MEMORANDUM

July 6, 2001

TO: Blair Ewing, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Bill 19-01, Personnel – Retirement – Amendments

You have delivered Bill 19-01 to me for approval or disapproval under Section 208 of the County Charter. The primary purpose of the bill, which I submitted to the Council on May 15, 2001, was to implement certain provisions of our collective bargaining agreements. In addition, the bill I submitted contained provisions designed to improve the administration of County retirement programs.

I wish to reiterate my full and complete support for the collective bargaining process and for those portions of the bill that are intended to implement the bargained-for benefits. In addition, I fully support those portions of the bill that are designed to improve the administration of County retirement programs. However, in passing the legislation, the Council adopted two amendments that are unrelated to these objectives and are unacceptable for the reasons discussed below. Therefore, I have decided to disapprove Bill 19-01 as enacted; however, I urge the Council to act quickly to enact a bill identical to this one but without the two offending amendments and, upon delivery to me of such a bill, I will sign it into law.

Bill 19-01 was submitted to the Council on May 15, 2001, and introduced the following day. As noted, the bill was intended primarily to implement certain provisions of the collective bargaining agreements that had been negotiated with the Fraternal Order of Police and MCCEO/Local 1994 and approved by the Council. Other portions of the bill made improvements to the administration of the County's retirement programs by allowing (a) the Disability Review Panel to consider a vocational assessment of an applicant for disability retirement, (b) the County to refund to any employee any money paid by the employee into the retirement system to purchase credit for prior service.
if, due to a later amendment to the retirement law, the payment becomes unnecessary, and (c) any employee who leaves County employment before becoming vested in the Retirement Savings Plan to have earlier County contributions to the plan reinstated if the employee returns to County service within six months.

A public hearing was held June 12, 2001, at which time Councilmembers requested two amendments to address retirement issues facing certain County employees. One amendment addressed the return to County service by employees who left before October 1, 1994; the second opened a window of opportunity for certain employees to transfer retroactively State service credits to the County retirement system. Those amendments, which were not available for the public hearing, were drafted and made public in time for the June 14, 2001, worksession conducted by the Management and Fiscal Policy Committee.

On June 21, 2001, I asked the Council, which was scheduled to vote on Bill 19-01 on June 26, 2001, to consider the bill without the two Councilmember amendments. That course of action would have given the public an opportunity to comment on those proposed changes and allowed sufficient time for the conduct of a due diligence review to enable us to understand their implications. The Council chose not to do so and instead adopted the bill with the amendments.

As you know, as a result of collective bargaining and Council action, the County years ago established the Retirement Savings Plan ("RSP") effective October 1, 1994. With that significant policy change, the Council mandated that all non-public safety employees hired after the effective date would be members of a defined contribution plan, rather than be members of the Employee Retirement System ("ERS"), a defined benefit plan. A major motivation for the change was a decision made in the early 1990s that we needed to address, on several fronts, the issue of the cost of government, and that retirement plans were an appropriate area for review. Since that decision, we have saved millions of taxpayer dollars while providing our employees with the benefits of a defined contribution plan, including portability and the ability to direct their own investments.

As noted, one of the amendments modifies existing law by creating a new opportunity for County employees to transfer retroactively State service credits to the County retirement system. At this time, we are not able to determine how many employees are affected by this amendment, but we understand that one Council staff person may benefit. The other amendment allows certain employees, for the first time since adoption of the RSP, to transfer back to the ERS. Based on a preliminary review, it appears that only three people may benefit from this amendment – one Council staff person, one Confidential Aide to a Councilmember, and one MCGEO employee.
I am concerned that the amended bill represents a major policy shift with potentially significant fiscal impacts, undertaken without public hearings or adequate consideration of future consequences or implications for collective bargaining. The bill signals a willingness to consider reopening the ERS, at least on a case-by-case basis, if not on a broader scale. I believe that it is important for the residents of Montgomery County to understand the full import of the bill as amended. If there are to be wholesale changes, we need to understand which employees may be affected and the full fiscal impact; if the changes are to be more discreet, we need to understand what prompts the changes and how the system will benefit. To date, however, we have not had that public discussion. Because we should not make decisions of this magnitude in such a manner, I have decided to disapprove the bill.

