

PS COMMITTEE #3  
October 30, 2014

**MEMORANDUM**

October 29, 2014

TO: Public Safety Committee  
FROM: Susan J. Farag, Legislative Analyst *SJF*  
SUBJECT: Update: Police Disability Retirement

Today, the Committee will receive an update on Police Disability Retirement. The following are expected to brief the Committee:

Chief Tom Manger, Montgomery County Police Department (MCPD)  
Assistant Chief Luther Reynolds, MCPD  
Bruce Meier, Office of Management and Budget (OMB)

Bill 45-10 (effective July 1, 2012) created a two-tier service-connected disability retirement system for the Police Department, and was modeled after the system for Montgomery County Fire and Rescue Service (MCFRS) employees. Prior to July 1, 2012, the service-connected disability retirement benefit had been 66 2/3% of final earnings both for partial or total incapacity. The new system provides two levels of benefits for service-connected disability retirement: (1) a partial incapacity benefit equal to 52.5% of final earnings; or (2) a full incapacity benefit equal to 70% of final earnings.

For an employee to be eligible for a partial incapacity service-connected disability retirement, the impairment must prevent the employee from performing one or more of the essential functions of the employee's position and:

- Is unlikely to resolve in the next 12 months;
- May be permanent; and
- Does not prevent the employee from performing any other substantial gainful activity.

For an employee to be eligible for a total incapacity benefit, the impairment must prevent the employee from performing any substantial gainful activity that:

- Is unlikely to resolve in the next 12 months; and
- May be permanent.

The legislation also prohibits an employee who has committed an offense that would justify termination for misconduct from being eligible for disability retirement.

The following chart illustrates the number of police employees receiving a disability retirement from 2009 through 2014 (to date).

<b>Year</b>	<b>Service Connected Disability Retirement</b>	<b>Non-Service Connected Disability Retirement</b>
<b>2009</b>	13	2
<b>2010</b>	7	0
<b>2011</b>	11	1
<b>2012</b>	11	0
<b>2013</b>	3	0
<b>2014 (YTD)</b>	1	0

<u>This packet includes the following:</u>	©#
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Enacted Bill 45-10	7-24

**Public Safety Committee Worksession  
October 30, 2014  
Update – Police Disability Retirement**

Expedited Bill 45-10, Personnel-Disability Retirement Eligibility - Total and Partial Incapacity, was introduced on July 27, 2010. The Bill was enacted June 28, 2011 and became effective July 1, 2012.

Prior to July 1, 2012, the system for all employees, except fire and rescue employees, provided a for service-connected disability retirement benefit equal to 66 2/3% of final earnings for both partial and total incapacity.

Bill 45-10 created a two-tier service-connected disability retirement system identical to the system for fire and rescue employees. As a result of this bill, employees eligible for a service-connected disability retirement benefit now receive either a partial incapacity benefit equal to 52 ½% of final earnings or a total incapacity benefit equal to 70% of final earnings

An employee is now eligible for a total incapacity benefit if the employee is unable to perform any substantial gainful activity because of an impairment that;

1. is unlikely to resolve in the next 12 months; and
2. may be permanent.

NOTE: Bill 45-10 also required that an employee who receives a disability retirement pension for a total incapacity must submit an annual copy of that portion of the member's federal income tax return which shows the members income.

An employee is now eligible for a partial incapacity benefit if the impairment prevents the employee from performing one or more of the essential functions of the employee's position and;

1. is unlikely to resolve in the next 12 months;
2. may be permanent; and
3. does not prevent the employee from performing any other substantial gainful activity.

Further, Bill 45-10 also required that an employee may not be retired on a service connected disability if the employee has committed an offense that would justify termination for misconduct.

The number of police employees receiving a disability retirement since 2009 are listed below, as provided by the Police Personnel Division.

<b>Year</b>	<b>Service Connected Disability Retirement</b>	<b>Non - Service Connected Disability Retirement</b>
<b>2009</b>	13	2
<b>2010</b>	7	
<b>2011</b>	11	1
<b>2012</b>	11	
<b>2013</b>	3	
<b>2014 YTD</b>	1	

Attachments include:

1. Bill 45-10
2. Montgomery County Employees' Retirement System Summary Description for Sworn Police Personnel in Retirement Group F.



