AN [[EXPEDITED]] ACT to:

(1) make disability retirement procedures consistent for all employees;
(2) create a partial incapacity disability retirement benefit;
(3) create a total incapacity disability retirement benefit;
(4) create a Medical Review Panel;
(5) create a Disability Review Board;

[[(6)] prohibit certain applications for service connected disability retirement due to an accident filed more than a certain time after separation from County service [[for the date of the accident]] or after the date of the accident;

[[(7)] prohibit] [[limit the amount of the service connected disability pension for an employee who commits certain offenses [[from retiring on a service connected disability]]];

(8)] [[(9)] (3) require an independent medical examination for a disability retirement;
[(3)] (4) require an independent medical examination or a medical certificate for certain retirees; and
[(4)] (5) modify the appeal procedures for disability retirement; and

(10)] (5) generally amend the law regarding disability retirement.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources

The County Council for Montgomery County, Maryland approves the following Act:
Clerk’s Note:

Line 115, “(2) The” are an existing law. Removed underlining.
Line 161, Removed underlining on the period.
Line 172, Moved the period after the word section and put it at the end of Line 176.
Line 455, Added double brackets before the colon.
Line 456, Added double brackets after Roman Numeral (i).
Line 461, Removed the underlining on the period.
Lines 498-506, Added back existing law that was mistakenly omitted in error.
Sec. 1. Sections 33-38A, 33-43, 33-51, 33-128, 33-129, and 33-135 are amended as follows:

33-38A. Deferred Retirement Option Plans.

The Chief Administrative Officer must establish Deferred Retirement Option Plans, or DROP plans, that allow any employee who is a member of a specified membership group or bargaining unit and who meets the eligibility requirements to elect to retire but continue to work. Pension payments must not be paid to the member while the member participates in the DROP Plan. When the member's participation in the DROP Plan ends, the member must stop working for the County, draw a pension benefit based on the member's credited service and earnings as of the date that the member began to participate in the DROP Plan, and receive the value of the DROP Plan payoff.

(a) DROP Plan for Group F members. "Discontinued Retirement Service Program" or "DRSP" means the DROP program for Group F members.

*     *     *

(7) Disability retirement. An employee may apply for disability retirement prior to the termination of the employee’s participation in the program. [[An employee who receives a]]

(A) A DRSP participant who is eligible for a service-connected disability retirement [[will receive the balance in the DRSP account less an amount equal to the full actuarial value of the credited service which the employee would have received if the employee had not participated in the program. If an employee’s participation in the program ends before a final decision is made on the disability retirement application, the
balance of the DRSP account will not be distributed until a final decision is made.] must choose either:

(i) the retirement benefit under the DRSP and the DRSP account balance; or

(ii) the service-connected disability retirement benefit that the employee would have received if the employee had continued as an active employee and had not elected to participate in the DRSP, and no DRSP account balance.

(B) A DRSP participant who is eligible for a non-service-connected disability retirement benefit must receive the non-service-connected disability retirement benefit under Section 33-43(h), with the benefit calculated as of the member's DRSP exit date, plus the DRSP account balance.

* * *

Disability retirement.

(a) Applicability. This Section applies to[[:(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; (2) an application for disability benefits 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]].

(b) Definitions. In this Section, the following words and phrases have the following meanings:
Applicant means any member [(defined in subsection (a))] who has filed an application for disability retirement under subsection (d)(1).

Certified representative means an employee organization certified under Section 33-79, 33-106, or 33-151 to represent a bargaining unit.

Disability Arbitration Board or Board means one of the 3 panels designated under subsection (m)(1) to review an appeal of the Chief Administrative Officer's final decision regarding an application for disability benefits filed by any member except a member of the Police Bargaining Unit.

Disability Review Panel or Panel means the [3] 4 medical doctors appointed as Panel members by the Chief Administrative Officer [in accordance with] under subsection (c).

Medical doctor means a doctor of medicine or osteopathy who has graduated from a medical school accredited by the American Medical Association and [who] is licensed to practice medicine in [the State of] Maryland.

Medical specialty means a field of medicine, such as orthopedic surgery or neurology, which requires specialized training and certification.

