

**PLEASE BRING YOUR PACKET FROM MAY 8 PUBLIC HEARING**

**MEMORANDUM**

May 8, 2012

TO: Public Safety/Government Operations and Fiscal Policy Committees

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Expedited Bill 18-12, Personnel – Disability Retirement – Eligibility and Benefits - Amendments

Expedited Bill 18-12, Personnel – Disability Retirement – Eligibility and Benefits - Amendments, sponsored by the Council President at the request of the County Executive, was introduced on May 1, 2012. A public hearing was held on May 8.

Bill 18-12 would:

- Create a catastrophic incapacity service-connected disability retirement benefit for members of Retirement Group F (Police) and employees represented by MCGEO;
- Modify the amount of the benefit for a partial and total incapacity service-connected disability retirement for members of Retirement Group F (Police) and employees represented by MCGEO; and
- Reduce the restrictions on receiving a service-connected disability retirement benefit for members of Retirement Group F (Police) and employees represented by MCGEO who are convicted of a crime.

**Council Options**

The Executive transmitted Bill 18-12 to the Council on April 23 to implement the arbitrator's decision pursuant to the uncodified section of Bill 45-10. **The Bill is not the result of a negotiated Agreement.** The Executive, in his transmittal memo, expressly reserved his legislative authority over the Bill under the County Charter. Since this arbitration was outside of the normal collective bargaining process required by the County collective bargaining laws, the Council does not need to indicate its intent to reject or approve this legislation by May 15. The Council can consider Bill 18-12 in the same manner as other legislation proposed by the Executive. **The Council can enact it, reject it, amend it, or not vote on it. Bill 18-12, if enacted, would amend the provisions of Bill 45-10 enacted last July. If Bill 18-12 is not enacted, the provisions of Bill 45-10 would take effect on July 1, 2012.**

## Public Hearing

Joan Fidler, President of the Maryland Taxpayers League (©42) and Brian McTighe, an attorney specializing in employee benefits (©45-46) opposed the Bill as an expensive repeal of the reforms enacted in Bill 45-10 last year. Marc Zifcak, President of the Fraternal Order of Police Lodge 35 (©43-44) supported the Bill as reasonable concession made by the FOP during collective bargaining that is less expensive than the current one-tier disability retirement system. Former Councilmember Duchy Trachtenberg (©47-48) also sent an email message opposing the Bill.

### Council Staff Recommendations

#### 1. Should the Council increase the minimum amount of a service-connected disability pension to 60% of final salary?

Council staff could not find a local multi-tier disability retirement system with a partial disability pension as high as 60%. Howard and Baltimore Counties are at 50%. Prince George's County is at 55%. The District of Columbia is a different type of system, but a partial disability pension could be as low at 40% of final pay. Anne Arundel County does not have a multi-tier system. Fairfax County takes a different approach – the disability pension is at 66⅔%, but drops for everyone to 60% at normal retirement age. The 52½% of final pay in Bill 45-10 is within the range of most competing jurisdictions. Increasing the partial incapacity minimum to 60% would increase the County's annual contribution by more than \$800,000. It would divert the County's scarce resources to pay for a tax-free disability retirement benefit that would pay an employee more than the income reasonably lost due to injury.

**Council staff recommendation:** do not raise the partial incapacity to 60%.

#### 2. Should the Council create a catastrophic incapacity category at 90% of final pay?

A tax-free total incapacity pension equal to 70% of final pay would replace all of the employee's lost salary. A tax-free catastrophic incapacity pension equal to 90% of final pay would replace more than the employee's normal salary. Therefore, the only reason to provide a catastrophic incapacity pension greater than 70% is to pay an employee an extra benefit greater than the income lost due to the reason the employee is unable to work at any job. *Replacing lost income rarely serves as full and fair compensation for the pain and suffering experienced by an employee who suffers a service-connected injury that results in total or catastrophic incapacity.* A 90% catastrophic incapacity category is an attempt to compensate the employee for this pain and suffering in addition to replacing lost income. This is a dangerous road to start down. The potential cost to provide full and fair compensation for all losses due to a catastrophic injury is enormous if the category and the enhanced benefit each grow over time. It can quickly become unsustainable.

**Council staff recommendation:** do not create a catastrophic incapacity category at 90% of final pay.

### **3. Is the definition of catastrophic incapacity reasonable?**

If the Council decides to create a catastrophic incapacity category, the definition is too broad. Most, but not all of the definition, was copied from the definition of permanent and total disability under the Maryland Worker's Compensation Law. However, the Worker's Compensation Law has a different purpose than the disability retirement system. Worker's compensation is a legislative compromise that authorizes a payment to an injured worker without requiring the worker to prove that the injury was due to the negligence of an employer or a co-worker. In return for the expanded pool of recipients, each injured worker is strictly limited by statute to the amount of the compensation awarded for pain and suffering. However, worker's compensation is designed to compensate an injured worker for pain and suffering in addition to lost income and medical expenses. Therefore, an enhanced benefit for an amputation or paralysis is logical. It does not fit in a system designed to only replace lost income.

Functional deafness is not listed in the Worker's Compensation Law used as a model for the catastrophic incapacity definition for a good reason. A worker who suffers an injury causing functional deafness is normally able to perform some type of work. It does not belong.

**Council staff recommendation:** if the Council wants to create a catastrophic incapacity category, we recommend dropping functional deafness and using the definition of *dismemberment or paralysis* in the Baltimore County law shown at ©59 of the public hearing packet. We would also recommend reducing the minimum award to 75% of final pay as is done in Baltimore County.

### **4. Should the Council amend the provision that prohibits a person from receiving a service-connected disability retirement pension who commits an offense that would justify termination for misconduct?**

Bill 45-10 prohibits an award of a service-connected disability retirement pension to an employee who has "committed an offense that would justify termination for misconduct." The arbitrator noted that neither party could adequately explain the policy behind this provision. This confusion may be due to the arbitrator's misconception of the purpose of the disability retirement system. It is an enhanced retirement benefit to replace the income the employee is going to lose because of a service-connected disabling injury or illness. If an employee has committed an offense that would justify termination for misconduct, then that employee was not going to continue to work in his or her current position even if the employee did not become disabled. Therefore, the employee lost no income due to disability.<sup>1</sup> The employee may still be eligible for a normal or early retirement pension because that is based upon years of service.

Bill 18-12 would turn this provision on its head by authorizing the County to stop paying a service-connected disability retirement pension for those months that employee is incarcerated. This provision was taken from a "bad boy" provision in the Social Security regulations requiring the nonpayment of benefits to prisoners.<sup>2</sup> This is a punitive provision that has nothing to do with lost income due to disability. It would apply to current and future disability retirees and is not

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<sup>1</sup> The Inspector General found several cases where a police officer applied for and received disability retirement immediately after pleading guilty to a felony.

<sup>2</sup> See, [https://www.socialsecurity.gov/OP\\_Home/cfr20/404/404-0468.htm](https://www.socialsecurity.gov/OP_Home/cfr20/404/404-0468.htm) .

related to misconduct on the job. If the Council decides to enact this provision, the County Attorney's Office opined that it cannot be retroactively applied to current retirees and recommended that the this provision apply only to a retiree who applies for disability retirement on or after the effective date of the Act. See ©40-41.

**Council staff recommendation:** do not amend the provision established in Bill 45-10.

### Overall Recommendation

Bill 18-12 does not improve any of the provisions of Bill 45-10. Bill 18-12 is costly, out of step with other competing local jurisdictions, and in many areas illogical. The best argument for enacting Bill 18-12 is that it resulted out of a collective bargaining process. However, it is not the result of an agreement between the Executive and a County employee union. It is the result of a decision by one private arbitrator. **Council staff recommendation:** do not enact Bill 18-12.

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Expedited Bill No. 18-12  
Concerning: Personnel - Disability Retirement – Eligibility and Benefits– Amendments  
Revised: April 27, 2012 Draft No. 3  
Introduced: May 1, 2012  
Expires: November 1, 2013  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## 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) create a catastrophic incapacity service-connected disability retirement benefit for certain employees;
- (2) modify the amount of the benefit for a partial and total incapacity service-connected disability retirement for certain employees;
- (3) reduce the restrictions on receiving a service-connected disability retirement benefit for certain employees who are convicted of a crime; and
- (4) generally amend County law regarding disability retirement.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-43

<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:*



28 an offense punishable by death or by imprisonment for a term exceeding  
 29 one year.

30 \* \* \*

31 Vocational rehabilitation program means a court-approved program  
 32 that a prisoner is actively and satisfactorily participating in and is  
 33 expected to result in the prisoner being able to do substantial gainful  
 34 activity upon release and within a reasonable time.