# **Montgomery County Employees' Retirement System**

(Optional and Integrated Plans)

## **Summary Description**

For Sworn Police Personnel in Retirement Group F

**April 2014**

# Special benefits

## *Disability retirement*

If you become disabled, you may be eligible to retire on a disability pension. The requirements for disability retirement depend on whether your disability is service connected or non-service connected.

### **Non-service connected**

You may be eligible for a non-service connected disability retirement if you:

- are mentally or physically incapacitated from further performance of your present job (or another available job you are qualified for) as the result of an illness or injury that is not job related or due to your willful negligence
- the illness or injury was incurred after you became a member of the Plan
- have an incapacity that is likely to be permanent
- have five years of credited service

Under a non-service connected disability you will receive:

$$2.4\% \quad \times \quad \text{average final earnings} \quad \times \quad \text{your years of credited service up to 36 years} \\ \text{including any sick leave credits (up to 2 years)}$$

Your disability pension will be no less than 33 1/3% of your final earnings.

You may not choose an optional form of benefit if you qualify for a non-service disability retirement before becoming eligible for early retirement.

### **Service-connected**

You may be eligible for a service-connected disability retirement if you:

- are totally disabled by an occupational disease incurred or condition aggravated or accident occurring while you are performing your duty (as long as the disability does not result from your willful negligence)
- are unable to perform your present job (or another available job within your department that you are qualified for) as the result of your disability

After July 1, 2009, for an accidental injury not causing mental impairment, you must:

- report the injury as soon as practicable, but within one year of after your knew or should have known that your injury is likely to be disabling; or
- submit a claim for Workers' Compensation benefits for the accidental injury which is not dismissed as filed untimely.

If you have incapacitating injuries these requirements do not begin while you are incapacitated and unable to report the injury.

If your injury occurs after July 1, 2009, you must apply for disability benefits within one year after separation from County service or within five years of the date of accident, or July 1, 2014, if later.

*If you are partially disabled*, you will receive:

$$2.4\% \times \begin{matrix} \text{greater of final earnings or} \\ \text{average final earnings} \end{matrix} \times \begin{matrix} \text{your years of credited service up to 36 years} \\ \text{including any sick leave credits (up to 2 years)} \end{matrix}$$

Your disability pension will be no less than 52½% of your final earnings. If your disability occurred before July 1, 2012, your disability pension will be no less than 66 2/3% of your final earnings.

You are considered partially disabled if you are unable to perform one or more functions of the position you hold because of the impairment and the impairment is (a) unlikely to resolve in the next 12 months; (b) may be permanent; and (c) does not prevent you from performing any other substantial gainful activity.

### **Total Disability**

If greater than the regular pension formula, you will receive 70% of your final earnings if your disability is determined to be severe enough that you would meet the Social Security Administration's requirements for disability, meaning that you are unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that can be expected to end in death, or last for at least 12 months. You do not have to qualify for Social Security benefits to be eligible for the 70% minimum benefit.

Alternatively, your benefit will be increased to 70% if (a) you are awarded Social Security disability benefits; (b) you applied for Social Security benefits within 90 days of receiving your disability retirement decision; (c) you submit the information within 60 days of receiving the award; and (d) it is determined that the Social Security benefits were based on the same impairment.

If you receive a 70% benefit, you will be required to submit by May 30 of each year a copy of your federal income tax return which shows your annual income.

**Note: Any lump sum retroactive payment will be reduced by the total amount of any disability payments made under the Workers' Compensation laws.**

### **Applying for disability retirement**

You or your representative may file an application for disability retirement. Your department head also may file an administrative application on your behalf. Contact MCERP to schedule a disability retirement counseling session.

### Medical Re-examination

You are required to undergo either a yearly physical examination or, at the County's discretion, to submit a medical doctor's certificate verifying continuation of the disability for 5 years following retirement, and once in every 3 years thereafter, until age 55. The Chief Administrative Officer may decide that a physical examination is unnecessary because of the nature and severity of the injury or illness. If you do not undergo the examination, your disability pension payments may be reduced or discontinued.