Occupational medicine means a medical specialty which focuses on the health of workers, including the ability to perform work; the physical, chemical, biological, and social environments of the workplace; and the health outcomes of environmental exposures. Practitioners of occupational medicine address the promotion of
health in the work place and the prevention and management of occupational and environmental injury, illness, and disability.

[(7)] Police Disability Arbitration Board or Police Board means the 3 persons designated under subsection (m)(1) to review an appeal of a decision by the Chief Administrative Officer affecting a member of the Police Bargaining Unit’s right to disability benefits.

[(8)] Residual functional capacity means what the individual can still do, despite the individual’s impairment. The County must give the term residual functional capacity the same meaning as the term is given by the U.S. Social Security Administration.

[(9)] Substantial gainful activity means [[the ability to perform a substantial level of paid work that exists in significant numbers in the national economy]] a level of productive work that requires significant physical or mental duties, or a combination of both, performed for pay or profit on a full-time or part-time basis. An individual is able to perform a substantial level of work if the individual is able to earn more than the U.S. Social Security Administration’s current monthly earnings limit [[that applies to the individual’s impairment]] for a disabled person. The County must give the term substantial gainful activity the same meaning as the term is given by the U.S. Social Security Administration.

(c) Selection of the Disability Review Panel.

(1) The Chief Administrative Officer must appoint [[the 3]] 4 members of the Disability Review Panel from a list of at least 10 impartial, unbiased medical doctors willing and able to serve [[agreed upon by the certified representatives and the County]] 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 [may collectively]] must strike 3
names from the list and the County [may]] must strike 3 names
from the list by alternating strikes. The Chief Administrative
Officer must appoint a member from the remaining 4 names on
the list.

(2) The Chief Administrative Officer must [[ensure that no 2
members of the Panel practice in the same medical specialty]]
appoint members who are 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 [[member]] 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 [[created by a Panel member’s death, disability,
resignation, non-performance of duty or other cause]].
(B) After the Chief Administrative Officer appoints or reappoints a Panel member, the Chief Administrative Officer must promptly [[provide]] send each certified representative [[with]] a copy of the document confirming the appointment.

(4) [[At the expiration of]] When a Panel member's term expires, the Panel member [[is eligible for reappointment]] may 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) [[In the event]] If a Panel member declines to be reappointed to the Panel, [[a new medical doctor must be appointed by]] the Chief Administrative Officer must appoint a new Panel member from a list of [[5]] at least 10 medical doctors [[agreed upon by the certified representatives and the County]] 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[]. The Chief Administrative Officer must appoint the Panel member] from a list of [[5]] at least 10 medical doctors [[agreed upon by the

-7-
certified representatives and the County]] 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 [[his or her]] services rendered.

(d) * Disability retirement procedures. *

(6) The Panel must meet [[as a body]] in person and review and consider all evidence submitted to it no later than 60 [[calendar]] days after the application is filed. A majority vote [[on a decision]] of 3 members is required to take any action [[in accordance with the provisions of]] under this Section [[will prevail. [[If only 2 Panel members participate in the decision-making process, the vote on a decision to take any action must be unanimous. No action may be taken upon a decision made by one Panel member]].

* * * *

(8) (A) [[If]] Before making its recommendation, the Panel [[is unable to make a determination based on the evidence presented to it, the Panel may]] must:

(i) direct the applicant to undergo [[a]] an independent medical examination (including all relevant medical tests) by a medical doctor who is not a member of the Disability Review Panel, unless the Panel finds that a medical examination
is unnecessary because of the nature and severity of the injury or illness; and

(ii) if required for the Panel to make a recommendation [[under Section 33-43(i)(2)]] as to residual functional capacity or substantial gainful capacity, request an independent vocational assessment.

(B) The County must pay the cost of the examination and assessment. The results of the examination, including findings, conclusions, medical opinions and diagnoses, must be given to the applicant or the applicant's representative immediately after the County or the Panel receives it.

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

(i) the full report from the medical doctor who conducted the examination; or

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

*(*)

(11) For a Group F or Group G member, the amount of any lump sum retroactive disability retirement benefit must be reduced by the total amount of any temporary total disability, temporary partial disability, or permanent partial disability payments that the County [[made]] paid to the employee under the Workers Compensation laws after [[the effective date of]] the disability retirement took effect.
Service-connected disability retirement.