35 \* \* \*

36 (f) *Service-connected disability retirement.*

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

39 (A) the member is catastrophically, totally, or partially  
 40 incapacitated as the natural and proximate result of an  
 41 accident occurring, or an occupational disease incurred or  
 42 condition aggravated, while in the actual performance of  
 43 duty;

44 \* \* \*

45 (E) the member, except a member of Group F, E or H, has not  
 46 committed an offense that would justify termination for  
 47 misconduct. A member of Group F, E, or H must not be  
 48 paid a monthly benefit for any month on or after July 1,  
 49 2012 if the member is confined in a correctional facility for  
 50 conviction of a felony during any part of that month unless  
 51 the member is participating in a vocational rehabilitation  
 52 program. Confinement in a correctional facility continues  
 53 as long as the individual is under a sentence of  
 54 confinement and has not been released due to parole or

55 pardon. An individual is considered confined even if he or  
 56 she is temporarily or intermittently outside of the facility  
 57 on work release, attending school, hospitalized, or similar  
 58 program.

59  
 60 \* \* \*

61 (i) *Amount of pension at service-connected disability retirement.*

62 (1) Catastrophic Incapacity. The County must pay a Group F, E, or  
 63 H member who retires on a service-connected disability  
 64 retirement with catastrophic incapacity an annual pension  
 65 calculated under Section 33-42(b)(1), except that:

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

68 (B) the pension must be at least 90% of the member's final  
 69 earnings.

70 ~~[(1)]~~ (2) Total incapacity. The County must pay a member who retires  
 71 on service-connected disability retirement with total incapacity an  
 72 annual pension calculated under Section 33-42(b)(1), except that:

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

75 (B) the pension must be at least 70% of the member's final  
 76 earnings, except for a Group F, E, or H member. The  
 77 pension must be at least 66 $\frac{2}{3}$  % of the member's final  
 78 earnings for a Group F, E, or H member.

79 ~~[(2)]~~ (3) If the benefit calculation under Section 33-42(b)(1) is greater  
 80 than any other benefit under this subsection, the County must pay  
 81 a Group G member who retires on a service-connected disability

82 between June 26, 2002, and June 30, 2007, a pension based on  
 83 the member's average final earnings if that member's average  
 84 final earnings result in a greater benefit than final earnings.

85 [(3)] (4) The Disability Review Panel must recommend a finding of  
 86 catastrophic incapacity or total incapacity for a Group F, E, or H  
 87 member or total incapacity for a member of any other Group if  
 88 the member's service-connected disability is severe enough to  
 89 meet the Social Security Administration's requirements for  
 90 disability, meaning that the member is unable to engage in any  
 91 substantial gainful activity because of a medically determinable  
 92 physical or mental impairment that can be expected to end in  
 93 death or has lasted, or can be expected to last, for a continuous  
 94 period of at least 12 months. The member does not have to  
 95 qualify for Social Security disability benefits to be eligible for  
 96 benefits under this subsection.

97 \* \* \*

98 (D) If a member has already been granted disability benefits by  
 99 the Social Security Administration when the member  
 100 applies for a service-connected disability pension, the  
 101 County must pay the member a pension of at least 66 $\frac{2}{3}$  %  
 102 for a Group F, E or H member or 70% for a member of  
 103 any other Group if the Disability Review Panel finds that  
 104 the award of disability benefits from the Social Security  
 105 Administration was based primarily on the same medically  
 106 determinable physical or mental impairment on which the  
 107 Disability Review Panel awards the member a service-  
 108 connected disability benefit.

109 [(4)] (5) The County must pay a member who retires with partial  
110 incapacity on a service-connected disability retirement an annual  
111 pension calculated under Section 33-42(b)(1), but the benefit  
112 must be at least 60 % of final earnings for a Group F, E, or H  
113 member or at least 52½ % of final earnings for a member of any  
114 other Group, if the Chief Administrative Officer finds, based on a  
115 recommendation from the Disability Review Panel, that:

- 116 (A) the member meets the standards to receive a service-  
117 connected disability benefit under subsection (f); and
- 118 (B) the member is not eligible to receive a benefit for  
119 catastrophic or total incapacity under subsection [(i)(3)]  
120 (i)(1) or subsection (i)(2).

121 [(5)] (6) (A) The County must increase the partial incapacity service  
122 connected disability pension benefit of a member calculated  
123 under Section 33-42(b)(1), from a benefit of at least [52½] 60 %  
124 to a benefit of at least 66⅔ % for a Group F, E, or H member or  
125 from at least 52½ to at least 70% for a member of any other  
126 Group , if:

127 \* \* \*

128 [(6)] (7)

129 \* \* \*

130 [(7)] (8) The County must pay a Group F member who retires on a  
131 service-connected disability retirement on or after June 26, 2002,  
132 an annual pension calculated under subsection (i)(1), [or]  
133 subsection (i)(2), or subsection [(i)(4)] (i)(5). However, if a  
134 greater benefit results from the calculation under Section 33  
135 42(b)(1), the County must pay a Group F member a pension

136 based on the member's average final earnings if that member's  
137 average final earnings result in a greater benefit than final  
138 earnings.

139 \* \* \*

140 **33-128. Definitions.**

141 In this Division, the following words and phrases have the following  
142 meanings:

143 \* \* \*

144 Catastrophic Incapacity means a member's inability to engage in any  
145 substantial gainful activity because of a permanent loss or loss of use of:

- 146 (1) both arms;
- 147 (2) both eyes;
- 148 (3) both feet;
- 149 (4) both hands;
- 150 (5) both legs;
- 151 (6) functional deafness; or
- 152 (7) a combination of any two of the following body parts:
  - 153 (A) arm;
  - 154 (B) eye;
  - 155 (C) foot;
  - 156 (D) hand; or
  - 157 (E) leg.

158 \* \* \*

159 Correctional facility means a jail, prison, or other penal institution  
160 under the control and jurisdiction of the agency in charge of the penal  
161 system or in which convicted criminals can be incarcerated.

162 \* \* \*

163 Felony means an offense that is classified as a felony under applicable  
164 law or, in a jurisdiction which does not classify any crime as a felony, is  
165 an offense punishable by death or by imprisonment for a term exceeding  
166 one year.

167 \* \* \*

168 Represented employee means an employee who occupies a position in a  
169 bargaining unit represented by an employee organization certified under  
170 Section 33-106.

171 \* \* \*

172 Vocational rehabilitation program means a court-approved program  
173 that a prisoner is actively and satisfactorily participating in and is  
174 expected to result in the prisoner being able to do substantial gainful  
175 activity upon release and within a reasonable time.

176 **33-129. Disability benefits.**

177 \* \* \*

178 (d) Initial service-connected disability benefits. An employee may receive  
179 disability benefits for a period of 36 consecutive months, subject to this  
180 plan, if the administrator finds that:

181 \* \* \*

182 (E) An employee, except a represented employee, who has  
183 committed an offense that would justify termination for  
184 misconduct must not receive service-connected disability  
185 benefits. A represented employee must not be paid a  
186 monthly benefit for any month on or after July 1, 2012 if  
187 the represented employee is confined in a correctional  
188 facility for conviction of a felony during any part of that  
189 month unless the represented employee is participating in a

190 vocational rehabilitation program. Confinement in a  
 191 correctional facility continues as long as the individual is  
 192 under a sentence of confinement and has not been released  
 193 due to parole or pardon. An individual is considered  
 194 confined even if he or she is temporarily or intermittently  
 195 outside of the facility on work release, attending school,  
 196 hospitalized, or similar program.

197 \* \* \*

198 (f) The Disability Review Panel must recommend a finding of  
 199 catastrophic incapacity or total incapacity for a represented employee,  
 200 or total incapacity for any other employee, if the member's service-  
 201 connected disability is severe enough to meet the Social Security  
 202 Administration's requirements for disability, meaning that the member  
 203 is unable to engage in any substantial gainful activity because of a  
 204 medically determinable physical or mental impairment that can be  
 205 expected to end in death or has lasted, or can be expected to last, for a  
 206 continuous period of at least 12 months. The member does not have  
 207 to qualify for Social Security disability benefits to be eligible for  
 208 benefits under this subsection.

209 (1) The Panel must base its determination of whether an individual  
 210 is able to engage in any substantial gainful activity on an  
 211 assessment from an independent vocational expert that  
 212 considers the member's age, education, work experience,  
 213 transferable skills, and residual functional capacity.

214 (2) The Panel must determine the member's residual functional  
 215 capacity and provide this information to the independent  
 216 vocational expert.

217 (3) A Panel determination that the member's service-connected  
 218 disability is severe enough to be considered a disability by the  
 219 Social Security Administration is not a recommendation that  
 220 the member is entitled to, or should be granted, a disability  
 221 benefit by the Social Security Administration.

222 (4) If a member has already been granted disability benefits by the  
 223 Social Security Administration when the member applies for a  
 224 service-connected disability pension, the County must give the  
 225 member a total incapacity benefit if the Disability Review Panel  
 226 finds that the award of disability benefits from the Social  
 227 Security Administration was based primarily on the same  
 228 medically determinable physical or mental impairment on  
 229 which the Disability Review Panel awards the member a  
 230 service-connected disability benefit.

231 (g) The Disability Review Panel must recommend a finding of partial  
 232 incapacity if:

233 (1) the member meets the standards to receive a service-connected  
 234 disability benefit; and

235 (2) the member is not eligible to receive a benefit for catastrophic  
 236 or total incapacity under subsection (f).