### Reduction in Benefits

If you receive a non service connected disability and have not reached normal retirement age and you are working in or able to work in an occupation that pays you more than the difference between your disability retirement pension and the maximum earnings of the occupational class from which you were deemed disabled, your payments may be reduced.

If you receive a disability retirement pension for the same injury from another employer, your payments will be reduced.

If you receive a service connected disability, your pension will not be reduced by any earned income except for County government employment or employment as a sworn law enforcement officer with full powers of arrest and authority to carry a firearm in connection with that employment.

If you fail to submit any requested information, including your federal income tax return, to make this decision, your payments will stop.

### Special Rule for Disability Retirement Post Retirement Adjustments

If you receive a disability retirement benefit for a disability occurring after June 30, 2011, as determined by the Disability Review Panel, any adjustment of your benefit payment will not exceed 2.5%.

### ***Discontinued service retirement (DSR)***

If your employment ends because of an administrative action, and if you have 10 or more years of continuous service, you may be able to elect a discontinued service retirement. Discontinued service retirement begins at your early retirement date with no reduction for early retirement.

You may not elect a discontinued service pension if you were terminated for cause or resign.

If you elect a discontinued service retirement before you reach your early retirement date, your pension will be payable on your early retirement date.

*Clerk's Note: Correction on page 3, line 40 and on page 13, line 303: The words "Removal for cause" was changed to "termination for misconduct" as approved by Council at enactment.*

**CORRECTED COPY**

Bill No. 45-10  
Concerning: Personnel - Disability  
Retirement - Eligibility - Total and  
Partial Incapacity  
Revised: June 22, 2011 Draft No. 7  
Introduced: July 27, 2010  
Enacted: June 28, 2011  
Executive: July 11, 2011  
Effective: July 1, 2012 (Exception:  
Section 4 - October 10, 2011  
Sunset Date: None  
Ch. 13, Laws of Mont. Co. 2011

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Trachtenberg, Andrews, Berliner, and Council Vice President Ervin

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**AN ACT to:**

- (1) create a partial incapacity disability retirement benefit for certain employees;
- (2) create a total incapacity disability retirement benefit for certain employees;
- (3) prohibit an employee who commits certain offenses from receiving a service connected disability retirement benefit; and
- (4) generally amend County law regarding disability retirement.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-43, 33-128, 33-129, and 33-131

<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 or an occupational disease incurred or condition aggravated,  
29 while in the actual performance of duty;
- 30 (B) the incapacity is not due to the member's willful  
31 negligence;
- 32 (C) the incapacity is likely to be permanent; [and]
- 33 (D) the member is unable to perform the duties of either:
- 34 (i) the occupational classification to which the  
35 member was assigned [at the time] when the  
36 disability occurred; or
- 37 (ii) a position of comparable status [within] in the  
38 same department for which the member is  
39 qualified; and[.]
- 40 (E) the member has not committed an offense that would  
41 justify [[removal for cause]] termination for misconduct.
- 42 (F) For an accidental injury that does not cause mental  
43 impairment, the member must:
- 44 (i) [reports] report the claimed accidental injury as  
45 soon as practicable, but no later than one year after  
46 the applicant knew or should have known that the  
47 injury is likely to be disabling; or
- 48 (ii) [submits] submit a claim for Workers'  
49 Compensation benefits for the accidental injury  
50 that is not dismissed as untimely.
- 51 [(F)] (G) The time periods for reporting in subparagraphs (i)  
52 and (ii) do not begin while the member is unable to report  
53 because of incapacitating injuries.



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the County must pay a Group G member who retires on a service-connected disability retirement between June 26, 2002, and June 30, 2007, a pension based on the member's average final earnings if that member's average final earnings result in a greater benefit than final earnings.

