

Expedited Bill No. 33-03  
Concerning: Personnel - Retirement  
Amendments  
Revised: Nov. 6, 2003 Draft No. 3  
Introduced: September 9, 2003  
Enacted: November 18, 2003  
Executive: December 1, 2003  
Effective: December 1, 2003  
Sunset Date: None  
Ch. 31, Laws of Mont. Co. 2003

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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### AN EXPEDITED ACT to:

- (1) clarify or establish how certain retirement benefits are calculated for certain categories of retired County employees;
- (2) clarify and amend the procedures and standards regarding disability benefit determinations and appeals;
- (3) adjust retirement benefits to coordinate with federal Social Security benefits;
- (4) clarify and revise certain rules regarding survivor benefits;
- (5) allow certain transfers between retirement plans to correct administrative failures; and
- (6) generally amend County law regarding the County employee retirement system.

### By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-39, 33-42, 33-43, 33-44, 33-46, 33-56, and 33-127

### By adding

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Section 33-61J

<b>Boldface</b>	<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:*



28 new maximum for the member's retirement group on the  
 29 date that the amendment reducing the maximum years of  
 30 credited service became effective.

31 [(B)]

32 (C) The County must refund to the member, with interest, that  
 33 portion of the payment made to purchase any prior service  
 34 [which] that exceeds the maximum credited service for the  
 35 employee's retirement group. The County must determine  
 36 the amount of the refund based on the member's total  
 37 credited service, excluding sick leave, on the effective date  
 38 of the amendment to the County Code that reduced the  
 39 maximum years of service. In this subsection "payment"  
 40 means the lump sum amount, determined at the time of  
 41 purchase on an actuarial or flat payment basis, less any  
 42 interest paid by the member or any contributions that were  
 43 previously refunded.

44 (D) [Interest paid under] Under this subsection, the County  
 45 must [be credited] pay interest in the same manner and  
 46 amount as for a member's accumulated contributions  
 47 under subsection (b). To calculate interest on a refunded  
 48 payment, the [amount] County must [be assumed to have  
 49 been] assume that the member paid the amount in full  
 50 when the service was purchased.

51 (E) The County must pay the proper refund [must be paid] to  
 52 the member after the member's retirement begins.

53 \* \* \*

54 **33-42. Amount of pension at normal retirement date or early**  
55 **retirement date.**

56 \* \* \*

57 (b) *Amount of pension at normal retirement date.*

58 \* \* \*

59 (2) *Pension amount for an Integrated Retirement Plan member.*

60 \* \* \*

61 (C) For a Group E member in the integrated retirement plan  
62 who retires on a normal retirement, the annual pension  
63 must be computed as follows:

64 \* \* \*

65 (ii) From the month the member reaches Social Security  
66 normal retirement age: 1.25 percent of average final  
67 earnings up to the Social Security maximum  
68 covered compensation in effect on the date of  
69 retirement for each year of credited service to a  
70 maximum of 31 years plus sick leave credits, plus  
71 2.4 percent of average final earnings above the  
72 Social Security maximum covered compensation in  
73 effect on the date of retirement for each of the first  
74 25 years of credited service completed, and 2  
75 percent of average final earnings above the Social  
76 Security maximum covered compensation in effect  
77 on the date of retirement for each year of credited  
78 service of more than 25 years, to a maximum of 31  
79 years plus sick leave credits. Years of credited  
80 service of less than one full year must be prorated.

Sick leave credits used for years in excess of 25 years must be credited at 2 percent of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement. The County must increase this initial amount by the cost-of-living adjustments provided under Section 33-44(c) for the period from the member's date of retirement to the month in which the member reaches Social Security retirement age.