237 \* \* \*

238 **33-131. Amount of benefits.**

239 (a) *Service-connected disability.*

240 (1) Catastrophic Incapacity. The County must pay a represented  
 241 employee who retires on a service-connected disability retirement  
 242 with catastrophic incapacity an annual pension equal to 90% of  
 243 the represented employee's final earnings, less any reductions

- 244 provided in Section 33-134.
- 245 (2) Total Incapacity. The annual amount of service-connected  
 246 disability payments payable to an employee, except a represented  
 247 employee, for total incapacity equals 70% of the employee's final  
 248 earnings, less any reductions provided in section 33-134. The  
 249 County must pay a represented employee who retires on a  
 250 service-connected disability retirement with total incapacity an  
 251 annual pension equal to 66⅔% of the represented employee's  
 252 final earnings, less any reductions provided in Section 33-134.
- 253 (3) Partial Incapacity. The annual amount of service-connected  
 254 disability payments payable to an employee, except a represented  
 255 employee, for partial incapacity equals 52½ % of the employee's  
 256 final earnings. The County must pay a represented employee  
 257 who retires on a service-connected disability retirement with  
 258 partial incapacity an annual pension equal to 60% of the  
 259 represented employee's final earnings.

260 \* \* \*

261 **Sec. 2. Expedited Effective Date.**

262 The Council declares that this Act is necessary for the immediate protection of  
 263 the public interest. The amendments to Chapter 33 made by Section 1 of this Act  
 264 amend the provisions of Chapter 33 as amended by 2011 Laws of Montgomery  
 265 County, Ch. 13, and take effect on July 1, 2012. The amendments to County Code  
 266 Chapter 33 made by Section 1 of this Act apply to a service-connected disability  
 267 retirement that arises out of a disabling accident, injury, or occupational disease  
 268 which occurs on or after July 1, 2012.

LEGISLATIVE REQUEST REPORT  
Expedited Bill 18-12

*Personnel – Disability Retirement – Eligibility and Benefits - Amendments*

- DESCRIPTION:** This Bill amends Chapter 33 to implement the March 29, 2012, Service-Connected Disability Retirement Interest Arbitration award, as provided for in Bill 45-10.
- PROBLEM:** Amend Chapter 33 to implement the March 29, 2012, Service-Connected Disability Retirement Interest Arbitration award.
- GOALS AND OBJECTIVES:** Amend Chapter 33 to implement the March 29, 2012, Service-Connected Disability Retirement Interest Arbitration award.
- COORDINATION:** Office of the County Attorney and Police Department.
- FISCAL IMPACT:** Office of Management and Budget.
- ECONOMIC IMPACT:** Office of Management and Budget.
- EVALUATION:** Subject to the general oversight of the County Executive and the County Council. The Office of the County Attorney will evaluate for form and legality.
- EXPERIENCE ELSEWHERE:** Unknown
- SOURCES OF INFORMATION:** Silvia C. Kinch  
Associate County Attorney  
Office of the County Attorney
- Joseph Adler  
Director  
Office of Human Resources
- APPLICATION WITHIN MUNICIPALITIES:** None.
- PENALTIES:** Not applicable.



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

April 18, 2012

TO: Roger Berliner, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Legislation to Implement the March 29, 2012, Service-Connected Disability Retirement Interest Arbitration Award as Provided in Bill 45-10

As provided in Bill 45-10, attached please find legislation that would implement the March 29, 2012, Service-Connected Disability Retirement Interest Arbitration Award. Council staff was provided with a copy of the Arbitrator's decision on March 29, 2012. As you know, the Arbitrator selected the Fraternal Order of Police, Lodge 35's Last Best Final Offer. By transmitting this legislation I am not foregoing any legislative authority I may have under the County Charter.

As part of Bill 45-10, enacted June 28, 2011, and effective July 1, 2012, the County Council amended Chapter 33 of the County Code as it relates to service-connected disability retirement, but authorized separate negotiations with the certified employee representative for the police bargaining unit and the certified representative for the OPT and SLT bargaining units. The Fraternal Order of Police, Lodge 35, engaged in bargaining, negotiations and arbitration. The Municipal and County Government Employee's Association, UFCW Local 1994 also participated in bargaining, but chose not to actively participate in arbitration and instead to simply adopt the Arbitrator's award. The parties were unable to reach agreement and the matter proceeded to arbitration on March 22, 2012. The Arbitrator selected the Fraternal Order of Police, Lodge 35's Last Best Final Offer. In accordance with Section 4(d) of Bill 45-10, the Arbitrator's award was submitted to Council on March 29, 2012. The proposed expedited legislation incorporates the Arbitrator's award.

Attachments:

- A. Expedited Legislation
- B. Legislative Request Report
- C. Fiscal Impact Statement



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

April 26, 2012

TO: Roger Berliner, President  
Montgomery County Council

FROM: Isiah Leggett   
County Executive

SUBJECT: MCGEO's Inclusion in Service-Connected Disability Retirement Arbitration Award

As I mentioned in my prior memorandum to you dated April 18, 2012, the Municipal County Government Employee's Organization, UFCW Local 1994 ("MCGEO"), and the Fraternal Order of Police, Lodge 35 ("FOP") participated in bargaining with my representative over service-connected disability retirement as required by Section 4 of Bill 45-10, which was enacted by Council on July 11, 2011. MCGEO and the County agreed that, although MCGEO would not actively participate in the subsequent arbitration, it would be a party to that arbitration and any award would apply to MCGEO just as it applied to the FOP. Arbitration occurred on March 22, 2012, between the FOP and the County, with a representative from MCGEO present during the hearing. As you are aware, the Arbitrator selected FOP's Last Best Final Offer. That award also applies to MCGEO. In accordance with Section 4(d) of Bill 45-10, the Arbitrator's award was submitted to Council on March 29, 2012, and the County Executive transmitted proposed legislation to incorporate the Arbitrator's award on April 18, 2012.

IL:kb



ROCKVILLE, MARYLAND

MEMORANDUM

April 16, 2012

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance *JAB*

SUBJECT: Bill xx-12 - Service Connected Disability Retirement

Attached please find the fiscal and economic impact statements for legislation that will implement the March 29, 2012 arbitration award regarding service-connected disability retirement for members of the police bargaining unit.

c: Kathleen Boucher, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Joseph Adler, Director, Office of Human Resources  
Alex Espinosa, Office of Management and Budget  
Naeem Mia, Office of Management and Budget

**Fiscal Impact Statement**  
**Bill, Service Connected Disability Retirement**

1. Legislative Summary

As provided in Bill 45-10, the subject legislation implements the Arbitrator's decision in the March 29, 2012 service-connected disability retirement arbitration award to the Fraternal Order of Police (FOP), Lodge 35. County Council staff was provided with a copy of the arbitration award on March 29. The bill establishes a multi-tiered disability retirement system under certain criteria of either the greater of the accrued benefit or 60 percent, 66 2/3 percent, or 90 percent of final earnings, depending on the level of the disability. Functional hearing loss is included as one of the conditions enabling a member to be eligible for a disability retirement benefit of 90 percent of final earnings. The legislation covers employees in Groups A, E, F, and H of the Employees Retirement System.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Mercer, the County's retirement plan actuary, estimates a minimum annual cost of \$852,000 relative to the proposed FY13 budget to implement the arbitration award. Mercer is unable to make an appropriate assumption regarding the increased incidence of functional hearing loss that would entitle a member to a disability benefit of 90 percent of final earnings, but did estimate that annual costs could increase by an additional \$73,000 to \$91,000 for each 1 percent of disablements who receive the 90 percent benefit. According to Mercer, this 1 percent assumption does not represent a best estimate of the impact; the actual impact could be much higher, lower, or even negligible. The attachments include more detailed cost estimates by plan and actuarial assumptions.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The minimum cost over six years is \$5.112 million. There could be an additional six-year cost between \$438,000 and \$546,000 for each additional 1 percent of disablements who receive the 90 percent benefit level.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

See attached actuarial analysis.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

6. An estimate of the staff time needed to implement the bill.

The bill does not affect the amount of staff time engaged in the disability retirement administration system.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

8. An estimate of costs when an additional appropriation is needed.

An additional appropriation of at least \$852,000 relative to the FY13 proposed budget is needed to implement the bill.

9. A description of any variable that could affect revenue and cost estimates.

See attached actuarial analysis.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

See #2 and #3 above.

11. If a bill is likely to have no fiscal impact, why that is the case.

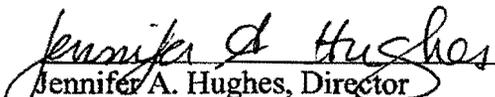
Not applicable.

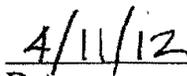
12. Other fiscal impacts or comments.

None.

