2009
 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) allow an active member of a County retirement plan who becomes an elected official to choose to continue to participate in that plan;
- (2) clarify the disability retirement provisions applicable to members of the elected officials' plan;
- (3) repeal certain obsolete provisions relating to an elected official's eligibility to participate in certain retirement plans;
- (4) correct certain cross-references and make technical amendments to the law relating to retirement plans; and
- (5) generally amend the law relating to retirement plans for County employees and elected officials.

By amending

Montgomery County Code
 Chapter 33, Personnel and Human Resources
 Sections 33-37, 33-41, and 33-128

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:

1 **Sec. 1. Sections 33-37, 33-41, and 33-128 are amended as follows:**

2 **33-37. Membership requirements and membership groups.**

3 * * *

4 [(c) *Elected officials.* Membership will be optional for the sheriff, the state's
5 attorney, and for any county official elected for a fixed term as
6 specifically provided in the charter of the county, and without the need
7 to meet any other entrance membership requirements that may be
8 specified herein. Membership shall be effective on the date the
9 employee's application for membership is approved.]

10 [(d)] (c) *Appointed officials.* Each person appointed by the [County] Executive
11 or [County] Council to head a principal department[,] or office[, or
12 agency] of the [county] County government must be subject to all
13 regulations and laws governing full-time members of the retirement
14 system.

15 (d) *Hearing Examiners.* Any person appointed by the Executive or Council
16 to serve as a hearing examiner must be treated as a full-time employee
17 under the laws and regulations governing members of the retirement
18 system if that person serves full time as a hearing examiner, and must be
19 treated as a part-time employee under the laws and regulations
20 governing members of the retirement system if that person serves less
21 than full time as a hearing examiner.

22 (e) *Retirement plans.*

23 * * *

24 (4) (A) [An individual who is an elected official on December 1,
25 1986, and was a Group A employee before December 1,
26 1986, must continue to participate in the retirement plan of
27 the retirement system in which the individual participated

28 before December 1, 1986, except as provided in subsection
29 (e)(5)(A). An individual who is an elected official on
30 December 1, 1986, and was not a member of a retirement
31 plan of the retirement system on November 30, 1986, as a
32 result of exercising the right described in subsection (c),
33 may elect to become a participant in the elected officials'
34 plan as provided in subsection (e)(5)(A).]

35 [(B) An individual who is an elected official on December 1,
36 1986, and was not a Group A employee on November 30,
37 1986, must become an elected officials' participant on
38 December 1, 1986, except as provided in subsection
39 (e)(6)(A).]

40 [(C) An individual who becomes an elected official on or after
41 December 2, 1986, but before December 1, 1989, must
42 become an elected officials' participant on the date the
43 individual becomes an elected official except as provided
44 in subsection (e)(6)(A).

45 (D) (i)] Except as [otherwise] provided in subparagraphs (B)
46 and (C), any individual who becomes an elected official
47 [on or after December 1, 1989] must become [an] a
48 member of the elected officials' [participant] plan on the
49 date the individual becomes an elected official.

50 (B) If an individual was an active member of a County
51 retirement plan immediately before becoming an elected
52 official, the individual may choose to continue to
53 participate in the retirement plan in which the individual
54 participated before becoming an elected official, subject to

55 the eligibility and transfer rules set out in subsections (e)
 56 and (f).

57 (C) An individual who chooses to continue to participate in a
 58 County retirement plan in which the individual participated
 59 immediately before becoming an elected official must not
 60 participate in the elected official's plan.

61 [(ii)] (D) If any highly compensated participant must be
 62 excluded from the elected officials' plan to maintain the
 63 plan's qualified status under the Internal Revenue Code,
 64 the highly compensated participant must participate in the
 65 retirement savings plan under Article VIII.

66 (5) (A) An elected official who [must continue to participate in
 67 another plan under subsection (e)(4)(A)] chooses to
 68 continue to participate in another County retirement plan
 69 under paragraph (4)(B) may become [an] a member of the
 70 elected officials' [participant] plan at any time while an
 71 elected official after terminating participation in the other
 72 plan.

