AN EXPEDITED ACT to:

(1) make technical changes to the County retirement law; and
(2) generally amend the retirement law for County employees to comply with changes in Federal law.

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

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 33-35, 33-37, 33-40, 33-44, 33-118 and 33-120 are amended as follows:

33-35. Definitions.

* * *

_Picked-up contributions:_ The contributions picked up by the County or a participating agency under Sections 33-39(a)(1)[(B)], 33-39(a)(2)[(B)], or 33-39(a)(3).

* * *

_Regular earnings:_ Except as otherwise provided, gross pay for actual hours worked exclusive of overtime. Regular earnings for an elected official is gross pay for services rendered to the County. [For a member who became a member in the retirement system on or after July 1, 1996, regular earnings in plan years beginning on or after July 1, 1996, does not include gross pay over $150,000, as adjusted by the Internal Revenue Service under—Section 401(a)(17) of the Internal Revenue Code for increases in the cost of living.] Regular earnings must not exceed the limit under Internal Revenue Code Section 401(a)(17), as adjusted by the Internal Revenue Service. Gross pay must be used to determine benefits even if the County implements a pick-up plan under Section 414 of the Internal Revenue Code. Gross pay must be used to determine benefits even if a member has agreed to a reduction in earnings under:

(a) the County's deferred compensation plan under Section 457 of the Internal Revenue Code; or

(b) any statutory fringe benefit program sponsored by the County and permitted by the Internal Revenue Code.

* * *

33-37. Membership requirements and membership groups.
(e) Retirement plans.

(4) (A) Except as provided in subparagraphs (B) and (C), any individual who becomes an elected official must become a member of the elected officials' 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, 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 this subsection and subsection (f).

33-40. Employer contributions.

(d) Elected officials' plan. Subsections 33-40(a), (b), and (c) do not apply to the elected officials' plan. Instead, the following provisions apply:

(2) The Board must allocate the County elected officials' contributions made on behalf of each elected officials' participant to a County elected officials' contributions account the Board establishes for that elected officials' participant. In addition, amounts allocated to the County elected officials' contributions account must be further allocated to sub-accounts to reflect the
proportionate amount of each account in each of the applicable investment funds.

* * *

(D) An elected officials' participant who ends employment with the County and who is not vested in any County contributions must forfeit the full account balance in the County elected officials' contributions account. If that occurs, the Chief Administrative Officer, upon the participant's completion of a properly completed distribution form, must pay the participant, in a single lump-sum payment, the full account balances in the required elected officials' participant contributions account and the voluntary elected officials' participant contributions account, less any indebtedness to the County government or the Montgomery County Employees Federal Credit Union. The Chief Administrative Officer must consider all forfeitures arising under the elected officials' plan in determining the County elected officials' contributions and must use the forfeitures to reduce the amount of the County elected officials' contributions.

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

* * *

(i) Period for distribution of death benefits of an elected officials' participant who was not receiving benefits.

(1) If an elected officials' participant dies before the payment of the benefits under the elected officials' plan has commenced, the benefits must be distributed within five (5) years after the elected
officials' participant's death) before the end of the calendar year containing the fifth anniversary of the elected official participant's death; however, the five-year rule does not apply if:

(A) Any portion of the elected officials' participant's benefit is payable to, or for the benefit of, a designated beneficiary;

(B) The portion of the benefit to which the designated beneficiary is entitled will be distributed over the life of the beneficiary, or over a period not extending beyond the life expectancy of the beneficiary; and

(C) The distributions commence before the end of the calendar year following the calendar year in which the elected official's participant's death occurred, [no later than one year after the date of the elected officials' participant's death, or such later date which the secretary of the treasury may, under regulations, prescribe.] Also, the five-year rule does not apply if:

(i) The portion of the elected officials' participant's benefit to which the surviving spouse [or domestic partner] is entitled must be distributed over the life of the surviving spouse [or domestic partner], or over a period not extending beyond the life expectancy of the surviving spouse [or domestic partner]; and

(ii) The distributions commence before the later of the end of the calendar year following the calendar year in which the participant died or the end of the calendar year in which [no later than the date on
which] the elected officials' participant would have attained age [seventy and one-half (70½)] 70½.

* * *

(I) Period for distribution of death benefits of a member who was not receiving benefits.