Again, I urge the Council to enact a version of Bill 19-01 that does not contain the two amendments discussed above. I will sign such a bill into law upon its receipt.

DMD:jp

Attachment

cc: Mr. John Sparks
    Mr. Walter Bader
    Mr. Gino Renne
AN ACT to:

(1) allow an individual of the opposite sex to qualify as the domestic partner of a member of the Police collective bargaining unit for purposes of employee benefits;

(2) change the minimum service requirements for retirement for Police Telecommunicators and members of the Service, Labor, and Trades bargaining unit;

(3) increase the amount of member contributions required for certain retirement groups;

(4) allow refunds of member contributions used to purchase prior service if County law is later amended to reduce the maximum years of service for which a member may receive credit;

(5) change the amount of pension at normal retirement for certain retirement groups;

(6) clarify that medical reevaluation under the current disability retirement provisions applies to all retired members;

(7) for retirement Group G, allow the Disability Review Panel to request and consider an independent vocational assessment in recommending an appropriate service-connected disability benefit;

(8) allow a “pop-up” joint and survivor pension payment option;

(9) change the cost-of-living adjustment for certain members;

(10) for a Retirement Savings Plan member, allow reinstatement of forfeited County contributions if the individual is reemployed by the County within 6 months of separation; [[and]]

(11) allow certain former employees who return to County service to transfer the present value of certain benefits to the Retirement Savings Plan, or to resume membership in the Employees Retirement System;

(12) require certain employees to be notified of the opportunity to transfer certain retirement benefits, and allow certain benefits to be transferred retroactively during a limited time period; and

(13) generally amend the law regarding County employee retirement programs.
By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
33-45, [33-46,]] and 33-120

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


(c) Requirements for domestic partnership. To establish a domestic partnership, the employee and the employee's partner must either:

1. satisfy all of the following requirements:
   (A) be the same sex, unless the employee is a member of the police bargaining unit;
   (G) not be related by blood or affinity in a way that would disqualify them from marriage under State law if the employee and partner were (or, for members of the police bargaining unit, are) opposite sexes;

33-35. Definitions.

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

Police Telecommunicator: An employee assigned to a position in a supervisory or nonsupervisory occupational class in the Police Telecommunicator occupational series.

33-37. Membership requirements and membership groups.

(e) Retirement plans.
(8) A former County employee who returns to County service may transfer to the Retirement Savings Plan the actuarial present value of the employee's benefit in the Employees' Retirement System, as of the date the employee returns to County service, if the employee:

(A) was vested under Section 33-45 when the employee left County service;

(B) left all member contributions plus credited interest in the fund;

(C) left County service before October 1, 1994; and

(D) did not return to County service within 25 months.

* * *

33-38. Normal retirement date, mandatory retirement date, early retirement date, and trial retirement.

(a) Normal retirement date. [Normal] The normal retirement date is the first day of the month elected by a member after the [following requirements have been met:] member meets the years of service and age requirements for the applicable membership group. For normal retirement:

(1) Group A:

(A) The member [has] must have at least:

(i) 5 years of credited service and [has reached] be at least age 60[;]; or

(ii) [has at least] 30 years of credited service and [has reached] be at least age 55.

(B) After June 30, 2002, a Group A member who is a Police Telecommunicator must have at least:
(i) 5 years of credited service and be at least age 60; or
(ii) 30 years of credited service and be at least age 50.

(2) Group B: The member [has] must have at least:
(A) 15 years of credited service and [has reached] be at least age 55; or
(B) [has at least] 30 years of credited service and [has reached] be at least age 51.

(3) Group D: The member [meets] must meet the requirements [contained in] of the County police relief and retirement fund law [of the County].

(4) Group E: The member [has] must have at least:
(A) 15 years of credited service and [has reached] be at least age 55; or
(B) [has at least] 25 years of credited service and [has reached] be at least age 46.

(5) Group F: The member [has] must have at least:
(A) 15 years of credited service and [has reached] be at least age 55; or
(B) [has at least] 25 years of credited service and [has reached] be at least age 46.

(6) Group G: The member [has] must have at least:
(A) 15 years of credited service and [has reached] be at least age 55; or
(B) 25 years of credited service, regardless of age.

