COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:
(1) clarify or establish how certain retirement benefits are calculated for certain categories of retired County employees;
(2) clarify and amend the procedures and standards regarding disability benefit determinations and appeals;
(3) adjust retirement benefits to coordinate with federal Social Security benefits;
(4) clarify and revise certain rules regarding survivor benefits;
(5) allow certain transfers between retirement plans to correct administrative failures; and
(6) generally amend County law regarding the County employee retirement system.

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

By adding
Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-61J

Boldface
Underlining
[Single boldface brackets]
Double underlining
[[Double boldface brackets]]
* * *

Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Added by amendment.
Deleted from existing law or the bill by amendment.
Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 33-39, 33-42, 33-43, 33-44, [[33-46,]] 33-56, and 33-127 are amended and Section 33-61J is added as follows:

33-39. Member contributions and credited interest.

* * *

(c) Return of member contributions.

* * *

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

(A) (i) If a member purchases prior service and 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 that

portion of the retirement contributions made to

purchase the unneeded prior service, with interest, if

the member requests a refund before the member

retires.

(ii) Notwithstanding clause (i) [[above]], the County must refund to a Group G member whose retirement is effective during the period March 1, 2000, through November 1, 2001, that portion of the member’s retirement contributions made to

purchase the unneeded prior service, with interest, if

the member requests a refund before or after the member retires.

(B) The County must refund the retirement contributions used to purchase excess service credits only if the member’s total credited service, excluding sick leave, exceeds the
new maximum for the member’s retirement group on the
date that the amendment reducing the maximum years of
credited service became effective.

[(B)]

[C] The County must refund to the member, with interest, that
portion of the payment made to purchase any prior service
[which] that exceeds the maximum credited service for the
employee’s retirement group. The County must determine
the amount of the refund based on the member’s total
credited service, excluding sick leave, on the effective date
of the amendment to the County Code that reduced the
maximum years of service. 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.

[D] [Interest paid under] Under this subsection, the County
must [be credited] pay interest in the same manner and
amount as for a member’s accumulated contributions
under subsection (b). To calculate interest on a refunded
payment, the [amount] County must [be assumed to have
been] assume that the member paid the amount in full
when the service was purchased.

[E] The County must pay the proper refund [must be paid] to
the member after the member’s retirement begins.

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

* * *

(b) Amount of pension at normal retirement date.

* * *

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

* * *

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

* * *

(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. The County must increase this initial amount by the cost-of-living adjustments provided under Section 33-44(c) for the period from the member’s date of retirement to the month in which the member reaches Social Security retirement age.

(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:

* * *

(ii) 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. The County must increase
this initial amount by the cost-of-living adjustments
provided under Section 33-44(c) for the period from
the member’s date of retirement to the month in
which the member reaches Social Security
retirement age.

(E) For The County must compute the annual pension of a
Group G 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 retirement age, the
following percentages of average final earnings
apply:

(a) 2 percent, for each of the first 20 years of
credited service;

(b) 3 percent, for years 21 through 24 of credited
service;

(c) 8 percent, for [year 25] the 25th year of
credited service; and

(d) 2 percent, for [years] each year of credited
service of more than 25 years, [through] to a
maximum of 31 years, [and any] plus sick
leave credits[ in excess of 31 years]; and
(e) 0 percent for years after year 31 (except sick leave credits referred to in subclause (d)).

(ii) From the month the member reaches Social Security retirement age, the percentages specified in clause (i) must be reduced, respectively, by the following percentages of average final earnings for the portion of any amount equal to or less than the Social Security maximum covered compensation in effect on the date of retirement:

(a) 1 percent, for each of the first 20 years of credited service;

(b) 1½ percent, for years 21 through 24 of credited service;

(c) 4 percent, for [year 25] the 25th year of credited service; and

(d) 1 percent for [years] each year of credited service of more than 25 years, [through] to a maximum of 31 years, [and any] plus sick leave credits[ in excess of 31 years].

(iii) The [cost-of-living adjustment formula in Section 33-44(c) applies to pension under this subparagraph between the member’s date of retirement and the month] County must increase the initial amount of a pension computed under (ii) above by the cost-of-living adjustments provided under Section 33-44(c) for the period from the member’s date of retirement
to the month in which the member reaches Social
Security retirement age.