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

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



- 108 (B) The Panel must determine the member's residual  
 109 functional capacity and provide this information to the  
 110 independent vocational expert.
- 111 (C) A Panel determination that the member's service-  
 112 connected disability is severe enough to be considered a  
 113 disability by the Social Security Administration is not a  
 114 recommendation that the member is entitled to, or should  
 115 be granted, a disability benefit by the Social Security  
 116 Administration.
- 117 (D) If a member has already been granted disability benefits  
 118 by the [U.S.] Social Security Administration when the  
 119 member applies for a service-connected disability  
 120 pension, the County must pay the member a pension of at  
 121 least 70% [percent] if the Disability Review Panel finds  
 122 that the award of disability benefits from the Social  
 123 Security Administration was based primarily on the same  
 124 medically determinable physical or mental impairment  
 125 on which the Disability Review Panel awards the  
 126 member a service-connected disability benefit.
- 127 (4) The County must pay a [Group G] member who retires with  
 128 partial incapacity on a service-connected disability retirement  
 129 an annual pension calculated under Section 33-42(b)(1), but the  
 130 benefit must be at least 52½ % [percent] of final earnings if the  
 131 Chief Administrative Officer finds, based on a recommendation  
 132 from the Disability Review Panel, that:
- 133 (A) the member meets the standards to receive a service-  
 134 connected disability benefit under subsection (f); and

- 135 (B) the member is not eligible to receive a benefit for total  
 136 incapacity under subsection (i)(3).
- 137 (5) (A) The County must increase the partial incapacity service-  
 138 connected disability pension benefit of a [Group G]  
 139 member calculated under Section 33-42(b)(1), from a  
 140 benefit of at least 52 ½ % [percent] to a benefit of at least  
 141 70 % [percent], if:
- 142 (i) the [U.S.] Social Security Administration awards  
 143 disability benefits to the member;
  - 144 (ii) the member submits all relevant information about  
 145 the award of disability benefits from the Social  
 146 Security Administration to the Disability Review  
 147 Panel within 60 days after the member receives the  
 148 award;
  - 149 (iii) the Disability Review Panel finds that the award of  
 150 disability benefits from the Social Security  
 151 Administration was based primarily on the same  
 152 medically determinable physical or mental  
 153 impairment on which the Disability Review Panel  
 154 originally awarded the member a service-  
 155 connected disability benefit; and
  - 156 [(a)] (iv) the member applies for disability benefits with  
 157 the Social Security Administration within 90 days  
 158 after the [date on which the] Chief Administrative  
 159 Officer notified the member that the [amount of  
 160 the] service-connected disability pension benefit  
 161 would be calculated [under Section 33-42(b)(1),

162 but at least 52 ½ percent; or] as a partial  
 163 incapacity.

164 [(b) the Chief Administrative Officer awards a service-  
 165 connected disability pension benefit calculated  
 166 under Section (b)(1), but at least 52 ½ percent to  
 167 the member between March 1, 2000, and  
 168 December 1, 2003, and the member applies for  
 169 disability benefits with the Social Security  
 170 Administration no later than February 29, 2004.]

171 (B) [For] If a member [who] qualifies for an increased  
 172 pension benefit under [subsection (5)] subparagraph (A)  
 173 [above], the County must increase the member's service-  
 174 connected pension retroactively to the date [on which]  
 175 when the pension began.

176 \* \* \*

177 (7) The County must pay a Group F member who retires on a  
 178 service-connected disability retirement on or after June 26,  
 179 2002, an annual pension calculated under subsection (i) (1) or  
 180 subsection (i) (4). However, if [the] a greater benefit results  
 181 from the calculation under Section 33-42(b)(1), the County  
 182 must pay a Group F member a pension based on the member's  
 183 average final earnings if that member's average final earnings  
 184 result in a greater benefit than final earnings.

185 (j) *Adjustment or cessation of disability pension payments.*

186 (1) If a member receiving service-connected disability pension  
 187 payments reaches the first day of the month [following] after  
 188 the member's normal retirement date, the amount of pension

189 then payable must not be less than the amount that would have  
190 been payable under [the provisions of] Section 33-45(c)[,] if the  
191 member had terminated service [on] when the [date] disability  
192 pension [commenced] began and had not elected a return of  
193 member contributions with credited interest.

194 (2) (A) The Chief Administrative Officer may reduce the amount  
195 of the disability pension payments of a member retired  
196 with total incapacity who:

- 197 (i) has not reached the normal retirement date; and  
198 (ii) is engaged in, or is able to engage in, an  
199 occupation that pays more than the difference  
200 between the disability pension payments and the  
201 current maximum earnings of the occupational  
202 classification from which the member was  
203 disabled.