(7) (A) Group H: The member [has] must have at least:
(i) 5 years of credited service and [has reached] be at least age 60; or
(ii) [has at least] 30 years of credited service and [has reached] be at least age 55.

(B) After June 30, 2002, a Group H member who is a Police Telecommunicator must have at least:

(i) 5 years of credited service and be at least age 60;
or
(ii) 30 years of credited service and be at least age 50.

(C) After June 30, 2002, a Group H member who is also an SLT bargaining unit member must have at least:

(i) 5 years of credited service and be at least age 60;
or
(ii) 30 years of credited service and be at least age 50.

(8) The normal retirement date for an elected officials' participant is the first day of the month after the month the elected officials' participant attains age 62 and has must have at least the lesser of a full term of office or 4 years of credited service and be at least age 62.

(f) Trial retirement.

* * *
Member contributions and credited interest.

(a) [Percent of member] Member contributions. Each member of the retirement system must contribute, through regular payroll deductions, a portion of the member’s regular earnings [as follows:]

through regular payroll deductions.

(1) Member Contributions to the Optional Retirement Plan. A member of the Optional Retirement Plan must contribute the following percentage of regular earnings:

(A) [For members who elect to remain in the Optional Retirement Plan, the contribution is] Group A or H member, 6 percent [for a group A or H member,];

(B) Group B member, 7 percent [for a group B member,];

(C) Group D member, 7½ percent [for a group D, E, or F member,]; and

(D) Group E, F, or G member, 8½ percent [for a Group G member].

[B. To the extent allowed under Section 414(h)(2) of the Internal Revenue Code, the County must "pick up" (as described in the Internal Revenue Code) mandatory
member contributions to the Optional Retirement Plan for pay periods beginning on or after July 1, 1989.

C. The Chief Administrative Officer may allow an agency that is not an "employing unit" (as described in Section 414(h)(2) of the Internal Revenue Code) to participate in the retirement system. The County must not "pick up" (as described in the Internal Revenue Code) mandatory contributions of members employed by a participating agency that is not an "employing unit".)

(2) **Member Contributions to the Integrated Retirement Plan.**

[(A)]

[For members] A member of the Integrated Retirement Plan[, the contribution is] must contribute the following percentage of regular earnings:

1. [(i)] (A) Group A[-3], 4 percent up to the maximum Social Security wage base, and 6 percent of regular earnings that exceed the wage base[.]

2. [(ii)] (B) Group B[-3½], 4½ percent up to the maximum Social Security wage base, and 7 percent of regular earnings that exceed the wage base[.]

3. [(iii)] (C) Group E[-3¾], 4¾ percent up to the maximum Social Security wage base, and 7½ 8½ percent of regular earnings that exceed the wage base[.]

4. [(iv)] (D) Group F[-4], 4¾ percent up to the maximum Social Security wage base and 8½ percent of regular earnings that exceed the wage base[.]
[(v)] (E) Group G[-], 4½ percent up to the maximum Social Security wage base and 8½ percent of regular earnings that exceed the wage base[,] and:

[(vi)] (F) Group H[ – 3], 4 percent up to the maximum Social Security wage base and 6 percent of regular earnings that exceed the wage base.

[(B)] To the extent allowed under Section 414(h)(2) of the Internal Revenue Code, the County must "pick up" (as described in the Internal Revenue Code) mandatory member contributions to the Integrated Retirement Plan for pay periods beginning on or after July 1, 1989.

(C) The Chief Administrative Officer may allow an agency that is not an "employing unit" (as described in Section 414(h)(2) of the Internal Revenue Code) to participate in the retirement system. The County must not "pick up" (as described in the Internal Revenue Code) mandatory contributions of members employed by a participating agency that is not an "employing unit."

(3) **Member Contributions to the Elected Officials' Plan.** [For members] A member of the Elected Officials’ Plan[, the contribution is] must contribute 3 percent. To the extent allowed under Section 414(h)(2) of the Internal Revenue Code, the County must "pick up" (as described in the Internal Revenue Code) mandatory member contributions to the Elected Officials’ Plan.