73 (B) An individual who [makes the choice under subsection
 74 (e)(5)(A)] chooses to become a member of the elected
 75 officials' plan under subparagraph (A) retains [that] the
 76 individual's rights under the plan in which [that] the
 77 individual was a member before [that date] becoming a
 78 member of the elected officials' plan, except for disability,
 79 but is not entitled to a refund of contributions [to the prior]
 80 from that plan [because of the transfer to the elected
 81 officials' plan]. The disability benefits of [the] an

82 individual who chooses to [be an elected officials'
 83 participant] become a member of the elected officials' plan
 84 under subparagraph (A) are specified in article [VI] VIII.
 85 [That] The individual's vested rights under the elected
 86 officials' plan must be determined based on [that] the
 87 individual's total [number of years of] credited service,
 88 which includes service in the prior plan. The amount of
 89 [that] the individual's retirement benefit under the prior
 90 plan must be determined based only on credited service
 91 while participating in the prior plan. However, [that] the
 92 individual's regular earnings until [the time of] retirement
 93 or other termination of service with the County or a
 94 participating agency must be used in determining final
 95 average earnings for purposes of determining the amount
 96 of the retirement benefit under the prior plan.

97 (C) The [county executive] Executive must [develop] adopt
 98 regulations[,] under method (3)[,] to allow an eligible
 99 individual to make the choice [provided for in this
 100 subsection 33-37(e)(5)] authorized by subparagraph (A).

101 [(6) (A) An elected official who must become an elected officials'
 102 participant under subsection (e)(4)(B) or (e)(4)(C) may
 103 choose to participate in a retirement plan of the retirement
 104 system in which the elected official would otherwise be
 105 eligible to participate. An elected official who must
 106 become an elected officials' participant under subsection
 107 (e)(4)(B) must make this choice before July 1, 1987. An
 108 elected official who must become an elected officials'

109 participant under subsection (e)(4)(C) must make this
110 choice before the date that is 7 months from the elected
111 official's date of enrollment.]

112 [(B) An elected official who makes the choice under subsection
113 (e)(6)(A) must receive the account balance in that elected
114 officials participant's voluntary elected officials' participant
115 contributions account. The account balance of that
116 participant's required elected officials' participant
117 contributions account will be transferred to the retirement
118 plan in which the elected official has chosen to participate.
119 The elected official also must contribute to the plan the
120 difference between:

121 (i) The mandatory contributions the elected official
122 would have contributed to the plan between the date
123 of enrollment in the elected officials' plan and the
124 date of transfer had the elected official participated
125 during that period; and

126 (ii) That elected officials' participant's required elected
127 officials' participant contributions account balance.
128 The account balance in that participant's county
129 elected officials' contributions account is forfeited
130 and the county must contribute to the other plan, on
131 behalf of that elected official, whose contributions
132 the county would have made between the date of the
133 enrollment in the elected officials' plan and the date
134 of transfer had the elected official participated in
135 that plan during that period.]

136 [(C) The County Executive must issue regulations, under
137 method (3), to allow an eligible individual to make the
138 choice allowed under subsection (e)(6)(A).]

139 [(D) An elected official who must become an elected officials'
140 participant under subsection (e)(4)(B) or (e)(4)(C) also
141 may participate in another retirement plan of the retirement
142 system under subsection (e)(7).]

143 [(7) Except as provided in this paragraph, an individual who becomes
144 an elected officials' participant must remain an elected officials'
145 participant until that individual is not an elected official. An
146 elected officials' participant who is eligible to make a choice
147 under subsection (e)(5)(A) or (e)(6)(A) and who has completed
148 the lesser of a full term of office or 4 years of credited service in
149 the elected officials' plan may choose at that time, and, except as
150 provided under subsection (e)(6)(A) only at that time, to stop
151 participating in the elected officials' plan and participate in the
152 retirement plan in which that elected official would have been a
153 participant if that elected official had not chosen to participate in
154 the elected officials' plan. A participant who chooses to transfer
155 to the other plan keeps the right to benefits under the elected
156 officials' plan, but must not receive a distribution of any account
157 balances. The elected official's credited service for purpose of
158 vesting in the other plan must be determined based on the elected
159 official's total number of years of credited service. The amount of
160 the elected official's benefit under the other plan must not be
161 increased by the elected official's credited service earned while
162 the elected official participated in the elected official's plan. If an

163 elected official stops participating in the elected officials' plan,
 164 the elected official's disability retirement benefit must still be
 165 determined under the article VI disability benefits program. If an
 166 elected official stops participating in the elected officials' plan,
 167 the elected official's retirement benefit under the other plan must
 168 be determined using the regular earnings of the elected official
 169 during the applicable periods immediately before the end of the
 170 elected official's employment with the County.]