204 (B) If a member other than a Group F member meets the  
205 criteria in subparagraph (A), the Chief Administrative  
206 Officer may reduce the member's disability pension  
207 payments until the disability pension payments plus the  
208 amount that the employee earned or is able to earn equals  
209 the maximum earnings of the occupational class from  
210 which the member was disabled.

211 \* \* \*

212 (3) If the earnings capacity of a disability retiree with a total  
213 incapacity changes, the Chief Administrative Officer may  
214 change the amount of the disability retirement pension. [For  
215 the purpose of] In this subsection, "disability pension" is the

216 amount of pension payable without election of a pension  
 217 payment option.

218 (A) For a disability retiree other than a group F member, the  
 219 Chief Administrative Officer must ensure that the amount  
 220 of the revised pension does not exceed:

221 (i) the original disability retirement pension plus cost-  
 222 of-living increases; or

223 (ii) an amount that, when added to the amount the  
 224 member earns or is able to earn, equals the  
 225 maximum earnings of the occupational  
 226 classification from which the member was  
 227 disabled.

228 (B) For a Group F member who receives a non-service  
 229 connected disability pension, the Chief Administrative  
 230 Officer must ensure that the amount of the revised  
 231 pension must not exceed:

232 (i) the original disability retirement pension plus cost-  
 233 of-living increases; or

234 (ii) an amount that, when added to the amount that the  
 235 member earns or is able to earn, equals 120 percent  
 236 of the maximum earnings of the occupational  
 237 classification from which the member was  
 238 disabled.

239 (4) A member who receives a disability retirement pension for a  
 240 total incapacity must submit to the Chief Administrative Officer  
 241 by May 30 of each year a copy of that portion of the member's  
 242 federal income tax return which shows the member's income.

243 If a member [receiving] who receives disability pension  
 244 payments [fails or refuses to] does not supply the Chief  
 245 Administrative Officer [whatever] any information [is  
 246 determined necessary] the Chief Administrative Officer needs  
 247 to [make a decision on] decide the amount of retirement pay  
 248 legally due, the Chief Administrative Officer must suspend the  
 249 member's pension payments [must be discontinued] until the  
 250 member submits the [requested] needed information.

251 \* \* \*

252 **33-128. Definitions.**

253 In this Division, the following words and phrases have the following  
 254 meanings:

255 \* \* \*

256 Partial incapacity means a member's inability to perform one or more  
 257 essential functions of the position the member holds because of  
 258 impairment that;

259 (1) is unlikely to resolve in the next 12 months;

260 (2) may be permanent; and

261 (3) does not prevent the member from performing any other  
 262 substantial gainful activity.

263 \* \* \*

264 Residual functional capacity means what the individual can still do,  
 265 despite the individual's impairment. The County must give the term  
 266 residual functional capacity the same meaning as the term is given by  
 267 the Social Security Administration.

268 Substantial gainful activity means a level of productive work that  
 269 requires significant physical or mental duties, or a combination of

270 both, performed for pay or profit on a full- time or part-time basis. An  
 271 individual is able to perform a substantial level of work if the  
 272 individual is able to earn more than the Social Security  
 273 Administration’s current monthly earnings limit for a disabled person.  
 274 The County must give the term substantial gainful activity the same  
 275 meaning as the term is given by the Social Security Administration.

276 Total Incapacity means the member’s inability to perform substantial  
 277 gainful activity because of an impairment that;

- 278 (1) is unlikely to resolve in the next 12 months; and
- 279 (2) may be permanent.

280 **33-129. Disability benefits.**

281 \* \* \*

282 (d) Initial service-connected disability benefits. An employee may receive  
 283 disability benefits for a period of 36 consecutive months, subject to  
 284 this plan, if the administrator finds that:

285 (A) the employee has incurred an initial service-connected  
 286 disability; and

287 (B) for an accidental injury that does not cause mental  
 288 impairment, the employee:

289 (i) reports the claimed accidental injury as soon as  
 290 practicable, but no later than one year after the  
 291 applicant knew or should have known that the  
 292 injury is likely to be disabling; or

293 (ii) submits a claim for Workers’ Compensation  
 294 benefits for the accidental injury that is not  
 295 dismissed as untimely.