(4) **To the extent allowed under Section 414(h)(2) of the Internal Revenue Code, the County must "pick up" (as described in the**
(5) The Chief Administrative Officer may allow an agency that is not an "employing unit" (as described in Section 414(h)(2) of the Internal Revenue Code) to participate in the retirement system. The County must not "pick up" (as described in the Internal Revenue Code) mandatory contributions of members employed by a participating agency that is not an "employing unit".

* * *

(c) Return of member contributions. [Member contributions may be refunded:]

(1) [(A)] [Upon termination of county] Refund after employee's separation. The County must refund contributions to a member who is separated from County service, [except by death or retirement, each] unless the member dies or retires. The County must pay a member who has not elected to vest [shall be paid] the full amount of accumulated contributions with credited interest, less any indebtedness to the County government or the Montgomery County Employees Federal Credit Union.

[(B)] (2) Refund after separation of an elected officials' participant. An elected officials' participant who ends employment with the County before [the] that participant's normal retirement date [of that elected officials' participant], and who does not receive a mandatory refund of [that elected officials'] the participant's account balances under Section 33-40(d)(2)(D), may, at the
[elected officials'] participant's request, receive the account balances, including picked-up contributions, in the required and the voluntary elected officials' participant contributions accounts established for that [elected officials'] participant, less any indebtedness to the [county government] County or the Montgomery County Employees Federal Credit Union, in a single lump-sum payment.

(2) Refund after a member's death. If a member dies, the Chief Administrative Officer must pay to the designated beneficiary accumulated member contributions plus credited interest, less any indebtedness to the County government, unless the beneficiary is eligible for an annuity under Section 33-46. If an elected officials' participant dies before the County has implemented the method of distribution under Section 33-44, the Chief Administrative Officer must pay to the beneficiary, in accordance with Section 33-46(g), the account balances, including picked-up contributions, in the required and the voluntary elected officials' participant contributions accounts, less any indebtedness to the [county government] County or the Montgomery County Employees Federal Credit Union.

(3) Refund after an employee elects to participate in the integrated plan instead of the optional plan. [Upon election] When a member elects to participate in the integrated retirement plan instead of the optional retirement plan, [a] the member must receive a refund of member contributions that exceeded the amount that would have been paid [had] if the contribution rate of the integrated retirement plan had been in
effect from date of enrollment to date of election, plus credited
interest earned on those contributions. Despite this
requirement, a member who elects to participate in the
integrated retirement plan instead of the optional retirement
plan while still employed by the County government must not
receive a refund of picked-up contributions made on or after
July 1, 1989 or credited interest earned on those contributions.

[A refund of picked-up] Picked-up contributions made on or
after July 1, 1989 and credited interest may be [made] refunded
only if one of the events described in Section 33-45(b) occurs.

(5) *Refund after a statutory change that reduces the maximum
years of credited service for a retirement group.*

(A) If a member purchases prior service and [[the County
Code]] this Chapter is later amended to reduce the
maximum years of service for which a member may
receive credit, the County must refund to the member
[[a]] that portion of the retirement contributions made to
purchase the unneeded prior service[[.]] if the
member[[:]]
[[(i)] requests a refund[; and
(ii) submits the request]] before the member retires.

(B) The [[amount the]] County must refund to the member
[[is the]] that portion of the payment made to purchase
[[the]] any prior service [[that is in excess of]] which
exceeds the maximum credited service for the
employee's retirement group. [[The term "payment" in]]
In this subsection "payment" means the lump sum
amount, determined at the time of purchase on an actuarial or flat payment basis, less any interest paid by the member or any contributions that were previously refunded. [[Payment]] The proper refund must be [[made]] paid to the member after [[the effective date of]] the member’s retirement begins.

[[C] This provision applies to any change made to the retirement law on or after March 1, 2000.]]

33-39A. Investment of contributions to the elected officials' plan.

33-40. Employer contributions.

33-41. Credited service.
(a) **Member’s credited service.**

* * *

(5) The Chief Administrative Officer must notify each eligible employee who attains 5 years of County service of the opportunity provided under this Section to purchase credited service. The Chief Administrative Officer must also notify each eligible employee who transfers from State service or from a dual merit system position of any opportunity to transfer credited service to the County retirement system.