(D) For a Group F member in the integrated retirement plan who retires on a normal retirement, the annual pension must be computed as follows:

\* \* \*

(ii) From the month the member reaches Social Security normal retirement age: 1.65 percent of average final earnings up to the maximum of 30 years, and 1.25 percent of average final earnings for years in excess of 30 years, credited with sick leave, up to the Social Security maximum covered compensation in effect on the date of retirement, plus 2.4 percent of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement, multiplied by years of credited service up to a maximum of 30 years, plus sick leave credits. Years of credited service of less than one full year must be prorated. Sick leave credits used for years in excess of 30 years must be credited at 2

108 percent of average final earnings above the Social  
 109 Security maximum covered compensation in effect  
 110 on the date of retirement. The County must increase  
 111 this initial amount by the cost-of-living adjustments  
 112 provided under Section 33-44(c) for the period from  
 113 the member's date of retirement to the month in  
 114 which the member reaches Social Security  
 115 retirement age.

116 (E) [For] The County must compute the annual pension of a  
 117 Group G member in the integrated retirement plan who  
 118 retires on a normal retirement[, the annual pension must be  
 119 computed] as follows:

120 (i) from the date of retirement to the month that the  
 121 member reaches Social Security retirement age, the  
 122 following percentages of average final earnings  
 123 apply:

124 (a) 2 percent, for each of the first 20 years of  
 125 credited service;

126 (b) 3 percent, for years 21 through 24 of credited  
 127 service;

128 (c) 8 percent, for [year 25] the 25<sup>th</sup> year of  
 129 credited service; and

130 (d) 2 percent, for [years] each year of credited  
 131 service of more than 25 years, [through] to a  
 132 maximum of 31 years, [and any] plus sick  
 133 leave credits[ in excess of 31 years]; and

- 134 (e) 0 percent for years after year 31 (except sick  
 135 leave credits referred to in subclause (d)).
- 136 (ii) From the month the member reaches Social Security  
 137 retirement age, the percentages specified in clause  
 138 (i) must be reduced, respectively, by the following  
 139 percentages of average final earnings for the portion  
 140 of any amount equal to or less than the Social  
 141 Security maximum covered compensation in effect  
 142 on the date of retirement:
- 143 (a) 1 percent, for each of the first 20 years of  
 144 credited service;
- 145 (b) 1 ½ percent, for years 21 through 24 of  
 146 credited service;
- 147 (c) 4 percent, for [year 25] the 25<sup>th</sup> year of  
 148 credited service; and
- 149 (d) 1 percent for [years] each year of credited  
 150 service of more than 25 years, [through] to a  
 151 maximum of 31 years, [and any] plus sick  
 152 leave credits[ in excess of 31 years].
- 153 (iii) The [cost-of-living adjustment formula in Section  
 154 33-44(c) applies to pension under this subparagraph  
 155 between the member's date of retirement and the  
 156 month] County must increase the initial amount of a  
 157 pension computed under (ii) above by the cost-of-  
 158 living adjustments provided under Section 33-44(c)  
 159 for the period from the member's date of retirement

160 to the month in which the member reaches Social  
161 Security retirement age.

162 (iv) [Any] The County must prorate any portion of a  
163 year described in this subparagraph[ must be  
164 prorated].

165 \* \* \*

166 **33-43. Disability retirement.**

167 \* \* \*

168 (b) *Definitions.* In this Section, the following words and phrases have the  
169 following meanings:

170 \* \* \*

171 (3) ***Disability Arbitration Board or Board*** means one of the 3  
172 persons] panels designated under subsection (m)(1) to review an  
173 appeal of the Chief Administrative Officer’s final decision  
174 regarding an application for disability benefits filed by any  
175 member except a member of the Police Bargaining Unit.

176 \* \* \*

177 (8) ***Residual functional capacity*** means what the individual can still  
178 do, despite the individual’s impairment. The County must give  
179 the term *residual functional capacity* the same meaning as the  
180 term is given by the U.S. Social Security Administration.

181 (9) ***Substantial gainful activity*** means the ability to perform a  
182 substantial level of paid work that exists in significant numbers in  
183 the national economy. An individual is able to perform a  
184 substantial level of work if the individual is able to earn more  
185 than the U.S. Social Security Administration’s current monthly  
186 earnings limit that applies to the individual’s impairment. The



187 County must give the term *substantial gainful activity* the same  
 188 meaning as the term is given by the U.S. Social Security  
 189 Administration.

