Agenda Item 16
June 15, 2010
Public Hearing

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Expedited Bill 35-10, Personnel – Disability Retirement – Imputed Compensation

Expedited Bill 35-10, Personnel – Disability Retirement – Imputed Compensation, sponsored by Councilmembers Elrich, Andrews, and Trachtenberg, was introduced on May 27, 2010. A Management and Fiscal Policy (MFP) Committee worksession was held on June 14.

Background

Bill 35-10 would amend the definition of final earnings to extend imputed compensation beyond FY10 for certain employees who applied for disability retirement benefits under the employees' retirement system (ERS) by May 18, 2010. The Bill would also modify the qualifications, selection, and operating procedures for the members of the Disability Review Panel.

Although the Executive and each of the 3 County employee unions representing police, fire, and general government workers agreed to "postpone"[1] the previously negotiated general wage adjustments for FY10 last year, Expedited Bill 18-09 required that the calculation of regular earnings used to determine a retirement benefit include the FY10 general wage adjustment as if the employee had received it on July 1, 2009.[2] This imputed compensation was scheduled to carry over into the calculation of regular earnings used to calculate a defined benefit pension for the rest of an employee's County career. However, Expedited Bill 16-10, enacted on May 18, amended the retirement laws to limit the effect of the imputed compensation to the calculation of regular earnings for FY10 only.

During the debate on Bill 16-10, the Council discussed an amendment that would have created an exception for Group G members (Fire and Rescue) who have a pending application for disability retirement that is approved after July 1. A disability retirement benefit is calculated based upon an employee's "final earnings" or the employee's regular earnings as of the last date

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[1] Although the collective bargaining agreements use the term "postpone," the Council did not fund these wage adjustments in the Approved FY11 Operating Budget.

[2] Employees of the Montgomery County Public Schools also agreed to "postpone" a negotiated general wage adjustment for FY10, but did not receive this imputed compensation.

of active service.[3] Therefore, the final earnings for an employee who applies for disability retirement in FY10 and is approved in FY11 would be regular earnings in FY11. Regular earnings in FY11 would be less than regular earnings in FY10 because Bill 16-10 limited the imputed compensation to the calculation of regular earnings in FY10.[4]

The Bill would provide that an employee of any retirement Group in the ERS with the benefit of the FY10 imputed compensation if the employee applied for disability retirement before May 19, 2010 and is approved after July 1. During the Council debate on Bill 16-10, OHR reported that there were 8 applications for disability retirement from Group G members. However, OHR received an additional 15 applications from Group G members on May 18 after the Council action on Bill 16-10. The total universe of disability retirement applications pending on May 18, 2010 is:

Group G (Fire and Rescue) – 23
Group F (Police) – 4
Group H (MCGEO non-public safety) – 4
Group A (unrepresented) – 2
Group E (Corrections) – 1

The fiscal impact statement estimates the additional increase in actuarial accrued liability of adding the imputed compensation to a disability retirement benefit for all of these employees is $1.2 million. Based upon the 40-year amortization schedule used for the imputed compensation last year, the additional annual contribution to the ERS Trust Fund for all 34 employees would be $93,500 each year for the next 40 years. See ©7-11.

Bill 37-08, Personnel – Disability Retirement –Amendments, enacted on May 12, 2009, modified the qualifications and selection procedures for members of the Disability Review Panel (DRP). DRP members are all physicians who review medical evidence and make a recommendation as to an applicant's eligibility for a disability retirement benefit. Bill 37-08 required all DRP members to be either certified as a specialist in occupational medicine or posses 10 or more years of experience practicing occupational medicine. Bill 37-08 also required the Chief Administrative Officer (CAO) to appoint all 4 members from a list of at least 10 impartial, unbiased medical doctors willing and able to serve provided by one or more impartial medical organizations.

The Office of Human Resources (OHR) reports that despite issuing an RFP to retain an impartial organization to provide nominations and conducting several discussions with potential organizations, OHR has been unable to retain an impartial organization. The two problems cited by potential proposers were the limited supply of occupational medicine specialists willing to serve and the requirement that the list include at least 10 names. Consequently, OHR has not been able to forward any new names to the CAO for possible selection as a DRP member since Bill 37-08 became law. The DRP currently has 2 members who were appointed prior to the

[3] A service connected disability retirement benefit for Group G is at least 52.5% of final earnings for partial disability and at least 70% of final earnings for total disability. A service connected disability retirement benefit for both partial and total disability is at least 66.7% of final earnings for all other groups in the ERS.