* * *

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

* * *

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

(1) **Pension amount for an Optional Retirement Plan member.**

(A) Except for a Group E, F, or G member, the annual pension for a member of the optional retirement plan who retires on a normal retirement must equal 2 percent of average final earnings multiplied by years of credited service, up to a maximum of 36 years, plus sick leave credits. Years of credited service of less than one full year must be prorated.

(B) For a Group E member who is a member of the optional plan and retires on a normal retirement, the annual pension must equal 2.4 percent of average final earnings for each of the first 25 years of credited service completed, and 2 percent of average final earnings for
each year of credited service of more than 25 years, to a maximum of 31 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 25 years must be credited at 2 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76 percent of average final earnings.

(C) For a Group F member who is a member of the optional plan and retires on a normal retirement, the annual pension must equal 2.4 percent of average final earnings 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 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76([%]) percent of average final earnings.

(D) For a Group G member who is a member of the optional plan and retires on a normal retirement, the annual pension must equal 2 percent of average final earnings for each of the first 20 years of credited service completed, 3 percent of average final earnings for completion of any year, or prorated portion of a year of credited service, in years 21 through 24, 8 percent of average final earnings for the 25th year of credited
service completed or for a prorated portion of credited service of more than 24 years up to the completion of 25 years, and 2 percent of average final earnings for each year or prorated portion of a year of credited service of more than 25 years, to a maximum of 31 years plus sick leave credits.

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

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

(i) From date of retirement to the month of attainment of Social Security retirement age: 2 percent of average final earnings multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Credited service of less than one full year must be prorated.

(ii) From the month of attainment of Social Security retirement age: 1¼ percent of average final earnings up to the Social Security maximum covered compensation level at time of retirement, plus 2 percent of average final earnings above the Social Security maximum covered compensation level at time of retirement, multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Credited service of less than one full year must be prorated. This amount is subject initially to the cost-of-living adjustment.
provided in Section 33-44(c) from date of retirement to Social Security retirement age.

(B) [Except for a Group F or G] For a Group D member, the annual pension for a member of the integrated retirement plan who retires on a normal retirement must be computed as follows:

(i) From date of retirement to the month of attainment of Social Security retirement age: 2 percent of average final earnings multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Years of credited service of less than one full year must be prorated.

(ii) From the month of attainment of Social Security retirement age: one percent of average final earnings up to the Social Security maximum covered compensation level at time of retirement, plus 2 percent of average final earnings in excess of the Social Security maximum covered compensation level at time of retirement, multiplied by years of credited service, up to a maximum of 36 years, plus sick leave credits. Years of credited service of less than one full year must be prorated. This amount is subject initially to the cost-of-living adjustment provided in [subsection (c) of] Section 33-44(c) from date of retirement to Social Security retirement age, if any.
For a Group E member in the integrated retirement plan who retires on a normal retirement, the annual pension must be computed as follows:

(i) From the date of retirement to the month that the member reaches Social Security normal retirement age: 2.4 percent of average final earnings for each of the first 25 years of credited service completed, and 2 percent of average final earnings for each year of credited service of more than 25 years, to a maximum of 31 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 25 years must be credited at 2 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76 percent of average final earnings.

(ii) From the month the member reaches Social Security normal retirement age: 1.25 percent of average final earnings up to the Social Security maximum covered compensation in effect on the date of retirement for each year of credited service to a maximum of 31 years plus sick leave credits, plus 2.4 percent of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement for each of the first 25 years of credited service completed, and 2 percent of average final earnings.
above the Social Security maximum covered compensation in effect on the date of retirement for each year of credited service of more than 25 years, to a maximum of 31 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 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.

[(B)] (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:

(i) From date of retirement to the month of attainment of Social Security retirement age: [2] 2.4 percent of average final earnings multiplied by years of credited service up to a maximum of [36] 30 years, plus sick leave credits. 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 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76 percent of average final earnings.

(ii) [From the month of attainment of Social Security retirement age: 1 ¼ percent of average final earnings up to the Social Security maximum]
covered compensation level at time of retirement, plus 2 percent of average final earnings above the Social Security maximum covered compensation level at time of retirement, multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Credited service of less than one full year must be prorated. This amount is subject initially to the cost-of-living adjustment provided in subsection (c) of Section 33-44 from date of retirement to Social Security retirement age.] 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 percent of average final earnings above the Social Security.
maximum covered compensation in effect on the date of retirement.