13. The following contributed to and concurred with this analysis:

Joseph Adler, Director, Office of Human Resources  
Alex Espinosa, PSP Manager, Office of Management and Budget

  
Jennifer A. Hughes, Director  
Office of Management and Budget

  
Date

**Economic Impact Statement**  
Council Bill XX-12 (amendment to Bill 45-10)  
-Service Connected Disability Retirement

Background:

As provided in Bill 45-10, the subject legislation implements the Arbitrator's decision in the March 29, 2012 service-connected disability retirement arbitration award to the Fraternal Order of Police (FOP), Lodge 35. County Council staff was provided with a copy of the arbitration award on March 29. The bill establishes a multi-tiered disability retirement system under certain criteria of either the greater of the accrued benefit or 60 percent, 66 2/3 percent, or 90 percent of final earnings, depending on the level of the disability. Functional hearing loss is included as one of the conditions enabling a member to be eligible for a disability retirement benefit of 90 percent of final earnings. The legislation covers employees in Groups A, E, F, and H of the Employees Retirement System.

1. The sources of information, assumptions, and methodologies used.

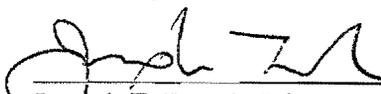
The Department of Finance relied on the analysis performed by Mercer, the retirement plan's actuary. Mercer indicated the minimum annual cost of this legislation (to implement the arbitration award at \$852,000 and a minimum cost over six years of \$5.112 million. There could be an additional six-year cost between \$438,000 and \$546,000 for each additional 1 percent of disablements who receive the 90 percent benefit level.

2. A description of any variable that could affect the economic impact estimates.  
Not applicable. See #3 below.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.  
The annual expenditure impact of the proposed legislation is not significant enough to cause a quantifiable impact on the County's employment, spending, saving, or other relevant economic indicators.

4. If a Bill is likely to have no economic impact, why is that the case?  
See #3 above.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance.

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

14-11-12  
\_\_\_\_\_  
Date



Douglas Rowe, FSA, EA, MAAA  
Principal

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**Via Electronic Mail**

Mr. Joseph Adler  
Director of Office of Human Resources  
Montgomery County Government  
101 Monroe Street, Seventh Floor  
Rockville, MD 20850-2589

April 4, 2012

**Subject:** Proposal on Disability Provisions for FOP – *Updated From Our March 21, 2012 Letter to Reflect “Functional Hearing Loss” Provision*

Dear Joe:

The purpose of this letter is to address the inclusion of “functional hearing loss” among the “*certain criteria*” described later in this letter for which members would be eligible for a benefit equal to 90% of pay at disability. This letter only addresses the impact of this provision on the Montgomery County Employees’ Retirement System (ERS) and only for Group F.

As we discussed, we have no way of determining what would be an appropriate assumption for the increased incidence of 90% of pay benefits with this new provision in the absence of further information about how the provision would be administered. One explanation says “Functional hearing loss involves a psychological or emotional problem, rather than physical damage to the hearing pathway. Individuals with this type of hearing loss do not seem to hear or respond; yet, in reality, they have normal hearing.” We are not experts in hearing or disability administration or determination, but this explanation seems to us to allow a broad range of possible outcomes for employees to receive the proposed 90% benefit level.

As we agreed, to illustrate the cost impact of a 1% increase in the incidence of the 90% of pay benefits and to provide a range of results, we have modified the results from our letter dated March 21, 2012 to reflect two additional scenarios, which increase the assumed rate of service-connected disabilities that meet “*certain criteria*” by 1% and decrease the assumed rate of the other service-related disabilities per the following scenarios:

- **Scenario 1** – decreases the assumed rate of disabilities qualifying for the 66 2/3% benefit by 1%. No changes to the assumed rate of disabilities qualifying for the 60% benefit
- **Scenario 2** – decreases the assumed rate of disabilities qualifying for the 60% benefit by 1%. No changes to the assumed rate of disabilities qualifying for the 66 2/3% benefit

The changes reflected in this letter are based on our understanding of the set of proposed plan changes you provided.

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The estimates are based on the July 1, 2011 actuarial valuation data. The data, actuarial assumptions and methods, and plan provisions are the same as those used in our July 1, 2011 actuarial valuation report unless otherwise noted. Actual costs will depend on the actual experience of the plan. By cost, we mean the change in Normal Cost and amortization payment according to the County's policy. The benefit changes are assumed to apply only to active ERS members, not to retirees or terminated vested members, with the exception of the retroactivity of the 90% benefit level to July 1, 2004.

As requested, we have estimated the impact of the plan changes on the FY2013 County contributions. We have compared the impact against the budgeted FY2013 contributions provided in the July 1, 2011 actuarial valuation report, which reflect the disability plan provisions effective July 1, 2012. Reflecting the impact of these proposals in the FY2013 contribution would be a year earlier than the most common recognition of past plan improvements by the County, which often would have been reflected in the valuation following the change and funded in the fiscal year beginning a year after the valuation date. However, reflecting this improvement at the same time, i.e. in the FY2013 contribution, as the other disability changes seems appropriate.

### **Description of Proposed Plan Provision Changes**

Following is the description of the proposed plan changes you provided.

- The benefit amount for a group F member who applies for service-connected disability on or after July 1, 2012 and doesn't satisfy the "*certain criteria*" outlined below is:
  - For a disabled employee "determined not able to perform any substantial gainful employment, as defined in Social Security's standards," but who would not satisfy the "*certain criteria*" outlined below: the greater of the accrued benefit or 66 2/3% of final earnings
  - For other disabilities that do not satisfy the "*certain criteria*" outlined below: the greater of the accrued benefit or 60% of final earnings
  
- The benefit amount for a group F member who applies for service-connected disability on or after July 1, 2004 and retires on a service-connected disability retirement is:
  - For disability meeting *certain criteria* (para or quadriplegia, loss of limb, functional hearing loss, etc. as specified in the Final Offer of Fraternal Order of Police, Montgomery County Lodge 35, dated March 21, 2012): the greater of the accrued benefit or 90% of final earnings

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- The non-service-connected disability retirement benefit amount and other plan provisions would remain the same as described in the July 1, 2011 actuarial valuation report.

### Actuarial Assumptions

Except as noted below, all the assumptions used in this analysis are the same as those used in the July 1, 2011 valuation.

Assumptions for Service-connected disability	March 21, 2012 estimates	Scenario 1	Scenario 2
Receiving 60% benefit	65.0%	65.0%	64.0%
Receiving 66 2/3% benefit	26.2%	25.2%	26.2%
Receiving 90% benefit	1.8%	2.8%	2.8%
Receiving 90% benefit	1.8%	2.8%	2.8%
Total	93.0%	93.0%	93.0%

- We understand that there is one current disabled retiree who would qualify for the 90% minimum benefit. As discussed over the phone with the County, the retiree was receiving \$3,877.16 per month at retirement in 2007 and is currently age 46. Based on the 2007 valuation data, that member has been included in the contribution impact for union members shown below. Please note that we did not receive information for any current retirees that would be eligible for the "functional hearing loss" benefit as a result of the plan change. If there are any, it could increase the cost impact substantially and a revision to this letter may be required. Please let us know if you're aware of any.
- We assumed that the Social Security standard for suspending benefits during incarceration would not result in any reduction in contributions until after such suspensions occurred. We did not attempt to quantify the impact on any future contributions due to this provision.
- All other assumptions are the same as those under the Union's LBFO as described in our March 21, 2012 letter.

### Contribution Impact

The estimated contribution impact of this proposal based on the results from the 2011 valuation and budgeted FY2013 contribution is shown below.

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The amounts shown below are rounded to the nearest thousand.

**Scenario 1:**

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$5,566,000	\$87,000	\$5,653,000
Normal Cost	\$277,000	\$3,000	\$281,000
FY2013 Contribution	\$652,000	\$9,000	\$661,000

\*Numbers may not add due to rounding.

Since the FY2013 contribution was estimated to increase \$614,000 in the March 21, 2012 letter, each 1% of disablements who receive the 90% benefit instead of the 66 2/3% benefit increases the County's contribution by \$47,000 (\$661,000 - \$614,000).

**Scenario 2:**

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$5,657,000	\$90,000	\$5,747,000
Normal Cost	\$282,000	\$3,000	\$286,000
FY2013 Contribution	\$663,000	\$9,000	\$672,000

\*Numbers may not add due to rounding.

Since the FY2013 contribution was estimated to increase \$614,000 in the March 21, 2012 letter, each 1% of disablements who receive the 90% benefit instead of the 60% benefit increases the County's contribution by \$58,000 (\$672,000 - \$614,000).

Note that the portion of the contribution due to the change in Actuarial Accrued Liability is amortized as a level percentage of assumed payroll over 20 years.

Please also note that the results shown above reflect the impact on the FY2013 contribution. If these changes were adopted, they may first be reflected in the 2012 actuarial valuation report and FY2014 budgeted contribution, or even later (depending on when the changes are adopted and when the County decides to reflect them).

**Additional Considerations**

With the changes to disability benefits for certain service-connected disablements, it is possible that the frequency of disability claims could change. This could change the impact on County contribution amounts shown in this letter.

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Additionally, in the short term, the more generous COLAs available for service retirement benefits for service prior to June 30, 2011, as opposed to disability retirements after June 30, 2011, could result in a decrease to the number of disability claims in the near future.