190 \* \* \*

191 (c) ***Selection of the Disability Review Panel.***

192 \* \* \*

193 (2) [No] The Chief Administrative Officer must ensure that no 2  
 194 members of the Panel [can] practice in the same medical  
 195 specialty.

196 (3) (A) [Members appointed] The Chief Administrative Officer  
 197 must appoint members under subsection (c)(1) [must be  
 198 appointed] for staggered 3-year terms. To implement the  
 199 staggered terms, [the first member appointed by] the Chief  
 200 Administrative Officer must [have] appoint the first  
 201 member to a 3-year term, the second member [must have]  
 202 to a one-year term, and the third member [must have] to a  
 203 2-year term. After these initial appointments, the Chief  
 204 Administrative Officer must appoint all members [will be  
 205 appointed] to 3-year terms, except for any member  
 206 appointed under subsection (c)(6) to fill a vacancy created  
 207 by a Panel member's death, disability, resignation, non-  
 208 performance of duty or other cause.

209 (B) After the Chief Administrative Officer appoints or  
 210 reappoints a Panel member, the Chief Administrative  
 211 Officer must promptly provide each certified  
 212 representative with a copy of the document confirming the  
 213 appointment.

- 214 (i) *Amount of pension at service-connected disability retirement.*
- 215 (1) [A] The County must pay a member, other than a Group G
- 216 member, who retires on service-connected disability retirement
- 217 [must receive] an annual pension calculated under Section 33-
- 218 42(b)(1), [but not less than] subject to the following exceptions:
- 219 (A) the County must substitute final earnings for average final
- 220 earnings; and
- 221 (B) the pension must be at least 66 2/3 percent of the
- 222 member's final earnings.
- 223 (2) [A] The County must pay a Group G member [must receive] who
- 224 retires on a service-connected disability retirement an annual
- 225 pension [benefit] calculated under Section 33-42(b)(1), [subject
- 226 to the following:] except that the County must substitute final
- 227 earnings for average final earnings.
- 228 [(A) The benefit must be at least 70 percent of final earnings if
- 229 the Chief Administrative Officer finds, based on a
- 230 recommendation from the Disability Review Panel, that:
- 231 (i) the member suffers from a medically determinable
- 232 physical or mental impairment that makes the
- 233 member unable to engage in any substantial gainful
- 234 activity and is expected to end in death or last for at
- 235 least 12 consecutive months; or
- 236 (ii) the member's disability is so severe that the member
- 237 would qualify to receive disability benefits from the
- 238 U.S. Social Security Administration, even though

239 the member does not receive or has not applied for  
240 such benefits.

241 (B) The benefit must be at least 52 ½ percent of final earnings  
242 if the Chief Administrative Officer finds that the member  
243 meets the standards to receive service-connected disability  
244 benefits under subsection (f).]

245 (3) The County must pay a Group G member who retires on a  
246 service-connected disability retirement an annual pension  
247 calculated under Section 33-42(b)(1), but the benefit must be at  
248 least 70 percent of final earnings if the Chief Administrative  
249 Officer finds, based on a recommendation from the Disability  
250 Review Panel, that the member's service-connected disability is  
251 severe enough to meet the Social Security Administration's  
252 requirements for disability, meaning that the member is unable to  
253 engage in any substantial gainful activity because of a medically  
254 determinable physical or mental impairment that can be expected  
255 to end in death or has lasted, or can be expected to last, for a  
256 continuous period of at least 12 months. The member does not  
257 have to qualify for Social Security benefits to be eligible for  
258 benefits under this subsection.

259 (A) The Panel must base its determination of whether or not an  
260 individual is able to engage in any substantial gainful  
261 activity on an assessment from an independent vocational  
262 expert that considers the member's age, education, work  
263 experience, transferable skills, and residual functional  
264 capacity.

