COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

(1) allow an active member of a County retirement plan who becomes an elected official to choose to continue to participate in that plan;
(2) clarify the disability retirement provisions applicable to members of the elected officials' plan;
(3) repeal certain obsolete provisions relating to an elected official's eligibility to participate in certain retirement plans;
(4) correct certain cross-references and make technical amendments to the law relating to retirement plans; and
(5) generally amend the law relating to retirement plans for County employees and elected officials.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-37, 33-41, and 33-128

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 33-37, 33-41, and 33-128 are amended as follows:

33-37. Membership requirements and membership groups.

* * *

[(c) Elected officials. Membership will be optional for the sheriff, the state's attorney, and for any county official elected for a fixed term as specifically provided in the charter of the county, and without the need to meet any other entrance membership requirements that may be specified herein. Membership shall be effective on the date the employee's application for membership is approved.]

[(d)] (c) Appointed officials. Each person appointed by the [County] Executive or [County] Council to head a principal department[,] or office[, or agency] of the [county] County government must be subject to all regulations and laws governing full-time members of the retirement system.

(d) Hearing Examiners. Any person appointed by the Executive or Council to serve as a hearing examiner must be treated as a full-time employee under the laws and regulations governing members of the retirement system if that person serves full time as a hearing examiner, and must be treated as a part-time employee under the laws and regulations governing members of the retirement system if that person serves less than full time as a hearing examiner.

(e) Retirement plans.

* * *

(4) (A) [An individual who is an elected official on December 1, 1986, and was a Group A employee before December 1, 1986, must continue to participate in the retirement plan of the retirement system in which the individual participated]
before December 1, 1986, except as provided in subsection (e)(5)(A). An individual who is an elected official on December 1, 1986, and was not a member of a retirement plan of the retirement system on November 30, 1986, as a result of exercising the right described in subsection (c), may elect to become a participant in the elected officials' plan as provided in subsection (e)(5)(A).

[(B)] An individual who is an elected official on December 1, 1986, and was not a Group A employee on November 30, 1986, must become an elected officials' participant on December 1, 1986, except as provided in subsection (e)(6)(A).

[(C)] An individual who becomes an elected official on or after December 2, 1986, but before December 1, 1989, must become an elected officials' participant on the date the individual becomes an elected official except as provided in subsection (e)(6)(A).

(D) [(i)] Except as [otherwise] provided in subparagraphs (B) and (C), any individual who becomes an elected official [on or after December 1, 1989] must become [an] a member of the elected officials' [participant] plan on the date the individual becomes an elected official.

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

(C) An individual who chooses to continue to participate in a County retirement plan in which the individual participated immediately before becoming an elected official must not participate in the elected official's plan.

[(ii)] If any highly compensated participant must be excluded from the elected officials' plan to maintain the plan's qualified status under the Internal Revenue Code, the highly compensated participant must participate in the retirement savings plan under Article VIII.]

(5) (A) An elected official who chooses to continue to participate in another plan under subsection (e)(4)(A) chooses to continue to participate in another County retirement plan under paragraph (4)(B) may become a member of the elected officials' participant plan at any time while an elected official after terminating participation in the other plan.

(B) An individual who makes the choice under subsection (e)(5)(A) chooses to become a member of the elected officials' plan under subparagraph (A) retains the individual's rights under the plan in which the individual was a member before becoming a member of the elected officials' plan, except for disability, but is not entitled to a refund of contributions because of the transfer to the elected.
officials' plan]. The disability benefits of [the] an individual who chooses to [be an elected officials' participant] become a member of the elected officials' plan under subparagraph (A) are specified in article [VI] VIII. [That] The individual's vested rights under the elected officials' plan must be determined based on [that] the individual's total [number of years of] credited service, which includes service in the prior plan. The amount of [that] the individual's retirement benefit under the prior plan must be determined based only on credited service while participating in the prior plan. However, [that] the individual's regular earnings until [the time of] retirement or other termination of service with the County or a participating agency must be used in determining final average earnings for purposes of determining the amount of the retirement benefit under the prior plan.

(C) The [county executive] Executive must [develop] adopt regulations[,] under method (3)[,] to allow an eligible individual to make the choice [provided for in this subsection 33-37(e)(5)] authorized by subparagraph (A).

(6) (A) An elected official who must become an elected officials' participant under subsection (e)(4)(B) or (e)(4)(C) may choose to participate in a retirement plan of the retirement system in which the elected official would otherwise be eligible to participate. An elected official who must become an elected officials' participant under subsection (e)(4)(B) must make this choice before July 1, 1987. An
elected official who must become an elected officials' participant under subsection (e)(4)(C) must make this choice before the date that is 7 months from the elected official's date of enrollment.]

[(B) An elected official who makes the choice under subsection (e)(6)(A) must receive the account balance in that elected officials participant's voluntary elected officials' participant contributions account. The account balance of that participant's required elected officials' participant contributions account will be transferred to the retirement plan in which the elected official has chosen to participate. The elected official also must contribute to the plan the difference between:

(i) The mandatory contributions the elected official would have contributed to the plan between the date of enrollment in the elected officials' plan and the date of transfer had the elected official participated during that period; and

(ii) That elected officials' participant's required elected officials' participant contributions account balance. The account balance in that participant's county elected officials' contributions account is forfeited and the county must contribute to the other plan, on behalf of that elected official, whose contributions the county would have made between the date of the enrollment in the elected officials' plan and the date
of transfer had the elected official participated in that plan during that period."