We did not attempt to quantify the impact of either of the above.

Impacts on any amounts reflecting the most recent GASB 27 exposure draft have not been incorporated into the results in this letter. This would require additional calculations beyond the scope of this letter.

### **Important Notices**

Mercer has prepared this letter exclusively for Montgomery County; Mercer is not responsible for reliance upon this letter by any other party. Subject to this limitation, Montgomery County may direct that this letter be provided to its auditors.

The only purpose of this letter is to provide analyses of the specified changes on annual contribution amounts in order to help the County with collective bargaining. This letter may not be used for any other purpose; Mercer is not responsible for the consequences of any unauthorized use.

Decisions about benefit changes, granting new benefits, investment policy, funding policy, benefit security and/or benefit-related issues should not be made on the basis of this letter, but only after careful consideration of alternative economic, financial, demographic and societal factors, including financial scenarios that assume future sustained investment losses.

This letter only represents a snapshot of a Plan's estimated financial condition at a particular point in time; it does not predict the Plan's future financial condition or its ability to pay benefits in the future and does not provide any guarantee of future financial soundness of the Plan. Over time, a plan's total cost will depend on a number of factors, including the amount of benefits the plan pays, the number of people paid benefits, the period of time over which benefits are paid, plan expenses and the amount earned on any assets invested to pay benefits. These amounts and other variables are uncertain and unknowable at the date of the analysis.

Because modeling all aspects of a situation is not possible or practical, we may use summary information, estimates, or simplifications of calculations to facilitate the modeling of future events in an efficient and cost-effective manner. We may also exclude factors or data that are immaterial

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in our judgment. Use of such simplifying techniques does not, in our judgment, affect the reasonableness of analysis results for the plan.

To prepare this letter, actuarial assumptions, as described herein and in the July 1, 2011 actuarial valuation report, are used in a forward looking financial and demographic model to select a single scenario from a wide range of possibilities; the results based on that single scenario are included in this letter. The future is uncertain and the plan's actual experience will differ from those assumptions; these differences may be significant or material because these results are very sensitive to the assumptions made and, in some cases, to the interaction between the assumptions.

Different assumptions or scenarios within the range of possibilities may also be reasonable and results based on those assumptions would be different. As a result of the uncertainty inherent in a forward looking projection over a very long period of time, no one projection is uniquely "correct" and many alternative projections of the future could also be regarded as reasonable. Two different actuaries could, quite reasonably, arrive at different results based on the same data and different views of the future. Due to the limited scope of Mercer's assignment, Mercer will not perform or present an analysis of the potential range of future possibilities and scenarios when requested. At the County's request, Mercer is available to determine the cost of a range of scenarios.

Actuarial assumptions may also be changed from one valuation to the next because of changes in mandated requirements, plan experience, changes in expectations about the future and other factors. A change in assumptions is not an indication that prior assumptions were unreasonable when made.

The calculation of actuarial liabilities for valuation purposes is based on a current estimate of future benefit payments. The calculation includes a computation of the "present value" of those estimated future benefit payments using an assumed discount rate; the higher the discount rate assumption, the lower the estimated liability will be. For purposes of estimating the liabilities (future and accrued) in this letter, the County selected an assumption based on the expected long term rate of return on plan investments. Using a lower discount rate assumption, such as a rate based on long-term bond yields, could substantially increase the estimated present value of future and accrued liabilities, thus increasing the savings estimated in this letter, but also increasing the cost of the remaining benefits.

Because analyses are a snapshot in time and are based on estimates and assumptions that are not precise and will differ from actual experience, contribution calculations are inherently imprecise. There is no uniquely "correct" level of contributions for a particular plan year.

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Valuations do not affect the ultimate cost of the Plan, only the timing of contributions into the Plan. Plan funding occurs over time. Contributions not made this year, for whatever reason, including errors, remain the responsibility of the Plan sponsor and can be made in later years. If the contribution levels over a period of years are lower or higher than necessary, it is normal and expected practice for adjustments to be made to future contribution levels to take account of this with a view to funding the plan over time.

Data, computer coding, and mathematical errors are possible in the preparation of results involving complex computer programming and thousands of calculations and data inputs. Errors in a valuation discovered after its preparation may be corrected by amendment to this analysis letter.

Assumptions used are based on the last experience study, as adopted by the County and the Board of Investment Trustees. The County is responsible for selecting the plan's funding policy, actuarial valuation methods, asset valuation methods, and assumptions. The policies, methods and assumptions used in this letter are those that have been so prescribed and are described herein. The County is solely responsible for communicating to Mercer any changes required thereto.

To prepare this letter Mercer has used and relied on financial data and participant data supplied by the County and summarized herein. The County is responsible for ensuring that such participant data provides an accurate description of all persons who are participants under the terms of the plan or otherwise entitled to benefits as of July 1, 2011 that is sufficiently comprehensive and accurate for the purposes of this report. Although Mercer has reviewed the data in accordance with Actuarial Standards of Practice No. 23, Mercer has not verified or audited any of the data or information provided.

Mercer has also used and relied on the plan documents, including amendments, and interpretations of plan provisions, supplied by the County as summarized herein. We have assumed for purposes of this letter that copies of any official plan document including all amendments and collective bargaining agreements as well as any interpretations of any such document have been provided to Mercer along with a written summary of any other substantive commitments. The County is solely responsible for the validity, accuracy and comprehensiveness of this information. If any data or plan provisions supplied are not accurate and complete, the results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this report. Moreover, plan documents may be susceptible to different interpretations, each of which could be reasonable, and that the different interpretations could lead to different results.

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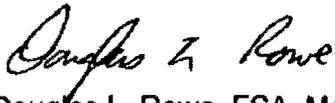
The County should notify Mercer promptly after receipt of this letter if the County disagrees with anything contained in this report or is aware of any information that would affect the results of this report that has not been communicated to Mercer or incorporated therein. This report will be deemed final and acceptable to the County unless the County promptly provides such notice to Mercer.

All costs, liabilities, and other factors under the plan were determined in accordance with generally accepted actuarial principles and procedures. Funding calculations reflect the provisions of current statutes and regulations issued hereunder. In our opinion, the actuarial assumptions are reasonable and represent our best estimate of the anticipated experience under the plan.

### **Professional Qualifications**

We are available to answer any questions on the material contained in the report, or to provide explanations of further details as may be appropriate. The undersigned credentialed actuaries meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report. We are not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict-of-interest, that would impair the objectivity of our work.

Sincerely,



Douglas L. Rowe, FSA, MAAA, EA  
Principal



James M. Baughman, ASA, MAAA, EA  
Senior Associate

Copy:  
Belinda Fulco, Montgomery County Government

**The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.**



Douglas Rowe, FSA, EA, MAAA  
Principal

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**Via Electronic Mail**

Mr. Joseph Adler  
Director of Office of Human Resources  
Montgomery County Government  
101 Monroe Street, Seventh Floor  
Rockville, MD 20850-2589

April 9, 2012

**Subject:** Proposal on Disability Provisions for Groups A, E, and H

Dear Joe:

The purpose of this letter is to provide the cost estimate you requested for the proposal to revise the disability provisions for groups A, E, and H of the Montgomery County Employees' Retirement System (ERS) to match the changes in the March 21, 2012 Union BAFO letter for group F. This letter also addresses the potential inclusion of "functional hearing loss" among the "certain criteria" described later in this letter for which group A, E, and H members would be eligible for a benefit equal to 90% of pay at disability.

The changes reflected in this letter are based on our understanding of the set of proposed plan changes you provided. As discussed, we did not reflect any retroactive benefits pertaining to the 90% pay benefit level to July 1, 2004.

The estimate is based on the July 1, 2011 actuarial valuation data. The data, actuarial assumptions and methods, and plan provisions are the same as those used in our July 1, 2011 actuarial valuation report unless otherwise noted. Actual costs will depend on the actual experience of the plan. By cost, we mean the change in Normal Cost and amortization payment according to the County's policy. The benefit changes are assumed to apply only to active ERS members, not to retirees or terminated vested members.

As we discussed, we have no way of determining what would be an appropriate assumption for the increased incidence of 90% of pay benefits with the functional hearing loss provision in the absence of further information about how the provision would be administered. One explanation says "Functional hearing loss involves a psychological or emotional problem, rather than physical damage to the hearing pathway. Individuals with this type of hearing loss do not seem to hear or respond; yet, in reality, they have normal hearing." We are not experts in hearing or disability administration or determination, but this explanation seems to us to allow a broad range of possible outcomes for employees to receive the proposed 90% benefit level.

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Due to this uncertainty over the impact of adding functional hearing loss, we have illustrated the cost impact of a 1% increase in the incidence of the 90% of pay benefits for groups A, E, and H by including two additional scenarios ("Scenario 2 and Scenario 3"), which increase the assumed rate of service-connected disabilities that meet "*certain criteria*" by 1% and decrease the assumed rate of the other service-related disabilities. The 1% assumption does not represent a best estimate of the impact; the actual impact could be much higher, lower, or even negligible. A summary of the assumed rates for each benefit is shown under the Actuarial Assumptions section below.