(1) A member may be retired on a service-connected disability retirement if:

* * *

(E) For an accidental injury that does not cause mental impairment, the member:

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

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

(F) The time periods for reporting in subparagraphs (i) and (ii) do not begin while the member is unable to report because of incapacitating injuries.

(G) For an accidental injury that occurs after July 1, 2009, the member must apply for disability benefits:

(i) within one year after separation from County service or before July 1, 2010, whichever is later; and

(ii) if the applicant is a member of Group F, within 5 years after the date of the accident causing the impairment or before July 1, 2014, whichever is later, unless the member is in a chronic incapacity duty assignment.
(2) A Group F member who otherwise satisfies the requirements of subsection (f)(1) must not be denied a disability retirement because the member is able to perform a chronic incapacity duty assignment.

[[(2)] (3) * * *
[(3)] (4) * * *
[(4)] (5) * * *

(g) Medical reexamination of disability retiree. The Chief Administrative Officer [[may]] must require a member receiving disability pension payments to undergo either a yearly physical examination or to submit a medical doctor's certificate verifying continuation of the disability during the [[5-year period following]] 5 years after retirement, and once in every [[3-year period]] 3 years thereafter, until age 55 [[if]] for a member of group B, E, F, or G, or age 60 [[if]] for a member of group A or H, unless the Chief Administrative Officer finds that a physical examination is unnecessary because of the nature and severity of the injury or illness. The Chief Administrative Officer must review the findings of the physical examination and take appropriate action, which may include submitting the results of the evaluation to the Disability Review Panel for a redetermination [[as to]] whether the individual qualifies for disability benefits in accordance with subsection (d). If a member [[refuses to]] does not submit to the examination, the Chief Administrative Officer may reduce or discontinue any disability pension payments which the member receives. The Disability Review Panel may require the member to submit to an additional independent medical examination.
A member may appeal a decision to reduce or discontinue disability pension payments to the appropriate Disability Arbitration Board.

(j) Adjustment or cessation of disability pension payments.

(2) (A) The Chief Administrative Officer may reduce the amount of the disability pension payments of a member who:

(i) has not reached the normal retirement date; and

(ii) is engaged in, or is able to engage in, an occupation that pays more than the difference between [[the amount off]] the disability pension payments and the current maximum earnings of the occupational classification from which the [[employee]] member was disabled.

(B) [[For]] If a member other than a Group F member [[who]] meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member’s disability [[person]] pension payments until [[the amount off]] the disability pension payments plus the amount that the employee earned or is able to earn equals the maximum earnings of the occupational class from which the member was disabled.

(C) [[For]] If a Group F member [[who]] receives a non-service connected disability pension and [[who]] meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member’s disability pension payments until [[the amount off]] the disability pension
payments plus the amount the employee earned or is able to earn equals 120 percent of the maximum earnings of the occupational class from which the employee was disabled.

(D) If a member receives a disability retirement pension, except for a Social Security disability benefit, from another employer for the same impairment, the Chief Administrative Officer must reduce the member's disability pension payments by the amount of the other disability retirement pension.

* * *

(6) For [[those employees]] any employee, except as provided below, who enrolled or re-enrolled in the retirement system on or after July 1, 1978, the member's disability retirement benefit for any month must be integrated with the primary disability benefits received from Social Security, and the total benefits from both sources must not exceed 100% of the member's average final earnings, [[of the member; provided, however, that this limitation]] This limit does not apply to [[the]] cost-of-living adjustments [[issued pursuant to]] made under Section 33-44(c). The benefit for a [[Group F]] member who received a disability retirement benefit on or after [[July 1, 2002]] January 1, 2000, must not be integrated with the primary disability benefits received from Social Security, and the total benefits from both sources may exceed 100% of the member’s average final earning.
(7) The Chief Administrative Officer must not reduce the service-connected disability pension payments of a Group F or G member by earned income received from [[sources]] any source [[other than]] except:

(A) County Government employment; or

(B) for a Group F member, employment as a sworn law enforcement officer with full powers of arrest and authority to carry a firearm in connection with that employment.