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

* * *

33-43. Disability retirement.

(a) Applicability. This Section applies to an application for disability benefits under this Article filed:

(1) an application for disability benefits filed on or after March 1, 2000, by a member who is also a member of the Police Bargaining Unit; [or]

(2) an application for disability benefits filed after May 18, 1995, by any other member[.]; or

(3) a medical reevaluation of a disability retiree under subsection (g), regardless of when an application for disability benefits was filed.

* * *

(d) Disability retirement procedures.

* * *

(8) (A) If the Panel is unable to make a determination based on the evidence presented to it, the Panel may:

(i) direct the applicant to undergo a medical examination (including all relevant medical tests) by a medical doctor who is not a member of the Disability Review Panel; and
(ii) if required [[in order]] for the Panel to make a recommendation under Section 33-43(i)(2), request an independent vocational assessment.

(B) The County must pay the cost of the examination and assessment.

(C) The Panel must issue its written recommendation within 30 calendar days after the Panel receives [[whichever of]] the [[following is]] later of:

(i) the full report [is received] from the medical doctor who conducted the examination; or

(ii) the full report of the results of the independent vocational assessment.

* * *

(h) Amount of pension at non-service-connected disability retirement.

(1) A member, other than a Group G member, who retires on non-service-connected disability retirement must receive an annual pension equal to the greater of:

(A) 2 percent of average final earnings for each year of credited service, up to 36 years plus any additional sick leave credits; or

(B) 33 percent of final earnings.

(2) A [Group G] member who retires on non-service-connected disability retirement must receive an annual pension equal to the greater of:

[(A)] (1) the amount calculated under Section 33-42(b); or

[(B)] (2) 33 1/3 percent of final earnings.

(i) Amount of pension at service-connected disability retirement.
(1) A member, other than a Group G member, who retires on service-connected disability retirement must receive an annual pension [computed as follows:

(A) *For total incapacity.* 2 percent of final earnings, multiplied by years of credited service, up to a maximum of 36 years and any additional sick leave credits calculated under Section 33-42(b), but not less than 66 2/3 percent of final earnings[, if the member is totally and permanently incapacitated].

(B) *For partial incapacity.* 6 percent of final earnings for each 10 percent of permanent disability, but not less than 25 percent of final earnings, if the member is partially and permanently incapacitated. However, if the member meets the age requirements for early retirement, not less than the yearly amount of retirement pension computed under Section 33-42(c) must be payable.]

(2) A Group G member must receive a service-connected disability pension benefit calculated under Section 33-42(b), subject to the following:

(A) the benefit must be at least 70 percent of final earnings if the Chief Administrative Officer [determines] finds, based on a recommendation from the Disability Review Panel, that:

(i) the member suffers from a medically determinable physical or mental impairment that makes the member unable to engage in any substantial
gainful activity and [which] is expected to end in
death or last for at least 12 consecutive months; or

(ii) the member's disability is so severe that the
member would qualify to receive disability
benefits from the U.S. Social Security
Administration, even though the member does not
receive or has not applied for such benefits; or

(B) the benefit must be at least 52½ percent of final earnings
if the Chief Administrative Officer [determines] finds
that the member meets the standards to receive
service-connected disability benefits under subsection (f).

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

*   *   *

(I) Appeal procedures.

*   *   *

(4) The Chairperson must:

(A) decide all issues on prehearing procedures, including any
issue related to discovery; and

(B) rule on all issues of law that arise before the hearing,
unless ruling on the issue would decide the appeal.

[(4)] (5) The Disability Arbitration Board and Police Disability
Arbitration Board must render a decision quickly. The
Disability Arbitration Board and Police Disability Arbitration Board should issue the decision within 30 calendar days after the hearing or receiving any post-hearing briefs.

* * *

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

(a) [Election of pension] Pension payment [option] options.

(1) A member may elect an optional form of pension actuarially equivalent to the normal form of retirement pension otherwise payable, unless the member qualifies for a non-service-connected disability retirement before reaching the early retirement date. The [determination of] Chief Administrative Officer must not consider the health condition of the member when deciding what is "actuarially equivalent" [shall not include the health condition of the member whether or not disabled].