As requested, we have estimated the impact of the plan changes on the FY2013 County contributions. We have compared the impact against the budgeted FY2013 contributions provided in the July 1, 2011 actuarial valuation report, which reflect the disability plan provisions effective July 1, 2012. Reflecting the impact of these proposals in the FY2013 contribution would be a year earlier than the most common recognition of past plan improvements by the County, which often would have been reflected in the valuation following the change and funded in the fiscal year beginning a year after the valuation date. However, reflecting this improvement at the same time, i.e. in the FY2013 contribution, as the other plan changes that are effective July 1, 2012 seems appropriate.

### **Description of Proposed Plan Provision Changes**

Following is the description of the proposed plan changes you provided.

- The benefit amount for group A, E, or H members who apply for service-connected disability on or after July 1, 2012 and do not satisfy the "*certain criteria*" outlined below is:
  - For a disabled employee "determined not able to perform any substantial gainful employment, as defined in Social Security's standards," but who would not satisfy the "*certain criteria*" outlined below: the greater of the accrued benefit or 66 2/3% of final earnings
  - For other disabilities that do not satisfy the "*certain criteria*" outlined below: the greater of the accrued benefit or 60% of final earnings
- The benefit amount for group A, E, or H members who apply for service-connected disability on or after July 1, 2004 and retire on a service-connected disability retirement is:
  - For disability meeting *certain criteria* (para or quadriplegia, loss of limb, functional hearing loss, etc. as specified in the Final Offer of Fraternal Order of Police, Montgomery County Lodge 35, dated March 21, 2012): the greater of the accrued benefit or 90% of final earnings

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- The non-service-connected disability retirement benefit amount and other plan provisions would remain the same as described in the July 1, 2011 actuarial valuation report.

### Actuarial Assumptions

Except as noted below, all the assumptions used in this analysis are the same as those used in the July 1, 2011 valuation.

#### Groups A and H

Assumptions for Service-connected disability	Base Scenario	Scenario 2	Scenario 3
Receiving 60% benefit	20.0%	20.0%	19.0%
Receiving 66 2/3% benefit	18.7%	17.7%	18.7%
Receiving 90% benefit	1.3%	2.3%	2.3%
Total service-connected as % of all disabilities	40.0%	40.0%	40.0%

#### Group E

Assumptions for Service-connected disability	Base Scenario	Scenario 2	Scenario 3
Receiving 60% benefit	60.0%	60.0%	59.0%
Receiving 66 2/3% benefit	23.4%	22.4%	23.4%
Receiving 90% benefit	1.6%	2.6%	2.6%
Total service-connected as % of all disabilities	85.0%	85.0%	85.0%

- We assumed that the Social Security standard for suspending benefits during incarceration would not result in any reduction in contributions until after such suspensions occurred. We did not attempt to quantify the impact on any future contributions due to this provision.
- Please note that we did not receive information for any current retirees in Groups A, E, or H who would qualify for the 90% minimum benefit. If there are any, it could increase the cost impact substantially and a revision to this letter may be required. Please let us know if you are aware of any.

### Contribution Impact

The estimated contribution impact of this proposal based on the results from the 2011 valuation and budgeted FY2013 contribution is shown on the following pages. The amounts are rounded to the nearest thousand. Please note numbers may not add due to rounding.

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**Base Scenario**

**Group A**

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$0	\$149,000	\$149,000
Normal Cost	\$0	\$6,000	\$6,000
FY2013 Contribution	\$0	\$16,000	\$16,000

**Group E**

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,481,000	\$120,000	\$1,601,000
Normal Cost	\$88,000	\$5,000	\$93,000
FY2013 Contribution	\$188,000	\$13,000	\$201,000

**Group H**

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$200,000	\$0	\$200,000
Normal Cost	\$8,000	\$0	\$8,000
FY2013 Contribution	\$21,000	\$0	\$21,000

**All groups A, E, H**

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,681,000	\$269,000	\$1,950,000
Normal Cost	\$96,000	\$11,000	\$107,000
FY2013 Contribution	\$209,000	\$29,000	\$238,000

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## Scenario 2

### Group A

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$0	\$201,000	\$201,000
Normal Cost	\$0	\$7,000	\$7,000
FY2013 Contribution	\$0	\$21,000	\$21,000

### Group E

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,577,000	\$135,000	\$1,712,000
Normal Cost	-\$94,000	\$6,000	\$100,000
FY2013 Contribution	\$200,000	\$15,000	\$215,000

### Group H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$263,000	\$0	\$263,000
Normal Cost	\$10,000	\$0	\$10,000
FY2013 Contribution	\$28,000	\$0	\$28,000

### All groups A, E, H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,840,000	\$336,000	\$2,176,000
Normal Cost	\$105,000	\$13,000	\$118,000
FY2013 Contribution	\$228,000	\$36,000	\$264,000

### Total Increase from Base Scenario

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$159,000	\$67,000	\$225,000
Normal Cost	\$8,000	\$2,000	\$11,000
FY2013 Contribution	\$19,000	\$7,000	\$26,000

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### Scenario 3

#### Group A

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$0	\$213,000	\$213,000
Normal Cost	\$0	\$8,000	\$8,000
FY2013 Contribution	\$0	\$22,000	\$22,000

#### Group E

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,604,000	\$138,000	\$1,742,000
Normal Cost	\$96,000	\$6,000	\$102,000
FY2013 Contribution	\$204,000	\$15,000	\$219,000

#### Group H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$278,000	\$0	\$278,000
Normal Cost	\$11,000	\$0	\$11,000
FY2013 Contribution	\$30,000	\$0	\$30,000

#### All groups A, E, H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,882,000	\$351,000	\$2,233,000
Normal Cost	\$107,000	\$14,000	\$121,000
FY2013 Contribution	\$233,000	\$37,000	\$271,000

#### Total Increase from Base Scenario

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$201,000	\$82,000	\$283,000
Normal Cost	\$11,000	\$3,000	\$14,000
FY2013 Contribution	\$24,000	\$9,000	\$33,000

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Note that the portion of the contribution due to the change in Actuarial Accrued Liability is amortized as a level percentage of assumed payroll over 20 years.

Please also note that the results shown above reflect the impact on the FY2013 contribution. If these changes are adopted, they may first be reflected in the 2012 actuarial valuation report and FY2014 budgeted contribution, or even later (depending on when the changes are adopted and when the County decides to reflect them).

### **Additional Considerations**

With the changes to disability benefits for certain service-connected disablements, it is possible that the frequency of disability claims could change. This could change the impact on County contribution amounts shown in this letter.

Additionally, in the short term, the more generous COLAs available for service retirement benefits for service prior to June 30, 2011, as opposed to disability retirements after June 30, 2011, could result in a decrease to the number of disability claims in the near future.

We did not attempt to quantify the impact of either of the above.

Impacts on any amounts reflecting the most recent GASB 27 exposure draft have not been incorporated into the results in this letter. This would require additional calculations beyond the scope of this letter.

### **Important Notices**

Mercer has prepared this letter exclusively for Montgomery County; Mercer is not responsible for reliance upon this letter by any other party. Subject to this limitation, Montgomery County may direct that this letter be provided to its auditors.

The only purpose of this letter is to provide analyses of the specified changes on annual contribution amounts in order to help the County analyze its options. This letter may not be used for any other purpose; Mercer is not responsible for the consequences of any unauthorized use.

Decisions about benefit changes, granting new benefits, investment policy, funding policy, benefit security and/or benefit-related issues should not be made on the basis of this letter, but only after careful consideration of alternative economic, financial, demographic and societal factors, including financial scenarios that assume future sustained investment losses.

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April 9, 2012  
Mr. Joseph Adler  
Montgomery County Government

This letter only represents a snapshot of a Plan's estimated financial condition at a particular point in time; it does not predict the Plan's future financial condition or its ability to pay benefits in the future and does not provide any guarantee of future financial soundness of the Plan. Over time, a plan's total cost will depend on a number of factors, including the amount of benefits the plan pays, the number of people paid benefits, the period of time over which benefits are paid, plan expenses and the amount earned on any assets invested to pay benefits. These amounts and other variables are uncertain and unknowable at the date of the analysis.

Because modeling all aspects of a situation is not possible or practical, we may use summary information, estimates, or simplifications of calculations to facilitate the modeling of future events in an efficient and cost-effective manner. We may also exclude factors or data that are immaterial in our judgment. Use of such simplifying techniques does not, in our judgment, affect the reasonableness of analysis results for the plan.

To prepare this letter, actuarial assumptions, as described herein and in the July 1, 2011 actuarial valuation report, are used in a forward looking financial and demographic model to select a single scenario from a wide range of possibilities; the results based on that single scenario are included in this letter. The future is uncertain and the plan's actual experience will differ from those assumptions; these differences may be significant or material because these results are very sensitive to the assumptions made and, in some cases, to the interaction between the assumptions.