33-51. Reports and audits.

(a) Annual and quarterly reports.

(5) By March 31 of each year, the Chief Administrative Officer must submit to the Council and the Executive an annual report on the disability retirement system for the preceding calendar year that includes the number of disability retirement applications, awards, appeals, and re-examinations of retirees for each retirement group. The Council may request the Chief Administrative Officer to provide additional information in the annual report or in additional reports. The Chief Administrative Officer must provide the additional information.

33-128. Definitions.

In this Division, the following words and phrases have the following meanings:
Administrator means either the Chief Administrative Officer or the entity that contracts with the County to administer this disability plan.

[(b)] Applicant means an employee who has filed an application for benefits under Division 2 of Article VIII, or for whom the Chief Administrative Officer has filed an application.

[(c)] Certified representative means an employee organization certified under Sections 33-79, 33-106, or 33-151 to represent a bargaining unit.

[(d)] Continued non-service-connected disability means a condition of the employee that:

1. continues after [(the close of)] the period of initial non-service-connected disability closes;
2. makes the employee unable to engage in any available employment commensurate with the employee's training or retraining, education, and experience [(of the employee)]; and
3. is likely to be permanent.

[(e)] Continued service-connected disability for a non-public safety employee means a condition of a non-public safety employee that:

1. continues after [(the close of)] the period of initial service-connected disability closes;
2. makes the employee unable to engage in available employment commensurate with the employee's training or retraining, education, and experience [of the employee]; and
3. is likely to be permanent.

[(f)] Continued service-connected disability for a public safety employee means a condition of a public safety employee that:

1. continues after [(the close of)] the period of initial service-connected disability closes;
(2) makes the employee unable to:

(A) engage in available employment commensurate with the employee's training or retraining, education, and experience [[of the employee]]; and

(B) earn substantially similar final earnings; and

(3) is likely to be permanent.

[(g)] County means Montgomery County Government and, when applicable, any agency that adopts this plan under an adoption agreement approved by the Chief Administrative Officer.

[(h)] Disability Arbitration Board or Board means the 3 persons designated under Section [[33-43A(m)]] 33-43(m) to review an appeal of the final decision of the Administrator regarding an application for disability benefits.

[(i)] Disability Review Panel or Panel means the [[3]] 4 medical doctors appointed as Panel members by the Chief Administrative Officer under [[Section 33-43A(c)]] Section 33-43(c).

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

(1) participates in the retirement savings plan under this Article;

and

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

[(k)] Final earnings means the annual average of the regular salary of an employee less any shift pay differential for the 18-month period immediately before the disability or any period of 18 consecutive months, whichever is greater.

[(l)] Initial non-service-connected disability means a condition of an employee that:

(1) is the natural and proximate result of an accident, illness, or injury;
is not due to the employee's willful misconduct or willful negligence [[of the employee]];
(3) makes the employee incapable of performing the job that the employee performed immediately before the accident, illness, or injury; and
(4) is not an initial service-connected disability.

Initial service-connected disability means a condition of an employee that:

(1) is the natural and proximate result of an accident, illness, or injury occurring, an occupational disease incurred, or a condition aggravated while in the performance of duty as an employee;

(2) is not due to the employee's willful misconduct or willful negligence [[of the employee]]; and

(3) makes the employee incapable of performing the job that the employee performed immediately before the accident, illness, or injury.

Medical doctor means a doctor of medicine or osteopathy who [[has]] graduated from a medical school accredited by the American Medical Association and [[who]] is licensed to practice medicine in [[the State of]] Maryland.

Non-public safety employee means any employee who is not a public safety employee.

Plan means the disability benefits plan established under this Division.

Public safety employee means any employee who is a:
(1) sworn, ranking officer of the [[Montgomery County]] Police Department;
(2) paid firefighter, paid fire officer, or paid rescue service employee of the [[Montgomery County Department of]] Fire and Rescue [[Services]] Service;
(3) sworn deputy sheriff;
(4) [[Montgomery County]] correctional officer; or
(5) correctional staff member, if designated as a public safety employee by the Chief Administrative Officer.

33-129. Disability benefits.