171 ~~[(8)]~~ (6) * * *

172 (f) *Membership groups and eligibility.* Any full-time or part-time employee
 173 is eligible for membership in the appropriate membership group
 174 [outlined below] if the employee meets all of the requirements for the
 175 group:

176 (1) Group A: An employee, elected official, or appointed official not
 177 eligible for membership in another group is a group A member.
 178 An employee who otherwise would be eligible for membership in
 179 group A must participate in the Retirement Savings Plan if the
 180 employee:

181 (A) begins, or returns to, County service on or after October 1,
 182 1994 (except as provided in the last sentence of subsection
 183 (e)(2);

184 (B) is not represented by an employee organization;

185 (C) does not occupy a bargaining unit position; and

186 (D) is not an elected official (except as provided in subsection
 187 ~~[(e)(4)(D)(ii)]~~ (e)(4)(D)).

188 * * *

189 (4) Group E: The Chief Administrative Officer, the [director of the]
 190 Council Staff Director, the hearing examiners, the County
 191 Attorney and each head of a principal department[,] or office [or
 192 agency] of the County government, if appointed to [such] that
 193 position before July 30, 1978, or a member having held such
 194 position on or before October 1, 1972. Any sworn deputy sheriff
 195 and any County correctional staff or officer as designated by the
 196 Chief Administrative Officer. Any group E member who has
 197 reached elective early retirement date may retain membership in
 198 group E [in the event of transfer] if the member transfers from the
 199 position which qualified the member for group E. Any group E
 200 member who is temporarily transferred from the position which
 201 qualified the member for group E may retain membership in
 202 group E as long as the temporary transfer from the group E
 203 position does not exceed 3 years. Notwithstanding the foregoing
 204 provisions in group E, any employee who is eligible for
 205 membership in group E must participate in the retirement savings
 206 plan under Article VIII if the employee:

207 * * *

208 (6) Group G: Any paid firefighter, paid fire officer, and paid rescue
 209 service personnel. Any group G member who has reached
 210 elective early retirement date may retain membership in group G
 211 [in the event of transfer] if the member transfers from the position
 212 which qualified the member for group G. Any group G member
 213 who is temporarily transferred from the position which qualified
 214 the member for Group G may retain membership in group G as
 215 long as the temporary transfer from the group G position does not

216 exceed 3 years. Notwithstanding the foregoing provisions in
217 group G, any employee who is eligible for membership in group
218 G must participate in the retirement savings plan under Article
219 VIII if the employee:

220 * * *

221 **33-41. Credited service.**

222 (a) *Member's credited service.*

223 * * *

224 (2) However, credited service earned while an individual is a
225 participant in the elected officials' plan must be used only for the
226 purposes described in [section] Section 33-37(e) and [section]
227 Section 33-55A. Credited service earned while an individual is a
228 participant in the retirement savings plan under Article VIII must
229 be used only as provided in Section 33-37(i)

230 * * *

231 (f) *Use of sick leave for credited service.* An employee [whose retirement is
232 effective on or after May 1, 1970, or who becomes vested on or after
233 October 1, 1971,] must receive credit toward retirement for any
234 accumulated sick leave, up to a maximum of 4,224 hours. Each 176
235 hours of accumulated sick leave is equal to 1 month of credited service.
236 Accumulated sick leave totaling less than 11 days must not be credited
237 for retirement purposes. Accumulated sick leave totaling 11 to 22 days
238 must be credited as 1 month of service for retirement purposes. An
239 employee who transfers to the retirement savings plan must receive
240 credit toward retirement under the optional plan or integrated plan under
241 Section 33-37(i) for the employee's accumulated sick leave.