[(C) The County Executive must issue regulations, under method (3), to allow an eligible individual to make the choice allowed under subsection (e)(6)(A).]

[(D) An elected official who must become an elected officials' participant under subsection (e)(4)(B) or (e)(4)(C) also may participate in another retirement plan of the retirement system under subsection (e)(7).]

[(7) Except as provided in this paragraph, an individual who becomes an elected officials' participant must remain an elected officials' participant until that individual is not an elected official. An elected officials' participant who is eligible to make a choice under subsection (e)(5)(A) or (e)(6)(A) and who has completed the lesser of a full term of office or 4 years of credited service in the elected officials' plan may choose at that time, and, except as provided under subsection (e)(6)(A) only at that time, to stop participating in the elected officials' plan and participate in the retirement plan in which that elected official would have been a participant if that elected official had not chosen to participate in the elected officials' plan. A participant who chooses to transfer to the other plan keeps the right to benefits under the elected officials' plan, but must not receive a distribution of any account balances. The elected official's credited service for purpose of vesting in the other plan must be determined based on the elected official's total number of years of credited service. The amount of the elected official's benefit under the other plan must not be
increased by the elected official's credited service earned while
the elected official participated in the elected official's plan. If an
elected official stops participating in the elected officials' plan,
the elected official's disability retirement benefit must still be
determined under the article VI disability benefits program. If an
elected official stops participating in the elected officials' plan,
the elected official's retirement benefit under the other plan must
be determined using the regular earnings of the elected official
during the applicable periods immediately before the end of the
elected official's employment with the County.]

[(8)] (6) * * *

(f) Membership groups and eligibility. Any full-time or part-time employee
is eligible for membership in the appropriate membership group
[outlined below] if the employee meets all of the requirements for the
group:

(1) Group A: An employee, elected official, or appointed official not
eligible for membership in another group is a group A member.
An employee who otherwise would be eligible for membership in
group A must participate in the Retirement Savings Plan if the
employee:

(A) begins, or returns to, County service on or after October 1,
1994 (except as provided in the last sentence of subsection
(e)(2));

(B) is not represented by an employee organization;

(C) does not occupy a bargaining unit position; and

(D) is not an elected official (except as provided in
subsection [(e)(4)(D)(ii)] (e)(4)(D)).]
(4) Group E: The Chief Administrative Officer, the [director of the] Council Staff Director, the hearing examiners, the County Attorney and each head of a principal department[,] or office [or agency] of the County government, if appointed to [such] that position before July 30, 1978, or a member having held such position on or before October 1, 1972. Any sworn deputy sheriff and any County correctional staff or officer as designated by the Chief Administrative Officer. Any group E member who has reached elective early retirement date may retain membership in group E [in the event of transfer] if the member transfers from the position which qualified the member for group E. Any group E member who is temporarily transferred from the position which qualified the member for group E may retain membership in group E as long as the temporary transfer from the group E position does not exceed 3 years. Notwithstanding the foregoing provisions in group E, any employee who is eligible for membership in group E must participate in the retirement savings plan under Article VIII if the employee: 

(6) Group G: Any paid firefighter, paid fire officer, and paid rescue service personnel. Any group G member who has reached elective early retirement date may retain membership in group G [in the event of transfer] if the member transfers from the position which qualified the member for group G. Any group G member who is temporarily transferred from the position which qualified the member for Group G may retain membership in group G as
long as the temporary transfer from the group G position does not exceed 3 years. Notwithstanding the foregoing provisions in group G, any employee who is eligible for membership in group G must participate in the retirement savings plan under Article VIII if the employee:

* * *

33-41. Credited service.

(a) **Member's credited service.**

* * *

(2) However, credited service earned while an individual is a participant in the elected officials' plan must be used only for the purposes described in [section] Section 33-37(e) and [section] Section 33-55A. Credited service earned while an individual is a participant in the retirement savings plan under Article VIII must be used only as provided in Section 33-37(i)

* * *

(f) **Use of sick leave for credited service.** An employee [whose retirement is effective on or after May 1, 1970, or who becomes vested on or after October 1, 1971,] must receive credit toward retirement for any accumulated sick leave, up to a maximum of 4,224 hours. Each 176 hours of accumulated sick leave is equal to 1 month of credited service. Accumulated sick leave totaling less than 11 days must not be credited for retirement purposes. Accumulated sick leave totaling 11 to 22 days must be credited as 1 month of service for retirement purposes. An employee who transfers to the retirement savings plan must receive credit toward retirement under the optional plan or integrated plan under Section 33-37(i) for the employee’s accumulated sick leave.
33-128 Definitions

(j) Employee means an employee of the County who:

(1) participates in the retirement savings plan under this Article or in the elected officials' plan under Article III; and

(2) is regularly scheduled to work 20 hours or more per week.

Sec. 2. Transition

An individual who was an active member of a County retirement plan immediately before becoming an elected official, and who was required to participate in the elected officials' plan, may make a one time election to continue to participate in the retirement plan the individual participated in immediately before becoming an elected official. The individual's account balance must be transferred to the retirement plan in which the individual is resuming membership. The individual must contribute to the plan any accumulated contributions the individual would have made had the individual continued participation in that plan after deducting the individual's participant contributions made to the elected officials' plan. The individual must have no interest in the County elected official contributions made on the individual's behalf. The individual must continue participation as if the individual had not participated in the elected officials' plan.

Sec. 3. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. Section 2 is effective on December 1, 2006. The rest of this Act takes effect on the date on which it becomes law.
Approved:

Michael J. Knapp, President, County Council

Date

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date