[4] Regular earnings in FY11 will also be less than FY10 due to the temporary reduction in salary from furloughs. However, Expedited Bill 18-10, enacted on May 18, ensures that retirement benefits are not reduced due to the furloughs.

effective date of Bill 37-08, neither of whom is a specialist in occupational medicine. Bill 35-10 would require only 1 of the 4 members to be a specialist in occupational medicine and reduce the minimum size of the list provided by an impartial organization from 10 to 5.

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Expedited Bill No. 35-10
Concerning: Personnel – Disability Retirement – Imputed Compensation
Revised: May 21, 2010 Draft No. 3
Introduced: May 27, 2010
Expires: November 27, 2011
Enacted:
Executive:
Effective:
Sunset Date: No Expiration
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Elrich, Andrews, and Trachtenberg

AN EXPEDITED ACT to:

(1) amend the definition of final earnings to extend imputed compensation beyond FY10 for certain members who apply for disability retirement benefits under the employees' retirement system by a certain date;

(2) modify the qualifications, selection, and operating procedures for disability review panel members; and

(2) generally amend the law regarding disability retirement.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-35 and 33-43

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 33-35 is amended as follows:

33-35. Definitions.

In this Article, the following words and phrases have the following meanings:

* * *

Final earnings: Except as otherwise provided, the regular earnings of a member as of the last date of active service. Final earnings for a member who filed an application for disability benefits under Section 33-43 before May 19, 2010 that is approved after June 30, 2010 must be the member's regular earnings on the date of the member's application.

* * *

33-43. Disability Retirement

* * *

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

(1) The Chief Administrative Officer must appoint 4 members of the Disability Review Panel from a list of at [lease 10] least 5 impartial, unbiased medical doctors willing and able to serve provided by one or more impartial medical organizations retained by the Chief Administrative Officer. If the list of doctors provided by the impartial medical organization is not agreed to by the certified representatives and the County, the certified representatives must strike [3 names] 1 name from the list and the County must strike [3 names] 1 name from the list by alternating strikes. The Chief Administrative Officer must appoint a member from the remaining [4] 3 names on the list.

(2) The Chief Administrative Officer must appoint members who are licensed to practice medicine and certified in a medical specialty under standards established by the American Board of Medical

Specialties (or a successor organization). At least 1 member [who are] must be either:

(A) certified by the American Board of Preventive Medicine (or a successor organization) as a specialist in occupational medicine; or

(B) certified in a different medical specialty and have at least 10 years of experience practicing occupational medicine.

(3) (A) The Chief Administrative Officer must appoint members under subsection (c)(1) for staggered 3-year terms. To implement the staggered terms, the Chief Administrative Officer must appoint the first member to a 3-year term, the second member to a one-year term, and the third and fourth members to a 2-year term. After these initial appointments, the Chief Administrative Officer must appoint all members to 3-year terms, except for any member appointed under subsection (c)(6) to fill a vacancy.

(B) After the Chief Administrative Officer appoints or reappoints a Panel member, the Chief Administrative Officer must promptly send each certified representative a copy of the document confirming the appointment.

(4) When a Panel member's term expires, the Panel member my be reappointed to a new 3-year term unless, at any time within 30 days to 60 days prior to the expiration of the term, a certified representative notifies the County and the other certified representatives or the County notifies the certified representatives that it objects to the reappointment of the Panel member. If there

is no objection, the Panel member is eligible to serve an additional term or terms.

(5) If a Panel member declines to be reappointed to the Panel, the Chief Administrative Officer must appoint a new Panel member from a list of at least [10] 5 medical doctors as provided for in subsection (c)(1).

(6) If a vacancy on the Panel is created by a Panel member's death, disability, resignation, non-performance of duty, or other cause, the Chief Administrative Officer must appoint a medical doctor to complete the Panel member's term from a list of at least [10] 5 medical doctors as provided for in subsection (c)(1).

(7) The County must pay the impartial medical organization retained by the County and each Panel member reasonable compensation, as determined by the Chief Administrative Officer, for services rendered.