(2) [A member who qualifies for a non-service-connected disability retirement before reaching early retirement date is not eligible to elect a pension payment option.] A member who qualifies for non-service-connected disability retirement on or after reaching the early retirement date [is eligible to] may elect a pension payment option.

(3) A member who qualifies for a service-connected disability retirement may elect a pension payment option, [irrespective] regardless of age and credited service.

(4) To elect a pension payment option, the member must file the appropriate form at least one [(1)] month before the normal, early, or disability retirement date.

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The pension payment option [will be effective] must take effect on the member's retirement date and [will be] is void if the member or the named beneficiary dies before that date.

The following forms of pension options are available:

[(1)]  (A) Ten-Year Certain and Continuous. *

[(2)]  (B) Cash Refund Pension Option (available to members who were members of the employees' retirement system of the state on August 15, 1965). *

[(3)]  (C) Joint and Survivor Pension Option.

(i) [On or after May 1, 1970] Under this option, the County must make pension payments in an adjusted amount [may be paid] to the member during the member's lifetime and, [if at a] at the member's death, make pension payments to the designated beneficiary (spouse, domestic partner, or children only) who survives[]. The County must make the pension payments to the surviving beneficiary for the rest of the beneficiary's lifetime in the amount payable to the member or other amount elected by the member, but not less than 10 percent of the amount payable to the member[, must be paid for the balance of the beneficiary's lifetime].

(ii) Upon the death of both the member and the beneficiary, a death benefit must be paid in the same manner as is provided under the normal form of retirement pension for which the member had
been eligible. [Notwithstanding Article II of Chapter 35 (Police Retirement and Relief Fund), a group D member who retired before July 1, 1970, may, not later than August 31, 1974, elect the joint and survivor pension option effective July 1, 1974, instead of the surviving spouse's benefit under Section 35-15(b). A group D retiree's election of the joint and survivor pension option does not affect the amount of the retiree's pension. When the group D retiree dies, the spouse's or domestic partner's benefit must equal 50 percent of the retiree's benefit on the date of death, payable until the spouse or domestic partner dies.]

(iii) **Pop-up Option.** At retirement, the member may elect the pop-up variation of a joint and survivor option with an appropriate actuarial reduction. Under this option, if the member and designated beneficiary divorce or the designated beneficiary dies before the member dies, the member's monthly payments for the rest of the member's life must "pop up" to the amount that they would have been if the member had elected the modified cash refund annuity at retirement.

[(4) (D) **Modified Cash Refund Annuity.**

* * *  
* * *  

(c) **Cost-of-living adjustment.** A retired member or beneficiary, including the surviving spouse or domestic partner of a group D member or
other beneficiary who survives the member under a pension option or who is otherwise eligible to receive benefits, must receive an annual cost-of-living adjustment in pension benefits [computed as follows]:

* * *

(3) The percentage cost-of-living adjustment of pension benefits must be obtained by dividing the most recent index determined under paragraph (2) by the next preceding index multiplied by 100 less 100.

* * *

(B) A member enrolled on or after July 1, 1978, must receive 
[60\%] 100 percent of the [cost-of-living adjustment] change in the consumer price index up to [a total adjustment of 5\%] 3 percent, and 60 percent of any change in the consumer price index greater than 3 percent, up to a total adjustment of 7\%\% percent in any year. The [5\%-] 7\%\% percent annual [limitation] limit does not apply to:

(i) a retired member who is disabled; or
(ii) a pensioner aged 65 or older for a fiscal year beginning after the date the pensioner reaches age 65.

[(C) A member of Group F or G enrolled on or after July 1, 1978, must receive 100 percent of the change in the consumer price index up to 3 percent, and 60 percent of any change in the consumer price index greater than 3 percent, up to a total adjustment of 7\%\% percent in any year. The 7\%\% percent annual limitation does not apply to:
(i) a retired Group F or G member who is disabled; or
(ii) a retired Group F or G member in a County fiscal year that begins after the member reaches age 65.]