(iv) [Any] The County must prorate any portion of a
year described in this subparagraph [must be
prorated].

33-43. Disability retirement.

(b) Definitions. In this Section, the following words and phrases have the
following meanings:

(3) **Disability Arbitration Board or Board** means one of the 3
persons] 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.

(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. 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. 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.**

* * *

(2) [No] The Chief Administrative Officer must ensure that no
members of the Panel [can] practice in the same medical
specialty.

(3) (A) [Members appointed] The Chief Administrative Officer
must appoint members under subsection (c)(1) [must be
appointed] for staggered 3-year terms. To implement the
staggered terms, [the first member appointed by] the Chief
Administrative Officer must [have] appoint the first
member to a 3-year term, the second member [must have]
to a one-year term, and the third member [must have] to a
2-year term. After these initial appointments, the Chief
Administrative Officer must appoint all members [will be
appointed] 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 each certified
representative with a copy of the document confirming the
appointment.
(i) **Amount of pension at service-connected disability retirement.**

(1) [A] The County must pay a member, other than a Group G member, who retires on service-connected disability retirement [must receive] an annual pension calculated under Section 33-42(b)(1), [but not less than] subject to the following exceptions:

(A) the County must substitute final earnings for average final earnings; and

(B) the pension must be at least 66 2/3 percent of the member’s final earnings.

(2) [A] The County must pay a Group G member [must receive] who retires on a service-connected disability retirement an annual pension [benefit] calculated under Section 33-42(b)(1), [subject to the following:] except that the County must substitute final earnings for average final earnings.

[(A) The benefit must be at least 70 percent of final earnings if the Chief Administrative Officer 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 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...

[...remaining content redacted]
the member does not receive or has not applied for such benefits.

(B) The benefit must be at least 52 ½ percent of final earnings if the Chief Administrative Officer finds that the member meets the standards to receive service-connected disability benefits under subsection (f).]

(3) The County must pay a Group G member who retires on a service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), but the benefit must be at least 70 percent of final earnings if the Chief Administrative Officer finds, based on a recommendation from the Disability Review Panel, that the member’s service-connected disability is severe enough to meet the Social Security Administration’s requirements for disability, meaning that the member is unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that can be expected to end in death or has lasted, or can be expected to last, for a continuous period of at least 12 months. The member does not have to qualify for Social Security benefits to be eligible for benefits under this subsection.

(A) The Panel must base its determination of whether or not an individual is able to engage in any substantial gainful activity on an assessment from an independent vocational expert that considers the member’s age, education, work experience, transferable skills, and residual functional capacity.
(B) The Panel must determine the member’s residual functional capacity and provide this information to the independent vocational expert.

(C) A Panel determination that the member’s service-connected disability is severe enough to be considered a disability by the Social Security Administration is not a recommendation that the member is entitled to, or should be granted, a disability benefit by the Social Security Administration.

(D) If a member has already been granted disability benefits by the U.S. Social Security Administration when the member applies for a service-connected disability pension, the County must pay the member a pension of at least 70 percent if the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel awards the member a service-connected disability benefit.

(4) The County must pay a Group G member who retires on a service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), but the benefit must be at least 52 ½ percent of final earnings if the Chief Administrative Officer finds, based on a recommendation from the Disability Review Panel, that:

(A) the member meets the standards to receive a service-connected disability benefit under subsection (f); and
(B) the member is not eligible to receive a benefit under subsection (i)(3).

(5) (A) The County must increase the service-connected disability pension benefit of a Group G member calculated under Section 33-42(b)(1), from a benefit of at least 52½ percent to a benefit of at least 70 percent, if:

(i) the U.S. Social Security Administration awards disability benefits to the member;

(ii) the member submits all relevant information about the award of disability benefits from the Social Security Administration to the Disability Review Panel within 60 days after the member receives the award;

(iii) the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel originally awarded the member a service-connected disability benefit; and

(a) the member applies for disability benefits with the Social Security Administration within 90 days after the date on which the Chief Administrative Officer notified the member that the amount of the service-connected disability pension benefit would be
calculated under Section 33-42(b)(1), but at least 52 ½ percent; or

(b) the Chief Administrative Officer awards a service-connected disability pension benefit calculated under Section 33-42(b)(1), but at least 52 ½ percent, to the member between March 1, 2000, and [insert the effective date of this bill], and the member applies for disability benefits with the Social Security Administration no later than [insert 90 days after the effective date of this bill].