(1) If a member dies before the payment of the benefit has commenced, the benefit must be distributed [within five (5) years after the member's death] before the end of the calendar year containing the fifth anniversary of the member's death; however, the five-year rule does not apply if:

(A) Any portion of the member's benefit is payable to, or for the benefit of, a designated beneficiary;

(B) The portion of the benefit to which the designated beneficiary is entitled will be distributed over the life of the beneficiary, or over a period not extending beyond the life expectancy of the beneficiary; and

(C) The distributions commence before the end of the calendar year following the calendar year in which the elected official's participant's death occurred [no later than one (1) year after the date of the member's death, or such later date which the secretary of the treasury may, under regulations, prescribe].

(2) Also, the five-year rule does not apply if:

(A) The portion of the member's benefit to which the surviving spouse [or domestic partner] is entitled will be distributed over the life of the surviving spouse [or domestic partner],
or over a period not extending beyond the life expectancy of the surviving spouse [or domestic partner]; and

(B) The distributions commence before the later of the end of the calendar year following the calendar year in which the participant died or the end of the calendar year in which [no later than the date on which] the member would have attained age [seventy and one-half (70 1/2)] 70½.

(3) For purposes of this subsection, the life expectancy of a member and the member's spouse [or domestic partner] may be recalculated each year. Also, for purposes of this Subsection, any amount paid to a child must be treated as if it had been paid to the surviving spouse [or domestic partner] of a member if the amount becomes payable to the surviving spouse [or domestic partner] of a member when the child reaches the age of majority (or other designated event permitted under applicable treasury regulations).

33-118. Maximum annual contribution.

(a) Contribution limitations.

(5) For purposes of this Section, the maximum dollar limitation of $30,000 in subsection (a)(1)(A), or $40,000 effective January 1, 2002 and the maximum dollar limitation of $150,000 in subsection [(c)] (b), or $200,000, effective January 1, 2002, must be automatically increased as permitted by United States Treasury Regulations to reflect cost-of-living adjustments.
(b) *Compensation limitation.* For purposes of this retirement savings plan, for plan years beginning on or after [January 1, 1996] January 1, 2002, only the first [$150,000] $200,000 of a participant's regular earnings, or any other amount permitted under Internal Revenue Code Section 401(a)(17), must be taken into account.

* * *

33-120. Distribution of Benefit.

* * *

(h) *Benefit distribution date.*

(1) The Chief Administrative Officer must pay a participant who retires by reason of normal, deferred, or disability retirement the participant's account balances in the retirement savings plan. The distribution must begin as soon as administratively feasible after the participant's retirement and after the date elected by the participant, but no later than April 1 following the later of the calendar year in which the participant attains age [70] 70½, or the calendar year in which the participant's County employment ends.

* * *

(i) *Required commencement of benefit payments.*

(1) The distribution of a participant's or former participant's retirement benefits must begin no later than April 1 [of the calendar year] following the later of:

(A) the calendar year in which the participant attains age [70] 70½; or

(B) the calendar year in which the participant separates from County service.
(2) The distribution may be made as provided in subsection (f).

* * *

(k) Period for distribution of death benefits of a participant who was not receiving benefits.

(1) If a participant dies before payment of benefits under this Section has begun, the benefits must be distributed [within 5 years after the participant's death] before the end of the calendar year containing the fifth anniversary of the participant's death unless:

(A) (i) any portion of the participant's benefit is payable to, or for the benefit of, a designated beneficiary;

(ii) the portion of the benefit to which the designated beneficiary is entitled will be distributed over the life of the beneficiary or over a period not extending beyond the life expectancy of the beneficiary; and

(iii) the distributions begin before the end of the calendar year following the calendar year in which the participant's death occurred, [no later than one year after the date of the participant's death, or a later date permitted under federal regulation]; or

(B) (i) the portion of the participant's benefit to which the surviving spouse [or domestic partner] is entitled will be distributed over the life of the surviving spouse [or domestic partner], or over a period not extending beyond the life expectancy of the surviving spouse [or domestic partner]; and

(ii) the distributions begin before the later of the end of the calendar year following the calendar year in
which the participant died or [no later than the date
on which] the end of the calendar year in which the
participant would have reached age [70] 70½.

(2) For purposes of this Section:

(A) the life expectancy of a participant and the participant's
spouse [or domestic partner] may be recalculated each
year; and

(B) any amount paid to a child is treated as if it had been paid
to the participant's surviving spouse [or domestic partner]
if the amount is payable to the surviving spouse [or
domestic partner] before the child reaches the age of
majority or other designated event permitted under Federal
regulation.