(d) *Disability retirement procedures.*

* * *

(6) The Panel must meet in person, by telephone conference, or by video conference, and review and consider all evidence submitted to it no later than 60 days after the application is filed. A Panel must include either 2 or 3 members. [majority] At least 2 members must vote [of 3] [members] in favor of a decision [is required] to take any action under this Section.

* * *

Sec. 2. Expedited Effective Date.

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

*   *   *

Approved:

Nancy Floreen, President, County Council   Date

Approved:

Isiah Leggett, County Executive   Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council   Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 35-10
Personnel – Disability Retirement – Imputed Compensation

DESCRIPTION:	This Bill would amend the definition of final earnings to extend imputed compensation beyond FY10 for certain members who apply for disability retirement benefits under the employees' retirement system. The Bill would also modify the qualifications, selection, and operating procedures for the members of the Disability Review Panel.
PROBLEM:	The enactment of Expedited Bill 16-10 limited the use of the FY10 general wage adjustment that was not paid to the calculation of regular earnings for retirement purposes to FY10. A limited number of employees have pending applications for disability retirement that will be approved in FY11. In addition, the County has had difficulty recruiting new members for the Disability Review Panel due to the mandatory qualifications and selection procedures.
GOALS AND OBJECTIVES:	The Bill is intended to permit an employee with a pending disability retirement application that is not approved until FY11 to enjoy the benefits of the imputed compensation for FY10. The Bill is also intended to enhance the recruitment of new members for the Disability Review Panel.
COORDINATION:	Office of Human Resources, County Attorney's Office
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	Not applicable.
PENALTIES:	Not applicable.

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

June 10, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director, Office of Management and Budget

SUBJECT: Expedited Bill 35-10, Personnel – Disability Retirement – Imputed Compensation

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

This bill amends the definition of final earnings to extend imputed compensation beyond FY10 to those employees who, as of May 19, 2010, have pending disability retirement applications that are not approved until after June 30, 2010. In response to the difficulty experienced recruiting new Disability Review Panel members, the bill also modifies the qualifications, selection procedure, and operating procedure for members of the Disability Review Panel.

FISCAL AND ECONOMIC SUMMARY

There are 34 employees who have applied for disability retirement as of May 19, 2010, and whose applications are not anticipated to be approved before June 30, 2010. The estimated annual maximum incremental cost to provide these employees with a disability retirement benefit that includes an imputed general wage adjustment in FY11[1] is $93,500 annually assuming a 40-year amortization period. The actual cost of the proposed legislation will be lower if:

- employees retire before July 1, 2010;
- employees' benefits are based on average final earnings (over the final three years of service)[2]; or
- some employees have their disability applications denied.

[1] FY10 general wage adjustments originally negotiated or assumed for Montgomery County employees were 4.0% for IAFF and Fire Management, 4.25% for FOP and Police Management, and 4.5% for MCGEO and non-represented employees, including Management Leadership Service employees.

[2] The estimate is based on the assumption that most employees' benefits will be based on final earnings.

Office of the Director

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The proposed changes to the qualifications, selection procedure, and operating procedure are not expected to have a fiscal impact. Although indeterminate, the change will likely result in an administrative cost savings because the required number of physicians on the panel has been reduced from 10 to 5 and the qualifications of potential panel members has broadened to include those licensed to practice medicine in specialties other than occupational medicine, making it easier to identify potential and willing panel members.

There is no economic impact due to the proposed legislation.

The following contributed to and concurred with this analysis: Wesley Girling, Office of Human Resources, Michael Coveyou, Department of Finance, and Lori O'Brien, Office of Management and Budget.

JFB: lob

Attachment

c: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, Offices of the County Executive
Joseph Adler, Director, Office of Human Resources
Wesley Girling, Office of Human Resources
Stuart Weisberg, Office of Human Resources
Michael Coveyou, Department of Finance
Alex Espinosa, Office of Management and Budget
Lori O'Brien, Office of Management and Budget
John Cuff, Office of Management and Budget

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MERCER

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Confidential
Via Electronic Mail
Mr. Wes Girling
Montgomery County Government
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Rockville, MD 20850-2589

June 9, 2010

Subject: Fiscal Impact of Imputed Compensation for Disability Benefits

Dear Wes:

This letter summarizes the fiscal impact of imputed compensation on the pay used to determine the disability benefit for 34 individuals. The calculations are based on the compensation and employee group data in your May 26, 2010 email. We have also used data from the July 1, 2009 actuarial valuation. The actuarial assumptions and methods and plan provisions are the same as those used in our July 2009 actuarial valuation report except for the assumptions and provisions noted below.