Different assumptions or scenarios within the range of possibilities may also be reasonable and results based on those assumptions would be different. As a result of the uncertainty inherent in a forward looking projection over a very long period of time, no one projection is uniquely "correct" and many alternative projections of the future could also be regarded as reasonable. Two different actuaries could, quite reasonably, arrive at different results based on the same data and different views of the future. Due to the limited scope of Mercer's assignment, Mercer will not perform or present an analysis of the potential range of future possibilities and scenarios when requested. At the County's request, Mercer is available to determine the cost of a range of scenarios.

Actuarial assumptions may also be changed from one valuation to the next because of changes in mandated requirements, plan experience, changes in expectations about the future and other factors. A change in assumptions is not an indication that prior assumptions were unreasonable when made.

The calculation of actuarial liabilities for valuation purposes is based on a current estimate of future benefit payments. The calculation includes a computation of the "present value" of those

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estimated future benefit payments using an assumed discount rate; the higher the discount rate assumption, the lower the estimated liability will be. For purposes of estimating the liabilities (future and accrued) in this letter, the County selected an assumption based on the expected long term rate of return on plan investments. Using a lower discount rate assumption, such as a rate based on long-term bond yields, could substantially increase the estimated present value of future and accrued liabilities, thus increasing the savings estimated in this letter, but also increasing the cost of the remaining benefits.

Because analyses are snapshots in time and are based on estimates and assumptions that are not precise and will differ from actual experience, contribution calculations are inherently imprecise. There is no uniquely "correct" level of contributions for a particular plan year.

Valuations do not affect the ultimate cost of the Plan, only the timing of contributions into the Plan. Plan funding occurs over time. Contributions not made this year, for whatever reason, including errors, remain the responsibility of the Plan sponsor and can be made in later years. If the contribution levels over a period of years are lower or higher than necessary, it is normal and expected practice for adjustments to be made to future contribution levels to take account of this with a view to funding the plan over time.

Data, computer coding, and mathematical errors are possible in the preparation of results involving complex computer programming and thousands of calculations and data inputs. Errors in a valuation discovered after its preparation may be corrected by amendment to this analysis letter.

Assumptions used are based on the last experience study, as adopted by the County and the Board of Investment Trustees. The County is responsible for selecting the plan's funding policy, actuarial valuation methods, asset valuation methods, and assumptions. The policies, methods and assumptions used in this letter are those that have been so prescribed and are described herein. The County is solely responsible for communicating to Mercer any changes required thereto.

To prepare this letter Mercer has used and relied on financial data and participant data supplied by the County and summarized herein. The County is responsible for ensuring that such participant data provides an accurate description of all persons who are participants under the terms of the plan or otherwise entitled to benefits as of July 1, 2011 that is sufficiently comprehensive and accurate for the purposes of this report. Although Mercer has reviewed the data in accordance with Actuarial Standards of Practice No. 23, Mercer has not verified or audited any of the data or information provided.

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Montgomery County Government

Mercer has also used and relied on the plan documents, including amendments, and interpretations of plan provisions, supplied by the County as summarized herein. We have assumed for purposes of this letter that copies of any official plan document including all amendments and collective bargaining agreements as well as any interpretations of any such document have been provided to Mercer along with a written summary of any other substantive commitments. The County is solely responsible for the validity, accuracy and comprehensiveness of this information. If any data or plan provisions supplied are not accurate and complete, the results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this report. Moreover, plan documents may be susceptible to different interpretations, each of which could be reasonable, and that the different interpretations could lead to different results.

The County should notify Mercer promptly after receipt of this letter if the County disagrees with anything contained in this report or is aware of any information that would affect the results of this report that has not been communicated to Mercer or incorporated therein. This report will be deemed final and acceptable to the County unless the County promptly provides such notice to Mercer.

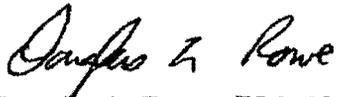
All costs, liabilities, and other factors under the plan were determined in accordance with generally accepted actuarial principles and procedures. Funding calculations reflect the provisions of current statutes and regulations issued hereunder. In our opinion, the actuarial assumptions are reasonable and represent our best estimate of the anticipated experience under the plan.

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Mr. Joseph Adler  
Montgomery County Government

### **Professional Qualifications**

We are available to answer any questions on the material contained in the report, or to provide explanations of further details as may be appropriate. The undersigned credentialed actuaries meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report. We are not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict-of-interest, that would impair the objectivity of our work.

Sincerely,



Douglas L. Rowe, FSA, MAAA, EA  
Principal



James M. Baughman, ASA, MAAA, EA  
Senior Associate

Copy:  
Belinda Fulco, Montgomery County Government

**The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.**

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## Bill 45-10 Excerpt

### Sec. 4. Collective bargaining.

- (a) It is the policy of Montgomery County that all County employees should have a multi-tier service-connected disability retirement system which includes a:
- (1) partial incapacity service-connected disability retirement benefit for any injury or illness that prevents an employee from continuing in the employee's current position but does not prevent the employee from engaging in other substantial gainful employment; and
  - (2) total incapacity service-connected disability retirement benefit for any injury or illness that prevents an employee from engaging in any other substantial gainful employment.
- (b) It is also the policy of the County that disability benefits are a mandatory subject of collective bargaining with each appropriate certified employee representative.
- (c) Notwithstanding any County law to the contrary, the County Executive may separately negotiate the terms of an appropriate multi-tier service-connected disability retirement system with the certified employee representative for the police bargaining unit and the certified representative for the OPT and SLT bargaining units, in each case not later than March 1, 2012. If in either case the parties are unable to reach agreement on an appropriate multi-tier system, the parties may submit this issue for resolution through the applicable impasse procedures under the County's police labor relations law and the County collective bargaining law as a separate matter, not part of or linked to any other collective bargaining procedure. The impasse neutral for the police bargaining unit and the mediator/arbitrator for the OPT and SLT bargaining units must choose the final offer of either party after considering equally the following factors:
- (1) service-connected disability retirement systems for similar employees of other public employers in the Washington Metropolitan Area and in Maryland;
  - (2) best practices for service-connected disability retirement systems for similar employees in the United States;

- (3) the interest and welfare of the public; and
- (4) the long-term ability of the employer to finance a disability retirement system, and the effect of the cost of the system on the normal standard of public services provided by the employer.
- (d) The Executive must submit the results of any collective bargaining process regarding this issue to the Council for legislative action not later than April 1, 2012.



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett  
*County Executive*

Marc P. Hansen  
*County Attorney*

**MEMORANDUM**

TO: Robert Drummer  
FROM: Amy S. Moskowitz  
DATE: May 3, 2012  
RE: Bill 18-12

You asked our office to opine on whether the provision contained in Bill 18-12 which requires the cessation of service connected disability benefits for members of Groups E, F or H while they are in a correctional facility is lawful. We believe, with a different effective date, such a prohibition is permissible.

Federal law, specifically Internal Revenue Code Section 401(a)(13) and ERISA Section 206, would prohibit such a restriction on a private, ERISA plan. These provisions, with certain exceptions, prohibit benefits under a qualified retirement plans from being assigned or alienated. However, governmental pension plans are not subject to these provisions.

Governmental retirement plans are largely governed by state law. Maryland case law has stated pensions are contractual in nature. *Frederick v. Quinn*, 35 Md. App. 626; *Howell v. Anne Arundel County*, 14 F. Supp. 2d 752, 754 (D. Md. 1998). These cited cases also discuss under what circumstances existing benefits may be changed and provide that future benefits may be changed.<sup>1</sup> While no Maryland case discusses forfeiting governmental pension plans, Attorney General Opinion 1980 Md. AG LEXIS 15; 65 Op. Atty Gen. Md. 445 discusses Governor Mandel's conviction for mail fraud and racketeering and the forfeiture of his pension benefits. The Attorney General stated that Mandel was entitled to his pension because pension benefits are contractual rights and where no express provision in the law allows for such a forfeiture one cannot be implied.

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<sup>1</sup> Our opinion to the Office of Legislative Oversight dated October 28, 2010 discussed the contractual issues associated with retirement plans in detail.

While the proposed forfeiture provision is uncommon, both New Jersey and Massachusetts have similar provisions in their laws.<sup>2</sup> New Jersey 43:1-2 states:

43:1-2. Suspension of right, or disqualification, during confinement in penal institution

No pension or subsidy shall be paid by this State or by any municipality or school district of this State to any person for the period during which he is confined in a penal institution as a result of conviction of a crime involving moral turpitude, and such person shall lose all right to so much pension or subsidy as he would receive or be entitled to receive had he not been so confined; provided, that nothing herein contained shall prevent the payment of the pension for the sole benefit of the mother, father, wife or minor children of the person so confined in a penal institution if the board or commission administering the pension fund shall determine that such pension is necessary for their maintenance and, thereupon, the board or commission shall provide for the payment to the aforesaid person or persons so determined to be entitled to the benefit of the pension.

Massachusetts Chapter 32 Section 7 provides for that a service connected disability benefit:

d) Payments to a member retired under the provisions of this section who is incarcerated for having been convicted of a felony committed on or after the effective date [July 1, 1996] of this paragraph shall cease for the period of such member's incarceration. Under no circumstances shall such payments be recoverable by such member after such period of incarceration.