296 (C) The time periods for reporting in subparagraphs (i) and

297 (ii) do not begin while the applicant is unable to report because  
298 of incapacitating injuries.

299 (D) For an accidental injury that occurs after July 1, 2009, the  
300 applicant must apply for disability benefits within one  
301 year after separation from County service or before July  
302 1, 2010, whichever is later.

303 (E) An employee who has committed an offense that would  
304 justify [[removal for cause]] termination for misconduct  
305 must not receive service-connected disability benefits.

306 \* \* \*

307 (f) The Disability Review Panel must recommend a finding of total  
308 incapacity if the member's service-connected disability is severe  
309 enough to meet the Social Security Administration's requirements for  
310 disability, meaning that the member is unable to engage in any  
311 substantial gainful activity because of a medically determinable  
312 physical or mental impairment that can be expected to end in death or  
313 has lasted, or can be expected to last, for a continuous period of at  
314 least 12 months. The member does not have to qualify for Social  
315 Security disability benefits to be eligible for benefits under this  
316 subsection.

317 (1) The Panel must base its determination of whether an individual  
318 is able to engage in any substantial gainful activity on an  
319 assessment from an independent vocational expert that  
320 considers the member's age, education, work experience,  
321 transferable skills, and residual functional capacity.

322           (2) The Panel must determine the member's residual functional  
323           capacity and provide this information to the independent  
324           vocational expert.

325           (3) A Panel determination that the member's service-connected  
326           disability is severe enough to be considered a disability by the  
327           Social Security Administration is not a recommendation that  
328           the member is entitled to, or should be granted, a disability  
329           benefit by the Social Security Administration.

330           (4) If a member has already been granted disability benefits by the  
331           Social Security Administration when the member applies for a  
332           service-connected disability pension, the County must give the  
333           member a total incapacity benefit if the Disability Review Panel  
334           finds that the award of disability benefits from the Social  
335           Security Administration was based primarily on the same  
336           medically determinable physical or mental impairment on  
337           which the Disability Review Panel awards the member a  
338           service-connected disability benefit.

339           (g) The Disability Review Panel must recommend a finding of partial  
340           incapacity if:

341           (1) the member meets the standards to receive a service-connected  
342           disability benefit; and

343           (2) the member is not eligible to receive a benefit for total  
344           incapacity under subsection (f).

345           (h) The County must increase the partial incapacity service-connected  
346           disability pension benefit of a member to a total incapacity benefit if:

347           (1) the Social Security Administration awards disability benefits to  
348           the member;

349 (2) the member submits all relevant information about the award of  
 350 disability benefits from the Social Security Administration to  
 351 the Disability Review Panel within 60 days after the member  
 352 receives the award;

353 (3) the Disability Review Panel finds that the award of disability  
 354 benefits from the Social Security Administration was based  
 355 primarily on the same medically determinable physical or  
 356 mental impairment on which the Disability Review Panel  
 357 originally awarded the member a service-connected disability  
 358 benefit; and

359 (4) the member applies for disability benefits with the Social  
 360 Security Administration within 90 days after the Chief  
 361 Administrative Officer notified the member that the service-  
 362 connected disability pension benefit would be calculated as a  
 363 partial incapacity.

364 (5) If a member qualifies for an increased pension benefit under  
 365 subsection (h), the County must increase the member's service-  
 366 connected pension retroactively to the date when the pension  
 367 began.

368 (i) *Role of the Disability Review Panel.*

369 (1) The Disability Review Panel must consider an application for  
 370 disability benefits to determine if the applicant is eligible for  
 371 disability benefits under subsection (a), (b), (c), (d), [or] (e), (f),  
 372 (g), or (h). The Panel may consider any information or material  
 373 submitted by the applicant, the certified representative, or the  
 374 County. Within 60 days after the application is filed, the Panel  
 375 must meet in person, by telephone conference, or by video

376 conference, to review all evidence submitted to the Panel. [An  
 377 action by the Panel under this Section requires a majority vote of  
 378 3] A Panel must include either 2 or 3 members. At least 2  
 379 members must vote in favor of a decision to take any action  
 380 under this Section.