* * *

(d) Initial service-connected disability benefits. [[If the administrator determines that an employee has incurred an initial service-connected disability, the]] An employee [[is entitled to]] may receive disability benefits for a period of 36 consecutive months, subject to this plan, if the administrator finds that:

(A) the employee has incurred an initial service-connected disability; and
(B) for an accidental injury that does not cause mental impairment, the employee:

(i) reports the claimed accidental injury as soon as practicable, but no later than one year after the applicant knew or should have known that the injury is likely to be disabling; or
(ii) submits a claim for Workers’ Compensation benefits for the accidental injury that is not dismissed as untimely.
(C) The time periods for reporting in subparagraphs (i) and (ii) do not begin while the applicant is unable to report because of incapacitating injuries.

(D) For an accidental injury that occurs after July 1, 2009, the applicant must apply for disability benefits[[;]]

(i)] within one year after separation from County service or before July 1, 2010, whichever is later[;]

and

(ii) within 5 years after the date of the accident causing the impairment or before July 1, 2014, whichever is later]].

*  *  *

(f) Role of the Disability Review Panel.

(1) The Disability Review Panel must consider an application for disability benefits to determine if the applicant is eligible for disability benefits under subsection (a), (b), (c), (d), or (e). The Panel may consider any information or material submitted by the applicant, the certified representative, or the County. Within 60 days after the application is filed, the Panel must meet [[as a body]] in person to [[consider]] review all evidence submitted to the Panel. An action by the Panel under this Section requires [[2 votes]] a majority vote of 3 members.

  *  *  *

(5) [[If]] Before making its recommendation, the Panel [[cannot determine the applicant's eligibility for disability benefits based on the evidence presented, the Panel may]] must require the applicant to complete a medical examination, including relevant
medical tests, by a medical doctor who is not a member of the Disability Review Panel, unless the Panel finds that a medical examination is unnecessary because of the nature and severity of the injury or illness. The County must pay the cost of the examination. The results of the examination must be given to the applicant or the applicant’s representative immediately after the County or the Panel receives it. The Panel must issue its written recommendation within 30 days after the medical doctor reports to the Panel.

33-135. Medical examination.

(a) The Administrator [[may]] must require any employee receiving continued disability payments to undergo annual or less frequent medical examinations, or to submit a medical doctor’s certificate verifying the continuation of the disability, unless the Administrator finds that a physical examination in a specific case is unnecessary because of the nature and severity of the injury or illness. The Administrator must submit the findings of [[the]] any medical examination to the Disability Review Panel. The Disability Review Panel may require the employee to submit to an additional independent medical examination. The Panel must consider the findings of the physical examination and any other information submitted by the employee or the County and recommend in writing to the Administrator whether the employee still qualifies for disability benefits. The Administrator must issue a final decision within 20 days after receiving the Panel’s recommendation. An employee may appeal the Administrator’s decision to reduce or discontinue disability
pension payments to the appropriate Disability Arbitration Board under Section 33-138.

Sec. 2. Transition. A member of the Disability Review Panel when this Act takes effect may continue to serve until the expiration of the Panel member's term. All appointments to the Panel made after this Act takes effect, including the re-appointment of a qualified existing Panel member, must be made pursuant to this Act.

[[Sec. 3. Partial Disability. It is the policy of Montgomery County that public safety employees should have a two-tiered disability system which includes a separate service-connected disability benefit for an injury or illness that prevents the employee from continuing as a public safety employee, but does not prevent the employee from engaging in other substantial gainful employment. It is also the policy of the County that disability benefits are a mandatory subject of collective bargaining with the appropriate certified employee representative. The Executive must negotiate the terms of an appropriate two-tiered disability system with the certified employee representative of police officers no later than the collective bargaining agreement that takes effect on July 1, 2010. If the parties are unable to reach agreement on an appropriate two-tiered system, the parties must submit this issue for resolution through the applicable impasse procedures under the County's police collective bargaining law. The Executive must then submit the results of collective bargaining over this issue to the Council for legislative action.]]
Approved:

Philip M. Andrews, President, County Council  May 15, 2009

Approved:

Isiah Leggett, County Executive  May 20, 2009

This is a correct copy of Council action.

Approved:

Linda M. Lauer, Clerk of the Council  May 22, 2009