

Expedited Bill No. 36-08  
Concerning: Personnel and Human Resources - Retirement - Technical Amendments  
Revised: 11/19/08 Draft No. 4  
Introduced: November 25, 2008  
Enacted: January 27, 2009  
Executive: February 9, 2009  
Effective: See Section 3  
Sunset Date: None  
Ch. 2, Laws of Mont. Co. 2009

## 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) make technical changes to the County retirement law; and
- (2) generally amend the retirement law for County employees to comply with changes in Federal law.

By amending  
Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-35, 33-37, 33-39, 33-40, 33-41, 33-44, 33-118 and 33-120

<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:*

1       **Sec. 1. Sections 33-35, 33-37, 33-40, 33-44, 33-118 and 33-120 are**  
2 **amended as follows:**

3 **33-35. Definitions.**

4                                   \*     \*     \*

5       *Picked-up contributions:* The contributions picked up by the County or a  
6 participating agency under Sections 33-39(a)(1)[(B)], 33-39(a)(2)[(B)], or 33-  
7 39(a)(3).

8                                   \*     \*     \*

9       *Regular earnings:* Except as otherwise provided, gross pay for actual hours  
10 worked exclusive of overtime. Regular earnings for an elected official is gross  
11 pay for services rendered to the County. [For a member who became a  
12 member in the retirement system on or after July 1, 1996, regular earnings in  
13 plan years beginning on or after July 1, 1996, does not include gross pay over  
14 \$150,000, as adjusted by the Internal Revenue Service under Section  
15 401(a)(17) of the Internal Revenue Code for increases in the cost of living.]  
16 Regular earnings must not exceed the limit under Internal Revenue Code  
17 Section 401(a)(17), as adjusted by the Internal Revenue Service. Gross pay  
18 must be used to determine benefits even if the County implements a pick-up  
19 plan under Section 414 of the Internal Revenue Code. Gross pay must be used  
20 to determine benefits even if a member has agreed to a reduction in earnings  
21 under:

- 22       (a) the County's deferred compensation plan under Section 457 of the  
23 Internal Revenue Code; or
- 24       (b) any statutory fringe benefit program sponsored by the County and  
25 permitted by the Internal Revenue Code.

26                                   \*     \*     \*

27 **33-37. Membership requirements and membership groups.**

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(e) *Retirement plans.*

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(4) (A) Except as provided in subparagraphs (B) and (C), any individual who becomes an elected official must become a member of the elected officials' plan on the date the individual becomes an elected official.

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(B) If an individual was an active member of a County retirement plan, including an employee on leave without pay, before becoming an elected official, the individual may choose to continue or return to participate in the retirement plan in which the individual participated before becoming an elected official, subject to the eligibility and transfer rules set out in this subsection and subsection (f).

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### 43 **33-40. Employer contributions.**

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45 (d) Elected officials' plan. Subsections 33-40(a), (b), and (c) do not apply  
46 to the elected officials' plan. Instead, the following provisions apply:

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(2) The Board must allocate the County elected officials' contributions made on behalf of each elected officials' participant to a County elected officials' contributions account the Board establishes for that elected officials' participant. In addition, amounts allocated to the County elected officials' contributions account must be further allocated to sub-accounts to reflect the

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54 proportionate amount of each account in each of the applicable  
 55 investment funds.

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57 (D) An elected officials' participant who ends employment  
 58 with the County and who is not vested in any County  
 59 contributions must forfeit the full account balance in the  
 60 County elected officials' contributions account. If that  
 61 occurs, the Chief Administrative Officer, upon the  
 62 participant's completion of a properly completed  
 63 distribution form, must pay the participant, in a single  
 64 lump-sum payment, the full account balances in the  
 65 required elected officials' participant contributions account  
 66 and the voluntary elected officials' participant  
 67 contributions account, less any indebtedness to the County  
 68 government or the Montgomery County Employees  
 69 Federal Credit Union. The Chief Administrative Officer  
 70 must consider all forfeitures arising under the elected  
 71 officials' plan in determining the County elected officials'  
 72 contributions and must use the forfeitures to reduce the  
 73 amount of the County elected officials' contributions.