242 * * *

243 **33-128 Definitions**

244 * * *

245 (j) Employee means an employee of the County who:

246 (1) participates in the retirement savings plan under this Article or in
247 the elected officials' plan under Article III; and

248 (2) is regularly scheduled to work 20 hours or more per week.

249 * * *

250 **Sec. 2. Transition**

251 An individual who was an active member of a County retirement plan
 252 immediately before becoming an elected official, and who was required to participate
 253 in the elected officials' plan, may make a one time election to continue to participate
 254 in the retirement plan the individual participated in immediately before becoming an
 255 elected official. The individual's account balance must be transferred to the
 256 retirement plan in which the individual is resuming membership. The individual
 257 must contribute to the plan any accumulated contributions the individual would have
 258 made had the individual continued participation in that plan after deducting the
 259 individual's participant contributions made to the elected officials' plan. The
 260 individual must have no interest in the County elected official contributions made on
 261 the individual's behalf. The individual must continue participation as if the
 262 individual had not participated in the elected officials' plan.

263 **Sec. 3. Expedited Effective Date.**

264 The Council declares that this legislation is necessary for the immediate
 265 protection of the public interest. Section 2 is effective on December 1, 2006. The
 266 rest of this Act takes effect on the date on which it becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 22-08

DESCRIPTION: This bill would amend several sections of Article III of Chapter 33 of the County Code. The bill would allow an active member of the County retirement plan who becomes an elected official to elect to continue to participate in that plan rather than participate in the elected officials' plan. The bill would also allow an individual who was an active member of the County retirement plan before becoming an elected official to make a one-time election to transfer from the elected officials' plan to the retirement plan in which the individual participated before becoming an elected official. The individual would have to pay the difference between the employee contributions made to the elected officials' plan and the employee contributions the individual would have made if the individual had continued to participate in the retirement plan. The individual will participate in the retirement plan as if the individual had never participated in the elected officials' plan. The bill also repeals certain obsolete provisions relating to an elected official's eligibility and changes certain cross-references.

PROBLEM: Participants in the County retirement plan who become elected officials are currently required to participate in the elected officials' plan. This bill would allow those individuals to continue to participate in the retirement plan in which they participated immediately before becoming elected officials. When the elected officials' plan was created, transition rules allowed elected officials to continue to participate in the same retirement plan but no rules were enacted for active retirement plan members who become elected officials.

GOALS AND OBJECTIVES: To allow participants in the County's retirement plan to elect to continue to participate in the retirement plan rather than requiring them to participate in the elected officials' plan.

COORDINATION: Office of Human Resources and Finance Department

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

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L:
Bill



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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Isiah Leggett
County Executive

MEMORANDUM

034862

April 14, 2008



TO: Michael J. Knapp, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Expedited Bill Regarding Retirement and Elected Officials.

I am attaching for the Council's consideration an expedited bill which would amend County law governing retirement and elected officials to allow an individual who becomes an elected official while an active member of the County's retirement plan to elect to continue participating in the retirement plan rather than participate in the elected officials' plan. I am also attaching a Legislative Request Report for the proposed bill.

The proposed bill would allow any individual who became an elected official on or after December 1, 2006, to make a one-time election to transfer from the elected officials' plan to the retirement plan that the individual participated in immediately before becoming an elected official. The individual must pay the difference between the employee contributions made to the elected officials' plan and the employee contributions the individual would have made had the individual continued to participate in the retirement plan. The bill would also repeal certain obsolete provisions and changes certain cross-references.

When the elected officials' plan was created, certain transition rules permitted an elected official to continue to participate in the retirement plan in which the elected official was currently participating; however no such transition rules were incorporated for active County retirement plan members who become elected officials. The proposed bill would allow an active retirement plan member who becomes an elected official to choose to continue participating in the retirement plan in which the elected official participated before becoming an elected official.

Thank you for your consideration of this proposed bill.

IL:jgs

Attachments

RECEIVED
MONTGOMERY COUNTY
COUNCIL
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