- 265           (B) The Panel must determine the member's residual  
266           functional capacity and provide this information to the  
267           independent vocational expert.
- 268           (C) A Panel determination that the member's service-  
269           connected disability is severe enough to be considered a  
270           disability by the Social Security Administration is not a  
271           recommendation that the member is entitled to, or should  
272           be granted, a disability benefit by the Social Security  
273           Administration.
- 274           (D) If a member has already been granted disability benefits by  
275           the U.S. Social Security Administration when the member  
276           applies for a service-connected disability pension, the  
277           County must pay the member a pension of at least 70  
278           percent if the Disability Review Panel finds that the award  
279           of disability benefits from the Social Security  
280           Administration was based primarily on the same medically  
281           determinable physical or mental impairment on which the  
282           Disability Review Panel awards the member a service-  
283           connected disability benefit.
- 284           (4) The County must pay a Group G member who retires on a  
285           service-connected disability retirement an annual pension  
286           calculated under Section 33-42(b)(1), but the benefit must be at  
287           least 52 ½ percent of final earnings if the Chief Administrative  
288           Officer finds, based on a recommendation from the Disability  
289           Review Panel, that:
- 290           (A) the member meets the standards to receive a service-  
291           connected disability benefit under subsection (f); and

- 292                    (B) the member is not eligible to receive a benefit under  
293                    subsection (i)(3).
- 294            (5)    (A) The County must increase the service-connected disability  
295                    pension benefit of a Group G member calculated under Section  
296                    33-42(b)(1), from a benefit of at least 52½ percent to a benefit of  
297                    at least 70 percent, if:
- 298                    (i)    the U.S. Social Security Administration awards  
299                    disability benefits to the member;
- 300                    (ii)   the member submits all relevant information about  
301                    the award of disability benefits from the Social  
302                    Security Administration to the Disability Review  
303                    Panel within 60 days after the member receives the  
304                    award;
- 305                    (iii)   the Disability Review Panel finds that the award of  
306                    disability benefits from the Social Security  
307                    Administration was based primarily on the same  
308                    medically determinable physical or mental  
309                    impairment on which the Disability Review Panel  
310                    originally awarded the member a service-connected  
311                    disability benefit; and
- 312                    (a)    the member applies for disability benefits  
313                    with the Social Security Administration  
314                    within 90 days after the date on which the  
315                    Chief Administrative Officer notified the  
316                    member that the amount of the service-  
317                    connected disability pension benefit would be

318 calculated under Section 33-42(b)(1), but at  
 319 least 52 ½ percent; or

320 (b) the Chief Administrative Officer awards a  
 321 service-connected disability pension benefit  
 322 calculated under Section 33-42(b)(1), but at  
 323 least 52 ½ percent, to the member between  
 324 March 1, 2000, and [insert the effective date  
 325 of this bill], and the member applies for  
 326 disability benefits with the Social Security  
 327 Administration no later than [insert 90 days  
 328 after the effective date of this bill].

329 (B) For a member who qualifies for an increased pension  
 330 benefit under subsection (5)(A) above, the County must  
 331 increase the member's service-connected pension  
 332 retroactively to the date on which the pension began.

333 [(3)]

334 (6) Under this subsection, “final earnings” for a Group F or G  
 335 member who is participating in a job-sharing program under a  
 336 collective bargaining agreement between the County and a  
 337 certified representative means the regular earnings that the  
 338 member would have received if the member had been employed  
 339 on a full-time basis on the last date of active service.

340 \* \* \*

341 (l) *Appeal procedures.*

342 (1) An applicant who is a member of the Police Bargaining Unit or  
 343 the certified representative of the Police Bargaining Unit may  
 344 appeal a decision of the Chief Administrative Officer that affects

345 the member's right to disability benefits to the Police Disability  
 346 Arbitration Board. An applicant who is not a member of the  
 347 Police Bargaining Unit, or the certified representative on behalf  
 348 of the applicant, may appeal the written decision of the Chief  
 349 Administrative Officer to [the] one of 3 Disability Arbitration  
 350 [Board] Boards. [Any appeal] An applicant must [be filed] file  
 351 an appeal within 20 calendar days of the date on which the  
 352 applicant receives the Chief Administrative Officer's decision.