74 **33-44. Pension payment options and cost-of-living adjustments.**

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76 (i) *Period for distribution of death benefits of an elected officials'*  
 77 *participant who was not receiving benefits.*

78 (1) If an elected officials' participant dies before the payment of the  
 79 benefits under the elected officials' plan has commenced, the  
 80 benefits must be distributed [within five (5) years after the elected

81 officials' participant's death] before the end of the calendar year  
82 containing the fifth anniversary of the elected official  
83 participant's death; however, the five-year rule does not apply if:

84 (A) Any portion of the elected officials' participant's benefit is  
85 payable to, or for the benefit of, a designated beneficiary;

86 (B) The portion of the benefit to which the designated  
87 beneficiary is entitled will be distributed over the life of the  
88 beneficiary, or over a period not extending beyond the life  
89 expectancy of the beneficiary; and

90 (C) The distributions commence before the end of the calendar  
91 year following the calendar year in which the elected  
92 official's participant's death occurred. [no later than one  
93 (1) year after the date of the elected officials' participant's  
94 death, or such later date which the secretary of the treasury  
95 may, under regulations, prescribe.] Also, the five-year rule  
96 does not apply if:

97 (i) The portion of the elected officials' participant's  
98 benefit to which the surviving spouse [or domestic  
99 partner] is entitled must be distributed over the life  
100 of the surviving spouse [or domestic partner], or  
101 over a period not extending beyond the life  
102 expectancy of the surviving spouse [or domestic  
103 partner]; and

104 (ii) The distributions commence before the later of the  
105 end of the calendar year following the calendar year  
106 in which the participant died or the end of the  
107 calendar year in which [no later than the date on

108 which] the elected officials' participant would have  
 109 attained age [seventy and one-half (70½ )] 70½ .

110 \* \* \*

111 (l) *Period for distribution of death benefits of a member who was not*  
 112 *receiving benefits.*

113 (1) If a member dies before the payment of the benefit has  
 114 commenced, the benefit must be distributed [within five (5) years  
 115 after the member's death] before the end of the calendar year  
 116 containing the fifth anniversary of the member's death; however,  
 117 the five-year rule does not apply if:

118 (A) Any portion of the member's benefit is payable to, or for  
 119 the benefit of, a designated beneficiary;

120 (B) The portion of the benefit to which the designated  
 121 beneficiary is entitled will be distributed over the life of the  
 122 beneficiary, or over a period not extending beyond the life  
 123 expectancy of the beneficiary; and

124 (C) The distributions commence before the end of the calendar  
 125 year following the calendar year in which the elected  
 126 official's participant's death occurred [no later than one (1)  
 127 year after the date of the member's death, or such later date  
 128 which the secretary of the treasury may, under regulations,  
 129 prescribe].

130 (2) Also, the five-year rule does not apply if:

131 (A) The portion of the member's benefit to which the surviving  
 132 spouse [or domestic partner] is entitled will be distributed  
 133 over the life of the surviving spouse [or domestic partner],

134 or over a period not extending beyond the life expectancy  
 135 of the surviving spouse [or domestic partner]; and  
 136 (B) The distributions commence before the later of the end of  
 137 the calendar year following the calendar year in which the  
 138 participant died or the end of the calendar year in which  
 139 [no later than the date on which] the member would have  
 140 attained age [seventy and one-half (70 1/2)] 70½ .

141 (3) For purposes of this subsection, the life expectancy of a member  
 142 and the member's spouse [or domestic partner] may be  
 143 recalculated each year. Also, for purposes of this Subsection, any  
 144 amount paid to a child must be treated as if it had been paid to the  
 145 surviving spouse [or domestic partner] of a member if the amount  
 146 becomes payable to the surviving spouse [or domestic partner] of  
 147 a member when the child reaches the age of majority (or other  
 148 designated event permitted under applicable treasury regulations).

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150 **33-118. Maximum annual contribution.**

151 (a) *Contribution limitations.*

152 \* \* \*

153 (5) For purposes of this Section, the maximum dollar limitation of  
 154 \$30,000 in subsection (a)(1)(A), or \$40,000 effective January 1,  
 155 2002 and the maximum dollar limitation of \$150,000 in  
 156 subsection [(c)] (b), or \$200,000, effective January 1, 2002, must  
 157 be automatically increased as permitted by United States  
 158 Treasury Regulations to reflect cost-of-living adjustments.

159 \* \* \*

160 (b) *Compensation limitation.* For purposes of this retirement savings plan,  
 161 for plan years beginning on or after [January 1, 1996] January 1, 2002,  
 162 only the first [\$150,000] \$200,000 of a participant's regular earnings, or  
 163 any other amount permitted under Internal Revenue Code Section  
 164 401(a)(17), must be taken into account.