* * * *

**33-45.** Vested benefits and withdrawal of contributions.

* * * *

(e) **Discontinued service benefits of elected and appointed members.**

(1) [Should] If an elected or appointed member [enrolled or reenrolled before January 22, 1974,] with 10 or more years of credited service, is not [be] reappointed or reelected, the member may [elect] opt to:

(A) receive a pension [commencing] immediately, if the member enrolled or reenrolled before January 22, 1974; or

(B) [for an elected] receive a pension at age 60, if the member enrolled or reenrolled on or after January 22, 1974[, commencing at age 60].

[(1) (2)] The pension for a member enrolled or reenrolled on or before September 26, 1983, or [a member] who [submits] submitted an application to transfer from the optional plan to the integrated plan before September 26, 1983, [must equal 2 percent of final earnings, multiplied by years of credited service, up to a maximum of 36 years, plus sick leave credits, but not less than $300.00 monthly] is the pension the member would have received under Section 33-42(b) for regular retirement, except that:
"final earnings" replaces "average final earnings" in the applicable formula in Section 33-42(b); 

a member who submitted an application to transfer from the optional plan to the integrated plan before September 26, 1983, must be treated as if the member had remained in the optional plan; and 

the monthly benefit must be at least $300.

The pension for a member enrolled or reenrolled after September 26, 1983, or a member who submits an application to transfer from the optional plan to the integrated plan after September 26, 1983, [must be computed as follows] is the amount of pension the member would have received under Section 33-42(b)(2) for regular retirement, except that:

[A.] [From date of retirement to the month of attainment of social security retirement age, 2 percent of final earnings, multiplied by years of credited service, up to a maximum of 36 years, plus sick leave credits, but not less than $300.00 monthly.] “final earnings” replaces "average final earnings" in the applicable formula in Section 33-42(b); and 

[B.] [From the month of attainment of social security retirement age, benefits will be 2 percent of final earnings, multiplied by years of credited service, up to a maximum of 36 years, plus sick leave credits, reduced by one percent of final earnings up to the social security maximum covered compensation level at time of retirement, multiplied by years of credited service, plus
sick leave credits. Years of credited service of less than one full year will be prorated. The monthly benefit [will not be less than] must be at least $300.00 monthly.

* * *

Sec. 33-120. Distribution of benefit.

* * *

(d) Separation from service before normal retirement, death or disability retirement.

* * *

(3) Forfeitures.

(A) If a participant has no vested interest in the County contributions account at the time of the participant's separation from service, the participant must forfeit the entire County contributions account as of the date of separation from service.

(B) The Chief Administrative Officer must allow a one-time reinstatement of the forfeited County contributions to an employee who is reemployed by the County within 12 months of separation and again becomes a member of the Retirement Savings Plan. The amount reinstated by the Chief Administrative Officer must be equal to the value of the County contributions account, including investment gains and losses, as of the date of the employee's separation. This provision applies, regardless of the member's separation or reemployment date, if the member, requests the reinstatement in writing: and
(ii) submits the request while the member is an active County employee.

(C) The Chief Administrative Officer must use the forfeitures to pay the operating expenses of the retirement savings plan or to reduce the amount of County contributions.

* * *

Sec. 2. Applicability of amendments.

(a) Section 33-37(e)(8), added by Section 1 of this Act, applies to any employee to whom it would otherwise apply who returned to County service before this Act took effect. Any such employee may transfer to the Retirement Savings Plan the actuarial present value of the employee's benefit in the Employees' Retirement System, as of the effective date of this Act. Alternatively, any such employee may resume membership in the Employees' Retirement System, on the later of the effective date of this Act or the date the employee so notifies the Office of Human Resources.

(b) Any active employee who was eligible at any time to transfer service credits from any public retirement system in the state under Section 33-41(h), but did not do so within the applicable time period under state law, may transfer all applicable credits to the County retirement system, subject to all applicable requirements of state law, by December 31, 2001.

The employee was not personally notified of the right to transfer any credit when a transfer could have been executed; and]}

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the employee has been prejudiced by the failure to transfer any credit]].

Any transfer under this subsection must be retroactive to the date the employee was originally eligible to apply for the transfer.

Approved:

Blair G. Ewing, President, County Council

Disapproved:

Douglas M. Duncan, County Executive

This is a correct copy of Council action.

Elda Dodson, CMC, Acting Clerk of the Council