(B) For a member who qualifies for an increased pension benefit under subsection (5)(A) above, the County must increase the member’s service-connected pension retroactively to the date on which the pension began.

[(3)]

(6) 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.

* * *

(l) Appeal procedures.

(1) An applicant who is a member of the Police Bargaining Unit or the certified representative of the Police Bargaining Unit may appeal a decision of the Chief Administrative Officer that affects
the member’s right to disability benefits to the Police Disability
Arbitration Board. An applicant who is not a member of the
Police Bargaining Unit, or the certified representative on behalf
of the applicant, may appeal the written decision of the Chief
Administrative Officer to [the] one of 3 Disability Arbitration
an appeal within 20 calendar days of the date on which the
applicant receives the Chief Administrative Officer’s decision.

(2) [An] The Police Disability Arbitration Board must consider
appeals [appeal] filed by [a member] members of the Police
Bargaining Unit[ must be considered by the Police Disability
Arbitration Board]. [All other appeals must be considered by the]
The 3 Disability Arbitration [Board] Boards must consider all
other appeals on a rotating basis in the order in which the County
receives the appeals.

(3) [The] After an applicant files an appeal, the appropriate Disability
Arbitration Board [and] or Police Disability Arbitration Board
with whom the appeal is filed must convene within a reasonable
time [after an appeal is filed] and consider the appeal.

(4) The appeal and judicial review proceedings are governed by the
Maryland Uniform Arbitration Act, except that a Board decision
must not be vacated on the ground that the applicant who filed
the appeal is not a bargaining unit member and did not agree to
arbitrate the appeal.

[(4)]
The Chairpersons of the Disability Arbitration Boards and Police Disability Arbitration Board must, for the appeals before them:

[5]

The Disability Arbitration [Board] Boards and Police Disability Arbitration Board must render [a decision] decisions quickly. The Disability Arbitration [Board] Boards and Police Disability Arbitration Board should issue [the decision] written decisions on appeals within 30 calendar days after the hearing or after receiving any post-hearing briefs.


The County Executive must appoint a different neutral arbitrator to be the Chairperson of [the] each Disability Arbitration Board. The County Executive must select the neutral [arbitrator] arbitrators from a list of [5] 6 arbitrators agreed upon by the County and the certified representatives that represent all bargaining units except for the Police Bargaining Unit. To the extent possible, the [5] 6 neutral arbitrators on the list should be experienced in law and occupational medicine. The appointment of the Chairperson of [the] each Disability Arbitration Board must be confirmed by the County Council. The County must give each certified representative a copy of the Council resolution confirming the appointment or
reappointment of each Chairperson promptly after the Council’s action.

* * * * * 

(3) If the neutral arbitrator declines to be reappointed, dies, resigns, or for other cause is unable or ineligible to serve on one of the Disability Arbitration Boards or the Police Disability Arbitration Board, a new arbitrator must be appointed by the County Executive under paragraph (1).

(4) The County must pay all reasonable fees and expenses of the arbitrators, as determined by the Chief Administrative Officer, except that a certified representative representing an applicant who is a member of the Office, Professional or Technical or Service, Labor and Trades Bargaining Unit must pay any fee resulting from the cancellation of a scheduled hearing if the certified representative:

(A) * * * *

(B) * * * *

(5) The applicant, or the certified representative on behalf of the applicant, must designate an individual to serve as a member of the Disability Arbitration Board [for determination of] that will consider and decide the applicant’s appeal. The applicant must designate an individual to serve as a member of the Police Disability Arbitration Board. The Chief Administrative Officer must designate an individual to serve on the Disability Arbitration Board or Police Disability Arbitration Board [for determination of] that will consider and decide the applicant’s appeal. The applicant, or the certified representative on behalf of
the applicant, and the County, respectively, may designate Board
members on a case-by-case basis according to each party’s
chosen procedure. There must be no restriction on who may
serve as the designee of the applicant or the County, except that
no member of the Board will consider and decide an appeal
may be involved in, or be a witness to, any matter that is before
[the] Board.