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166 **33-120. Distribution of Benefit.**

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168 (h) *Benefit distribution date.*

169 (1) The Chief Administrative Officer must pay a participant who  
 170 retires by reason of normal, deferred, or disability retirement the  
 171 participant's account balances in the retirement savings plan. The  
 172 distribution must begin as soon as administratively feasible after  
 173 the participant's retirement and after the date elected by the  
 174 participant, but no later than April 1 following the later of the  
 175 calendar year in which the participant attains age [70] 70½, or the  
 176 calendar year in which the participant's County employment  
 177 ends.

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179 (i) *Required commencement of benefit payments.*

180 (1) The distribution of a participant's or former participant's  
 181 retirement benefits must begin no later than April 1 [of the  
 182 calendar year] following the later of:

183 (A) the calendar year in which the participant attains age [70]  
 184 70½; or

185 (B) the calendar year in which the participant separates from  
 186 County service.



187 (2) The distribution may be made as provided in subsection (f).

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189 (k) *Period for distribution of death benefits of a participant who was not*  
 190 *receiving benefits.*

191 (1) If a participant dies before payment of benefits under this Section  
 192 has begun, the benefits must be distributed [within 5 years after  
 193 the participant's death] before the end of the calendar year  
 194 containing the fifth anniversary of the participant's death unless:

195 (A) (i) any portion of the participant's benefit is payable to,  
 196 or for the benefit of, a designated beneficiary;

197 (ii) the portion of the benefit to which the designated  
 198 beneficiary is entitled will be distributed over the  
 199 life of the beneficiary or over a period not extending  
 200 beyond the life expectancy of the beneficiary; and

201 (iii) the distributions begin before the end of the calendar  
 202 year following the calendar year in which the  
 203 participant's death occurred. [no later than one year  
 204 after the date of the participant's death, or a later  
 205 date permitted under federal regulation]; or

206 (B) (i) the portion of the participant's benefit to which the  
 207 surviving spouse [or domestic partner] is entitled  
 208 will be distributed over the life of the surviving  
 209 spouse [or domestic partner], or over a period not  
 210 extending beyond the life expectancy of the  
 211 surviving spouse [or domestic partner] ; and

212 (ii) the distributions begin before the later of the end of  
 213 the calendar year following the calendar year in

214                                 which the participant died or [no later than the date  
215                                 on which] the end of the calendar year in which the  
216                                 participant would have reached age [70] 70½ .

- 217                             (2) For purposes of this Section:
- 218                                 (A) the life expectancy of a participant and the participant's  
219                                 spouse [or domestic partner] may be recalculated each  
220                                 year; and
- 221                                 (B) any amount paid to a child is treated as if it had been paid  
222                                 to the participant's surviving spouse [or domestic partner]  
223                                 if the amount is payable to the surviving spouse [or  
224                                 domestic partner] before the child reaches the age of  
225                                 majority or other designated event permitted under Federal  
226                                 regulation.

227                     **Sec. 2. Sections 33-39, 33-40, 33-41, and 33-44 are amended as follows:**

228             **33-39. Member contributions and credited interest.**

- 229                     (a) Member contributions. Each member of the retirement system must  
230                     contribute a portion of the member's regular earnings through regular  
231                     payroll deductions.

232   \*        \*        \*

- 233                     (4) Member contributions to the guaranteed retirement income plan.
- 234                                 (A) A member in the guaranteed retirement income plan must  
235                                 contribute 4 percent of regular earnings less than or equal  
236                                 to the Social Security wage base and 8 percent of regular  
237                                 earnings that exceed the Social Security wage base.
- 238                                 (B) To the extent allowed under Section 414(h)(2) of the  
239                                 Internal Revenue Code, the County must "pick up" (as  
240                                 described in the Internal Revenue Code) member

241 contributions to the guaranteed retirement income plan. A  
 242 member is always vested in the member's contributions.  
 243 (C) When a member rejoins County service after military  
 244 service that qualifies under Section [33-41(p)] 33-41(q) as  
 245 credited service, the County must credit the member with  
 246 the amount equal to the amount that the member would  
 247 have contributed if the member had worked for the County  
 248 during the period of military service. Contribution credits  
 249 for the period of military service must be based on the  
 250 regular earnings the member would have earned during the  
 251 period of military service. If the regular earnings are not  
 252 reasonably ascertainable, the credit must be based on the  
 253 member's regular earnings during a period immediately  
 254 preceding the military service. The averaging period is 12  
 255 months, or the full length of the member's County service,  
 256 whichever is shorter. The member will not receive any  
 257 retroactive credited interest on the contribution credits.