381 \* \* \*

382 **33-131. Amount of benefits.**

383 (a) *Service-connected disability.* The annual amount of service-connected  
 384 disability payments payable for total incapacity equals [66 2/3  
 385 percent] 70% of the employee's final earnings, less any reductions  
 386 provided in section 33-134. The annual amount of service-connected  
 387 disability payments payable for partial incapacity equals 52½ % of the  
 388 employee's final earnings.

389 \* \* \*

390 **Sec. 2. Implementation.** Notwithstanding any other provision of law,  
 391 including §33-80(a)(7) and §33-107(a)(7), the implementation of any amendment  
 392 to County Code Chapter 33 in Section 1 of this Act concerning disability  
 393 retirement is not subject to collective bargaining with a certified representative of  
 394 employees in any bargaining unit.

395 **Sec. 3. Effective Date.** This Act, other than Section 4, takes effect on  
 396 July 1, 2012. Section 4 takes effect 91 days after the Act becomes law. The  
 397 amendments to County Code Chapter 33 made in Section 1 of this Act apply to any  
 398 [[application for]] disability [[retirement filed]] occurring on or after the date this  
 399 Act takes effect.

400 **Sec. 4. Collective bargaining.**

- 401           (a) It is the policy of Montgomery County that all County employees  
 402           should have a multi-tier service-connected disability retirement  
 403           system which includes a:
- 404           (1) partial incapacity service-connected disability retirement  
 405           benefit for any injury or illness that prevents an employee from  
 406           continuing in the employee's current position but does not  
 407           prevent the employee from engaging in other substantial gainful  
 408           employment; and
- 409           (2) total incapacity service-connected disability retirement benefit  
 410           for any injury or illness that prevents an employee from  
 411           engaging in any other substantial gainful employment.
- 412           (b) It is also the policy of the County that disability benefits are a  
 413           mandatory subject of collective bargaining with each appropriate  
 414           certified employee representative.
- 415           (c) Notwithstanding any County law to the contrary, the County  
 416           Executive may separately negotiate the terms of an appropriate multi-  
 417           tier service-connected disability retirement system with the certified  
 418           employee representative for the police bargaining unit and the  
 419           certified representative for the OPT and SLT bargaining units, in each  
 420           case not later than March 1, 2012. If in either case the parties are  
 421           unable to reach agreement on an appropriate multi-tier system, the  
 422           parties may submit this issue for resolution through the applicable  
 423           impasse procedures under the County's police labor relations law and  
 424           the County collective bargaining law as a separate matter, not part of  
 425           or linked to any other collective bargaining procedure. The impasse  
 426           neutral for the police bargaining unit and the mediator/arbitrator for

427 the OPT and SLT bargaining units must choose the final offer of  
428 either party after considering equally the following factors:

429 (1) service-connected disability retirement systems for similar  
430 employees of other public employers in the Washington  
431 Metropolitan Area and in Maryland;

432 (2) best practices for service-connected disability retirement  
433 systems for similar employees in the United States;

434 (3) the interest and welfare of the public; and

435 (4) the long-term ability of the employer to finance a disability  
436 retirement system, and the effect of the cost of the system on  
437 the normal standard of public services provided by the  
438 employer.

439 (d) The Executive must submit the results of any collective bargaining  
440 process regarding this issue to the Council for legislative action not  
441 later than April 1, 2012.

442

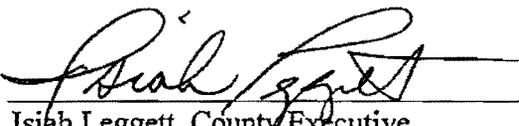
443 *Approved:*

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445  6/30/2011  
Valerie Ervin, President, County Council Date

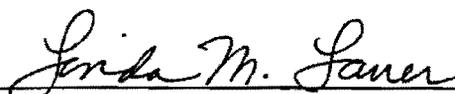
446 *Approved:*

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448  July 11, 2011  
Isiah Leggett, County Executive Date

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

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451  July 12, 2011  
Linda M. Lauer, Clerk of the Council Date

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