* * *

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

* * *

(b) Voluntary adjustment of pension payment by a member who retires

before qualifying to receive social security benefits.

(1) A member may elect to receive an actuarial equivalent benefit of

[larger] a certain level of pension payments until normal social

security payments [commence,] begin and [smaller] an adjusted

level of payments [thereafter, thus providing] after normal social

security payments begin. A member may elect these adjustments
to receive a more uniform total income from both sources. [For
members enrolled prior to July 1, 1978, if the member dies before
the total payments made or due equal the amount of the payments

guaranteed under the normal form of retirement pension,

payments will be continued to the designated beneficiary as if the

member was still living until the guaranteed amount has been

received. If both the member and the designated beneficiary die

before the guaranteed amount has been received, the actuarial

value of any remaining installment payments will be paid to the

payee designated by the member. For members enrolled on or
after July 1, 1978, if a member dies before receiving benefits in
an amount equal to member contributions plus credited interest,
the difference will be payable to the designated beneficiary.]

(2) A member who elects to receive adjusted levels of pension
payments under subsection (1) above must also choose one of the
forms of pension payment options described in subsection (a)(6).

(3) If a member dies, the County must pay the pension benefit to the
member’s designated beneficiary in the form elected by the
member under subsection (a)(6).

* * *

[[33-46. Death benefits and designation of beneficiaries.]]

* * *

[(b) Spouse’s, or domestic partner’s, and children’s benefits of a member
whose death is service connected.

(1) If a member, other than a Group F member, dies while in the
service of the County or a participating agency on or after August
15, 1965, and the employing department or agency, a beneficiary,
or another person submits satisfactory proof to the Chief
Administrative Officer that death was the result of injuries
sustained in the line of duty or was directly attributable to the
inherent hazards of the duties performed by the member [is
submitted] and the death was not due to willful negligence,
[payments] the County must [be made as follows] pay the
following benefits:

[(1)] (A) a spouse’s or domestic partner’s benefit equal to 25
percent of the member’s final earnings, paid as a monthly
benefit for the spouse’s life, but not less than $250 per month; plus

[(2)]  (B) a child’s benefit equal to 5 percent of the member’s final earnings, paid as a monthly benefit, but not less than $50 per month until the child reaches age 21 or for life if the child is disabled and incapable of self-support.

(2) The County must not pay combined total spouse’s, or domestic partner’s, and children’s benefit must not exceed benefits that exceed 40 percent of the member’s final earnings. The County must not pay the benefit to the spouse, domestic partner, or child if the spouse or domestic partner elects to receive benefits under subsection (e), except that however, the County must pay a child’s benefit if the eligible spouse or domestic partner dies before the child is 21 years old.)

* * *

33-56. Interpretations.

* * *

(b) The Chief Administrative Officer’s decision on a disability application under Section 33-43 may be appealed under subsection [33-43A(1)] 33-43.

* * *

33-61.J. Transfer of assets between trust funds of the retirement system.

To the extent permitted by the Internal Revenue Code and applicable guidance under the Internal Revenue Code, the County may transfer assets of the retirement system relating to an account or accrued benefit of a participant in trust-to-trust transfers between the trusts of the Employees’ Retirement System and the Retirement
Savings Plan to correct operational failures relating to such accounts or accrued benefits.

33-127. Miscellaneous.

(e) Transfer of assets between trust funds of the retirement system. To the extent permitted by the Internal Revenue Code and applicable guidance under the Internal Revenue Code, the County may transfer assets of the retirement system relating to an account or accrued benefit of a participant in trust-to-trust transfers between the trusts of the Employees’ Retirement System and the Retirement Savings Plan to correct operational failures relating to such accounts or accrued benefits.

(f) Exclusive Benefit.

Sec. 2. Expedited Effective Date.

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

__________________________
Michael L. Subin, President, County Council  Date

Approved:

__________________________
Douglas M. Duncan, County Executive  Date

This is a correct copy of Council action.

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Mary A. Edgar, CMC, Clerk of the Council  Date