353 (2) [An] The Police Disability Arbitration Board must consider  
 354 appeals [appeal] filed by [a member] members of the Police  
 355 Bargaining Unit[ must be considered by the Police Disability  
 356 Arbitration Board]. [All other appeals must be considered by the]  
 357 The 3 Disability Arbitration [Board] Boards must consider all  
 358 other appeals on a rotating basis in the order in which the County  
 359 receives the appeals.

360 (3) [The] After an applicant files an appeal, the appropriate Disability  
 361 Arbitration Board [and] or Police Disability Arbitration Board  
 362 with whom the appeal is filed must convene within a reasonable  
 363 time [after an appeal is filed] and consider the appeal.

364 (4) The appeal and judicial review proceedings are governed by the  
 365 Maryland Uniform Arbitration Act, except that a Board decision  
 366 must not be vacated on the ground that the applicant who filed  
 367 the appeal is not a bargaining unit member and did not agree to  
 368 arbitrate the appeal.

369 [(4)]





396 reappointment of each Chairperson promptly after the  
 397 Council's action.

398 \* \* \*

399 (3) [In the event] If the neutral arbitrator declines to be reappointed,  
 400 dies, resigns, or for other cause is unable or ineligible to serve on  
 401 one of the Disability Arbitration [Board] Boards or the Police  
 402 Disability Arbitration Board, a new arbitrator must be appointed  
 403 by the County Executive under paragraph (1).

404 (4) The County must pay all reasonable fees and expenses of the  
 405 [arbitrator] arbitrators, as determined by the Chief Administrative  
 406 Officer, except that a certified representative representing an  
 407 applicant who is a member of the Office, Professional or  
 408 Technical or Service, Labor and Trades Bargaining Unit must  
 409 pay any fee resulting from the cancellation of a scheduled hearing  
 410 if the certified representative:

411 (A) \* \* \*

412 (B) \* \* \*

413 (5) The applicant, or the certified representative on behalf of the  
 414 applicant, must designate an individual to serve as a member of  
 415 the Disability Arbitration Board [for determination of] that will  
 416 consider and decide the applicant's appeal. The applicant must  
 417 designate an individual to serve as a member of the Police  
 418 Disability Arbitration Board. The Chief Administrative Officer  
 419 must designate an individual to serve on the Disability  
 420 Arbitration Board or Police Disability Arbitration Board [for  
 421 determination of] that will consider and decide the applicant's  
 422 appeal. The applicant, or the certified representative on behalf of

423 the applicant, and the County, respectively, may designate Board  
 424 members on a case-by-case basis according to each party's  
 425 chosen procedure. There must be no restriction on who may  
 426 serve as the designee of the applicant or the County, except that  
 427 no member of the Board that will consider and decide an appeal  
 428 may be involved in, or be a witness to, any matter that is before  
 429 [the] that Board.

430 \* \* \*

431 **33-44. Pension payment options and cost-of-living adjustments.**

432 \* \* \*

433 (b) *Voluntary adjustment of pension payment by a member who retires*  
 434 *before qualifying to receive social security benefits.*

435 (1) A member may elect to receive an actuarial equivalent benefit of  
 436 [larger] a certain level of pension payments until normal social  
 437 security payments [commence,] begin and [smaller] an adjusted  
 438 level of payments [thereafter, thus providing] after normal social  
 439 security payments begin. A member may elect these adjustments  
 440 to receive a more uniform total income from both sources. [For  
 441 members enrolled prior to July 1, 1978, if the member dies before  
 442 the total payments made or due equal the amount of the payments  
 443 guaranteed under the normal form of retirement pension,  
 444 payments will be continued to the designated beneficiary as if the  
 445 member was still living until the guaranteed amount has been  
 446 received. If both the member and the designated beneficiary die  
 447 before the guaranteed amount has been received, the actuarial  
 448 value of any remaining installment payments will be paid to the  
 449 payee designated by the member. For members enrolled on or

450 after July 1, 1978, if a member dies before receiving benefits in  
 451 an amount equal to member contributions plus credited interest,  
 452 the difference will be payable to the designated beneficiary.]

