

Expedited Bill No. 22-08  
Concerning: Retirement - Elected  
Officials  
Revised: 7/24/08 Draft No. 5  
Introduced: June 10, 2008  
Enacted: July 29, 2008  
Executive: August 6, 2008  
Effective: August 6, 2008  
Effective: Section 2 - December 1, 2006  
Sunset Date: None  
Ch. 30, Laws of Mont. Co. 2008

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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### AN EXPEDITED ACT to:

- (1) 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

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

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

1           **Sec. 1. Sections 33-37, 33-41, and 33-128 are amended as follows:**

2   **33-37. Membership requirements and membership groups.**

3   \*                   \*                   \*

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

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

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

22          (e) *Retirement plans.*

23   \*                   \*                   \*

24           (4) (A) [An individual who is an elected official on December 1,  
25           1986, and was a Group A employee before December 1,  
26           1986, must continue to participate in the retirement plan of  
27           the retirement system in which the individual participated

28 before December 1, 1986, except as provided in subsection  
 29 (e)(5)(A). An individual who is an elected official on  
 30 December 1, 1986, and was not a member of a retirement  
 31 plan of the retirement system on November 30, 1986, as a  
 32 result of exercising the right described in subsection (c),  
 33 may elect to become a participant in the elected officials'  
 34 plan as provided in subsection (e)(5)(A).]

35 [(B) An individual who is an elected official on December 1,  
 36 1986, and was not a Group A employee on November 30,  
 37 1986, must become an elected officials' participant on  
 38 December 1, 1986, except as provided in subsection  
 39 (e)(6)(A).]

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

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

50 (B) If an individual was an active member of a County  
 51 retirement plan, including an employee on leave without  
 52 pay, [[immediately]] before becoming an elected official,  
 53 the individual may choose to continue or return to  
 54 participate in the retirement plan in which the individual

55 participated before becoming an elected official,  
 56 subject to the eligibility and transfer rules set out in  
 57 [[subsections (e)]] this subsection and subsection (f).

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

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

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

74 (B) An individual who [makes the choice under subsection  
 75 (e)(5)(A)] chooses to become a member of the elected  
 76 officials' plan under subparagraph (A) retains [that] the  
 77 individual's rights under the plan in which [that] the  
 78 individual was a member before [that date] becoming a  
 79 member of the elected officials' plan, except for disability,  
 80 but is not entitled to a refund of contributions [to the prior]  
 81 from that plan [because of the transfer to the elected

82 officials' plan]. The disability benefits of [the] an  
 83 individual who chooses to [be an elected officials'  
 84 participant] become a member of the elected officials' plan  
 85 under subparagraph (A) are specified in article [VI] VIII.  
 86 [That] The individual's vested rights under the elected  
 87 officials' plan must be determined based on [that] the  
 88 individual's total [number of years of] credited service,  
 89 which includes service in the prior plan. The amount of  
 90 [that] the individual's retirement benefit under the prior  
 91 plan must be determined based only on credited service  
 92 while participating in the prior plan. However, [that] the  
 93 individual's regular earnings until [the time of] retirement  
 94 or other termination of service with the County or a  
 95 participating agency must be used in determining final  
 96 average earnings for purposes of determining the amount  
 97 of the retirement benefit under the prior plan.

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

102 [(6) (A) An elected official who must become an elected officials'  
 103 participant under subsection (e)(4)(B) or (e)(4)(C) may  
 104 choose to participate in a retirement plan of the retirement  
 105 system in which the elected official would otherwise be  
 106 eligible to participate. An elected official who must  
 107 become an elected officials' participant under subsection  
 108 (e)(4)(B) must make this choice before July 1, 1987. An

109 elected official who must become an elected officials'  
110 participant under subsection (e)(4)(C) must make this  
111 choice before the date that is 7 months from the elected  
112 official's date of enrollment.]

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

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

127 (ii) That elected officials' participant's required elected  
128 officials' participant contributions account balance.  
129 The account balance in that participant's county  
130 elected officials' contributions account is forfeited  
131 and the county must contribute to the other plan, on  
132 behalf of that elected official, whose contributions  
133 the county would have made between the date of the  
134 enrollment in the elected officials' plan and the date

135 of transfer had the elected official participated in  
136 that plan during that period.]

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

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

144 [(7) Except as provided in this paragraph, an individual who becomes  
145 an elected officials' participant must remain an elected officials'  
146 participant until that individual is not an elected official. An  
147 elected officials' participant who is eligible to make a choice  
148 under subsection (e)(5)(A) or (e)(6)(A) and who has completed  
149 the lesser of a full term of office or 4 years of credited service in  
150 the elected officials' plan may choose at that time, and, except as  
151 provided under subsection (e)(6)(A) only at that time, to stop  
152 participating in the elected officials' plan and participate in the  
153 retirement plan in which that elected official would have been a  
154 participant if that elected official had not chosen to participate in  
155 the elected officials' plan. A participant who chooses to transfer  
156 to the other plan keeps the right to benefits under the elected  
157 officials' plan, but must not receive a distribution of any account  
158 balances. The elected official's credited service for purpose of  
159 vesting in the other plan must be determined based on the elected  
160 official's total number of years of credited service. The amount of  
161 the elected official's benefit under the other plan must not be

162 increased by the elected official's credited service earned while  
 163 the elected official participated in the elected official's plan. If an  
 164 elected official stops participating in the elected officials' plan,  
 165 the elected official's disability retirement benefit must still be  
 166 determined under the article VI disability benefits program. If an  
 167 elected official stops participating in the elected officials' plan,  
 168 the elected official's retirement benefit under the other plan must  
 169 be determined using the regular earnings of the elected official  
 170 during the applicable periods immediately before the end of the  
 171 elected official's employment with the County.]

172 ~~[(8)]~~ (6) \* \* \*

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

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

- 182 (A) begins, or returns to, County service on or after October 1,  
 183 1994 (except as provided in the last sentence of subsection  
 184 (e)(2);
- 185 (B) is not represented by an employee organization;
- 186 (C) does not occupy a bargaining unit position; and
- 187 (D) is not an elected official ~~[[~~(except as provided in  
 188 subsection [(e)(4)(D)(ii)] ~~)]~~ (e)(4)(D)).]]

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(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:

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(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

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216 long as the temporary transfer from the group G position does not  
 217 exceed 3 years. Notwithstanding the foregoing provisions in  
 218 group G, any employee who is eligible for membership in group  
 219 G must participate in the retirement savings plan under Article  
 220 VIII if the employee:

221 \* \* \*

222 **33-41. Credited service.**

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

224 \* \* \*

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

231 \* \* \*

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

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\* \* \*

244 **33-128 Definitions**

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\* \* \*

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

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

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

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\* \* \*

251 **Sec. 2. Transition**

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

264 **Sec. 3. Expedited Effective Date.**

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

268 *Approved:*

269 Michael J. Knapp 31 JUL 08  
Michael J. Knapp, President, County Council Date

270 *Approved:*

271 Isiah Leggett Aug 6, 2008  
Isiah Leggett, County Executive Date

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

273 Linda M. Lauer Aug 7, 2008  
Linda M. Lauer, Clerk of the Council Date