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259 **33-40. Employer contributions.**

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261 (e) Guaranteed retirement income plan.

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263 (2) When a member rejoins County service after military service that  
 264 qualifies under Section [33-41(p)] 33-41(q) as credited service,  
 265 the County must credit the member the amount that the County  
 266 would have credited the member if the member worked for the  
 267 County during the military service. The credits must be based on

268 the regular earnings the member would have earned during the  
 269 military service. If the regular earnings are not reasonably  
 270 ascertainable, the County contribution credit must be based on  
 271 the member's regular earnings during a period immediately  
 272 preceding military service. The averaging period is 12 months,  
 273 or the full length of the member's County service, whichever is  
 274 shorter. The member must not receive any retroactive credited  
 275 interest on the County contribution credits.

276 **33-41. Credited Service.**

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278 [(p)] (q) For the guaranteed retirement income plan, subsections (a)-(o) do not  
 279 apply and credited service must be determined only under this  
 280 subsection.

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282 **33-44. Pension payment options and cost-of-living adjustments.**

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284 (i) *Period for distribution of death benefits of a retired elected officials'*  
 285 *participant who was receiving benefits.* If the distribution to a retired  
 286 elected officials' participant has commenced in accordance with the  
 287 second sentence of subsection [33-44(g)] 33-44(h) and the elected  
 288 officials' participant dies before the elected officials' participant's entire  
 289 benefit has been distributed to that elected official's participant, the  
 290 remaining part of such benefit must be distributed at least as rapidly as  
 291 under the method of distribution in effect as of the date of the retired  
 292 elected officials' participant's death.

293 (j) *Period for distribution of death benefits of an elected officials'*  
 294 *participant who was not receiving benefits.*

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(2) For purposes of subsections (f), [(g)], (h), [and] (i), and (j), the life expectancy of an elected officials' participant and the elected officials' participant's spouse [or domestic partner] may be recalculated each year. Also, for purposes of subsections (f), [(g)], (h), [and] (i), and (j), any amount paid to a child must be treated as if it had been paid to the surviving spouse [or domestic partner] of an elected officials' participant if the amount becomes payable to the surviving spouse [or domestic partner] of an elected officials' participant when the child reaches the age of majority (or other designated event permitted under applicable Treasury Regulations).

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(1) *Period for distribution of death benefits of a retired member who was receiving benefits.* If the distribution to a retired member has commenced in accordance with the second sentence of Subsection [33-44(j)] 33-44(k) and the member dies before the member's entire benefit has been distributed to the member, the remaining part of such benefit must be distributed at least as rapidly as under the method of distribution in effect as of the date of the retired member's death.

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### **Sec. 3. Expedited Effective Date.**

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The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect as follows:

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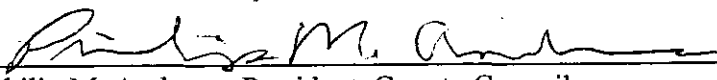
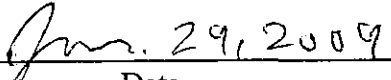
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(a) the amendments to Sections 33-37, 33-44 and 33-120 in Section 1 are effective on the date on which this Act becomes law;

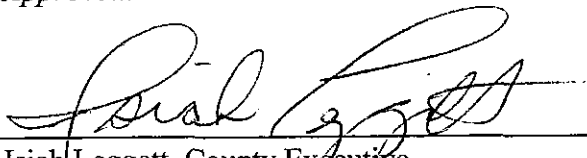

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- 321 (b) the amendments to Sections 33-35 and 33-118 in Section 1 are effective
- 322 on January 1, 2002;
- 323 (c) the amendments to Section 33-40 in Section 1 are effective on
- 324 November 30, 2007; and
- 325 (d) the amendments in Section 2 are effective on July 1, 2009.

326 *Approved:*

327    
Philip M. Andrews, President, County Council Date

328 *Approved:*

329    
Isiah Leggett, County Executive Date

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

331    
Linda M. Lauer, Clerk of the Council Date