By cost, we mean the amortization of the increase in unfunded liability unless otherwise indicated. We have based the cost on a disability retirement date of July 1, 2010 and assumed that the County would recognize the cost in FY2011 if it would recognize the savings for ending broadly-applied imputed compensation in FY2011.

Other Considerations

If the savings for ending broadly-applied imputed compensation will be amortized over 40 years, the cost for disability-only imputed compensation might best be amortized over 40 years. Otherwise, we have recommended that the County consider a shorter amortization period for future plan improvements in order to restore the funded ratio more quickly following a benefit improvement and in order to better align the cost of the improvement with the service of participants receiving an increase for service already performed. Applying that concept to this change might result in a 10-year amortization period. We show detailed results below for the County's traditional 40-year amortization period and for a 10-year amortization period. The amortization payment will remain level for the chosen period – 40 years or 10 years.

Plan Provisions

The 4.50% (for Groups A, E and H), 4.25% (for Group F) and 4.00% (for Group G) imputed compensation increases that have been in effect during FY2010 would continue to apply to disability retirees who apply prior to July 2, 2010 regardless of the date of approval.

Estimated Cost for Proposed Change

- Annual contribution using 40-year amortization for the 34 members identified: $93,500
- Annual contribution using 10-year amortization for the 34 members identified: $166,200
- Increase in Actuarial Accrued Liability for represented and non-represented members: $1.2 million (or around $35,000 per individual) at July 1, 2010.

The cost is not the same for each member. If fewer (or more) than 34 participants receive this benefit, the cost will be only roughly proportional.

Assumptions

All 34 individuals would retire with a disability retirement on July 1, 2010 regardless of whether imputed compensation would affect their Final Earnings. Group G members are assumed to receive a 70% disability benefit. Group A, E, F, and H members are assumed to receive a 66⅔% disability benefit. All other assumptions are the same as the assumptions in the July 1, 2009 actuarial valuation.

Mercer has prepared this letter exclusively for the Montgomery County Government for the purpose of illustrating the contribution increase of these 34 individuals receiving their disability benefit with the imputed compensation in their Final Earnings. This letter may not be used or relied upon by any other party or for any other purpose. Mercer is not responsible for the consequences of any unauthorized use.

This letter includes projections of future funding costs and/or benefit related results. To prepare these projections, various actuarial methods and assumptions, as described above and in our 2009 actuarial valuation report, were used to project one scenario from a range of possibilities. However, the future is uncertain, and the system's actual experience will likely differ from the assumptions utilized and the scenario presented; these differences may be significant or material. In addition, different assumptions or scenarios may also be within the reasonable range and results based on those assumptions would be different. This report has been created for a limited purpose, is presented at a particular point in time and should not be viewed as a prediction of the system's future financial condition.

The Governmental Accounting Standards Board (GASB) is working on a project on Postemployment Benefit Accounting and Financial Reporting. While the final requirements and effective date are uncertain, we believe changes in the current GASB 27 requirements are likely. Based on the tentative decisions to date, those changes are likely to increase (perhaps substantially) the amount the County will have to report as its Annual Required Contribution (ARC). While GASB has no authority to actually require higher contributions, only to make jurisdictions report what GASB believes is a fair representation of the annual cost of the plan, bond rating agencies could well pay attention to any gap between the ARC and the actual contribution. We will be happy to provide further information about the GASB tentative decisions and their possible impact on the County's ARC.

Because actual plan experience will differ from the assumptions, decisions about benefit changes, investment policy, funding amounts, benefit security and/or benefit-related issues should be made only after careful consideration of altemative future financial conditions and scenarios and not solely on the basis of a valuation report or reports.

This letter is based on data provided by the County and plan provisions as described in our 2009 actuarial valuation report. The County is solely responsible for the validity, accuracy and comprehensiveness of this information. If the data or plan provisions supplied are not accurate and complete, the valuation results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this letter.

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

Please let me know if you have any questions or need any further information. I can be reached at 410 347 2806. I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this letter. I am not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict of interest that would impair the objectivity of our work

Sincerely,

Douglas L. Rowe

Douglas L. Rowe, FSA, MAAA, EA
Principal

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