Sec. 2. Sections 33-39, 33-40, 33-41, and 33-44 are amended as follows:

33-39. Member contributions and credited interest.

(a) Member contributions. Each member of the retirement system must
contribute a portion of the member’s regular earnings through regular
payroll deductions.

*   *   *

(4) Member contributions to the guaranteed retirement income plan.

(A) A member in the guaranteed retirement income plan must
contribute 4 percent of regular earnings less than or equal
to the Social Security wage base and 8 percent of regular
earnings that exceed the Social Security 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) member
contributions to the guaranteed retirement income plan. A member is always vested in the member’s contributions.

(C) When a member rejoins County service after military service that qualifies under Section [33-41(p)] 33-41(q) as credited service, the County must credit the member with the amount equal to the amount that the member would have contributed if the member had worked for the County during the period of military service. Contribution credits for the period of military service must be based on the regular earnings the member would have earned during the period of military service. If the regular earnings are not reasonably ascertainable, the credit must be based on the member’s regular earnings during a period immediately preceding the military service. The averaging period is 12 months, or the full length of the member’s County service, whichever is shorter. The member will not receive any retroactive credited interest on the contribution credits.

* * *

33-40. Employer contributions.

* * *

(e) Guaranteed retirement income plan.

* * *

(2) When a member rejoins County service after military service that qualifies under Section [33-41(p)] 33-41(q) as credited service, the County must credit the member the amount that the County would have credited the member if the member worked for the County during the military service. The credits must be based on
the regular earnings the member would have earned during the military service. If the regular earnings are not reasonably ascertainable, the County contribution credit must be based on the member's regular earnings during a period immediately preceding military service. The averaging period is 12 months, or the full length of the member's County service, whichever is shorter. The member must not receive any retroactive credited interest on the County contribution credits.

33-41. Credited Service.

* * * *

[(p)] (q) For the guaranteed retirement income plan, subsections (a)-(o) do not apply and credited service must be determined only under this subsection.

* * * *

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

* * * *

(i) *Period for distribution of death benefits of a retired elected officials' participant who was receiving benefits.* If the distribution to a retired elected officials' participant has commenced in accordance with the second sentence of subsection [(33-44(g))](33-44(h)) and the elected officials' participant dies before the elected officials' participant's entire benefit has been distributed to that elected official's participant, the remaining part of such benefit must be distributed at least as rapidly as under the method of distribution in effect as of the date of the retired elected officials' participant's death.

(j) *Period for distribution of death benefits of an elected officials' participant who was not receiving benefits.*
(2) For purposes of subsections (f), [(g)], (h), [and] (i), and (j), the life expectancy of an elected officials' participant and the elected officials' participant's spouse [or domestic partner] may be recalculated each year. Also, for purposes of subsections (f), [(g)], (h), [and] (i), and (j), any amount paid to a child must be treated as if it had been paid to the surviving spouse [or domestic partner] of an elected officials' participant if the amount becomes payable to the surviving spouse [or domestic partner] of an elected officials' participant when the child reaches the age of majority (or other designated event permitted under applicable Treasury Regulations).

* * *

(l) Period for distribution of death benefits of a retired member who was receiving benefits. If the distribution to a retired member has commenced in accordance with the second sentence of Subsection [33-44(j)] 33-44(k) and the member dies before the member's entire benefit has been distributed to the member, the remaining part of such benefit must be distributed at least as rapidly as under the method of distribution in effect as of the date of the retired member's death.

* * *

Sec. 3. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect as follows:

(a) the amendments to Sections 33-37, 33-44 and 33-120 in Section 1 are effective on the date on which this Act becomes law;
(b) the amendments to Sections 33-35 and 33-118 in Section 1 are effective on January 1, 2002;
(c) the amendments to Section 33-40 in Section 1 are effective on November 30, 2007; and
(d) the amendments in Section 2 are effective on July 1, 2009.

Approved:

[Signature]

Philip M. Andrews, President, County Council  Jan. 29, 2009

Approved:

[Signature]

Isiah Leggett, County Executive  Feb 9, 2009

This is a correct copy of Council action.

[Signature]

Linda M. Lauer, Clerk of the Council  Feb 9, 2009