453 (2) A member who elects to receive adjusted levels of pension  
 454 payments under subsection (1) above must also choose one of the  
 455 forms of pension payment options described in subsection (a)(6).

456 (3) If a member dies, the County must pay the pension benefit to the  
 457 member's designated beneficiary in the form elected by the  
 458 member under subsection (a)(6).

459 \* \* \*

460 **[[33-46. Death benefits and designation of beneficiaries.]]**

461 \* \* \*

462 *[[b) Spouse's, or domestic partner's, and children's benefits of a member*  
 463 *whose death is service connected.*

464 (1) If a member, other than a Group F member, dies while in the  
 465 service of the County or a participating agency on or after August  
 466 15, 1965, and the employing department or agency, a beneficiary,  
 467 or another person submits satisfactory proof to the Chief  
 468 Administrative Officer that death was the result of injuries  
 469 sustained in the line of duty or was directly attributable to the  
 470 inherent hazards of the duties performed by the member [is  
 471 submitted] and the death was not due to willful negligence,  
 472 [payments] the County must [be made as follows] pay the  
 473 following benefits:

474 [(1) (A) a spouse's or domestic partner's benefit equal to 25  
 475 percent of the member's final earnings, paid as a monthly

476 benefit for the spouse’s life, but not less than \$250 per  
 477 month; plus

478 [(2)] (B) a child’s benefit equal to 5 percent of the member’s final  
 479 earnings, paid as a monthly benefit, but not less than \$50  
 480 per month until the child reaches age 21 or for life if the  
 481 child is disabled and incapable of self-support.

482 (2) The [maximum] County must not pay combined total spouse’s[,]  
 483 or domestic partner’s[,], and children’s [benefit must not exceed]  
 484 benefits that exceed 40 percent of the member’s final earnings.  
 485 The [spouse’s, or domestic partner’s, and children’s] County  
 486 must not pay the benefit [is not payable] to the spouse, domestic  
 487 partner, or child if the spouse or domestic partner elects to receive  
 488 benefits under subsection (e).[, except that] However, the County  
 489 must pay a child’s benefit [is payable] if the eligible spouse or  
 490 domestic partner dies before the child is 21 years old.]]

491 \* \* \*

492 **33-56. Interpretations.**

493 \* \* \*

494 (b) The Chief Administrative Officer’s decision on a disability application  
 495 under Section [33-43A] 33-43 may be appealed under subsection  
 496 [33-43A(1)] 33-43(l).

497 \* \* \*

498 **33-61J. Transfer of assets between trust funds of the retirement system.**

499 To the extent permitted by the Internal Revenue Code and applicable guidance  
 500 under the Internal Revenue Code, the County may transfer assets of the retirement  
 501 system relating to an account or accrued benefit of a participant in trust-to-trust  
 502 transfers between the trusts of the Employees’ Retirement System and the Retirement

503 Savings Plan to correct operational failures relating to such accounts or accrued  
504 benefits.

505 \* \* \*

506 **33-127. Miscellaneous.**

507 \* \*

508 (e) Transfer of assets between trust funds of the retirement system. To the  
509 extent permitted by the Internal Revenue Code and applicable guidance  
510 under the Internal Revenue Code, the County may transfer assets of the  
511 retirement system relating to an account or accrued benefit of a  
512 participant in trust-to-trust transfers between the trusts of the  
513 Employees' Retirement System and the Retirement Savings Plan to  
514 correct operational failures relating to such accounts or accrued benefits.

515 [(e)]

516 (f) *Exclusive Benefit.* \* \* \*

517 \* \* \*

518 **Sec. 2. Expedited Effective Date.**

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

522 *Approved:*

523

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Michael L. Subin, President, County Council

Date

524 *Approved:*

525

---

Douglas M. Duncan, County Executive

Date

526 *This is a correct copy of Council action.*

527

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Mary A. Edgar, CMC, Clerk of the Council

Date