No court has determined these statutes to be unconstitutional. In *Salley v. Firemen's & Policemen's Pension Fund Com*, 11 A.2d 244 (N.J. 1940), the New Jersey supreme court upheld a correctional facility forfeiture law and applied it to a member receiving benefit payments when the law was enacted stating that the member did not have a contractual right to pension benefits. More recently, the court applied the law In re Ceres, 2011 N.J. Super. Unpub. LEXIS 1208 (App.Div. May 11, 2011) and noted that "the Legislative purpose of the provision is to deny double payment to an incarcerated State retiree, who is being sustained at State expense in prison."

Therefore, it appears permissible for the Council to enact such a provision. However because pension benefits are contractual, changes usually cannot apply retroactively. The legislation applies to benefits paid "after July 1, 2012". This would apply to current retirees as well as members who have already satisfied the conditions for a service connected disability retirement. It is questionable whether adding an ongoing additional requirement which did not apply at the date of retirement could apply to current retirees without an analysis under the contract clause. The effective date could apply to disability applications filed on and after July 1, 2012.

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<sup>2</sup> Many states do have forfeiture provisions relating to crimes members relating to their government employment. See [http://www.nasra.org/resources/Forfeiture\\_statutes.pdf](http://www.nasra.org/resources/Forfeiture_statutes.pdf)

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**Testimony before the County Council  
on Bill 18-12, Personnel – Disability Retirement – Eligibility and Benefits  
May 8, 2012**

I am Joan Fidler, President of the Montgomery County Taxpayers League. Thank you for the opportunity to testify on Bill 18-12 regarding disability retirement benefits.

This Bill 18-12 is not an improvement over Bill 45-10, that we supported, and you passed last year. Your Bill created two levels of disability retirement benefits with payouts somewhat similar to those of the surrounding jurisdictions. This Bill creates a third, largely unnecessary level of retirement benefit, one that blurs the distinction between “catastrophic” and “total” incapacity, both with the same definition. This Bill also increases the percentage of payouts to levels exceeding those in surrounding jurisdictions. Why?

Let me state at the outset, my testimony does not denigrate the services of our police officers and county workers. They are competent, able and dedicated. My testimony focuses on the costs associated with this new bill at a time when we have a maintenance of effort law that is eroding our revenues, a shift of teachers pensions that will mortgage our future and the cumulative effect of compensation decisions in the past that have caused our structural budget deficit.

As to the specifics of Bill 18-12, creating a new category called “catastrophic” and tying that to a 90% tax-free payout is unfathomable. In Baltimore County, the payout for dismemberment and paralysis is 75%; everywhere else it is 66-2/3%. Yes, it would appear mercenary to put a dollar figure on the totally incapacitated but all our surrounding counties do.

But the real budget buster is raising the tax-free payouts for “partial” incapacity from 52-1/2% to 60%. Eighty-five percent of disability retirements fall into this category. I don't know if the picture has changed but between 2004 and 2008, 40% of our police force was retiring on disability. I am not privy to the number of disability retirements between the passage of Bill 45-10 last June and projections through this June but I would wager they are far higher than those in surrounding jurisdictions. Are their police officers stronger and fitter than ours? Are their police officers less competent and dedicated than ours? Why the higher payouts in Montgomery County?

Finally, this new Bill includes a new disability “functional deafness”. This new disability has no definition. Something is rotten in the state of Denmark.

Bill 18-12 does nothing to improve on Bill 45-10 but it does excel in one category - it raises costs. The Taxpayers League cannot support the Bill as it stands.

Thank you.

– Joan Fidler



## Montgomery County Lodge 35, Inc.

18512 Office Park Drive  
Montgomery Village, MD 20886

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Phone: (301) 948-4286

Fax: (301) 590-0317

**Statement of**  
**Fraternal Order of Police Montgomery County Lodge #35**  
**Public Hearing on Bill 18-12**  
**May 8, 2012**

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It has been more than three years since two assistant Montgomery County police chiefs became the poster children for a mismanaged disability retirement system. Although fully able and employed police managers, they left Montgomery County no longer able to work as police officers, then took lucrative law enforcement management jobs in other jurisdictions. In the weeks that followed these revelations, disabled working police officers - the officers who actually respond to 911 calls - were vilified, demonized and accused of fraud and abuse without benefit of facts or evidence to support the accusations. All that was levied against them were statistics and inference.

Bill 18-12 arises from an agreement reached between the Fraternal Order of Police #35 and the County Executive pursuant to a process and criteria established by this County Council. This Council's clear intent was to give collective bargaining a chance to resolve this issue. The Council also recognized that the established tiers for firefighters were part of an overall retirement agreement.

Contrary to the rhetoric, this Council established the law and set the criteria for this agreement. There was a hearing based upon the Council's criteria. Testimony and evidence was offered. There is a record of the hearing. To meet the Council's criteria the FOP 35 made concessions. Based upon the process and the criteria set up by the Montgomery County Council, and the evidence and testimony offered, the arbitrator chose the FOP 35's final offer as the more reasonable. It is not a concession to FOP 35 to respect the collective bargaining process. The County Charter clearly provides for binding arbitration of matters subject to collective bargaining.

Let it be stated again, on average 11 police officers have retired disabled each year since 1985. An examination was conducted of every disability determination by the County. The examination found that NOT ONE disability retirement awarded to a police officer was undeserved. In fact, no fraud or abuse was ever identified. Still, no one apologized to those disabled officers whose reputation was sullied by association with the unsubstantiated outcries of "fraud and abuse" rising from the actions of two assistant police chiefs.

This bill represents the last piece of a mutually agreed upon reform of the disability retirement system reached FOP 35 and the County Executive and enacted by the Council in Bill 37-08. Bill 37-08 codified the agreements in direct response to concerns that arose from police managements'

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abuse of the disability retirement system and lax stewardship by the County Executive. What has been enacted included among other things:

1. Requiring an independent medical examination in each application for disability retirement.
2. Changes to the disability panel including size of panel, selection procedures, qualifications, authority to engage an additional independent medical examiner and number of panel members required to make a decision on an application.
3. An offset in disability benefits for Workers Compensation payments received by an applicant.
4. Establishing a reporting requirement for work related injuries.
5. Deadlines for filing for a disability retirement for a work related injury.
6. Requiring annual medical examinations for disability retirees for five years after retirement and once every three years thereafter until age 55.
7. Requiring a deduction for non-Social Security benefits received for the same injury from another employer.
8. Limitations on filing for disability retirement after separation.
9. Permitting a reduction in benefit for outside earnings from a sworn law enforcement job.

The notion of a multi-tiered disability system has been on the table since the beginning, as has been the mutually three-tier structure you now see before you. This would have been resolved years ago had the County Executive been willing to come to an agreement on the issue.

Police work is fraught with hazards and police officers become disabled. As we speak, police officers are taking risks for the community. We have given them a car, a handgun, a baton and other tools and told them to use these to protect the community. In fact we tell them it is their job not to swerve from the path of duty. For what we ask of them, there must be protection for police officers and their families should they be hurt. Any change in the benefit level of a disabled police officer and her or his family should be carefully weighed against the possibility of hesitation by officers when taking any necessary action to protect the public. No police officer should have to hesitate to consider her or his financial situation before acting to protect a member of the community.

When this bill is passed into law, a janitor in the MCPS will have a higher disability benefit than a Montgomery County Police officer, so will a teacher. A Maryland State Trooper working in Montgomery County will have a higher disability benefit, so will a police officer working across the river in Fairfax who is forced to leave her job. Whether a disabled police officer receives 60, 66 2/3 or 90 percent of their final pay, they remain disabled. They have suffered standing the line in service to the community.

Police officers will accept this agreement, despite feeling that they have been targeted for political reasons. They will accept it because it is the product of a process. There is no gain for police officers in this agreement. It is all concessions and if enacted will save the County millions of dollars from the current benefit level.

MCTIGUE & VEIS LLP  
4530 Wisconsin Avenue, NW  
Suite 300  
Washington, D.C. 20016  
(202) 364-6900  
Fax: (202) 364-9960

Testimony  
Montgomery County Council  
on Disability Changes in Montgomery County  
by  
Brian McTigue  
May 8, 2012

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Council President Berliner and Council Members:

My name is Brian McTigue. I am here to speak against Bill 18-12.

This bill will undo the real reforms this Council passed last year. Reforms that were difficult to arrive at. And reforms involved a great deal of the Council's time and energy, at the committee and full council levels.

Bill 8-12 fails to address the scandalous situation that brought disability pay to the public's attention.

I am an attorney specializing in employee benefits. I've served on the Committee which nominated the candidates for Montgomery County Inspector General. More recently I served on the Task Force for Public Employee Benefits. Both appointments were by the Council. I have lived in Montgomery County for 25 years.

Bill 45-10 was passed to address a scandal that developed when it appeared inordinate numbers of police were successful in claiming disability benefits, benefits that often nearly equaled their final salary -- regardless of their level of disability. Bill 45-10 rightly distinguishes between those unable to find other work because of their disability, and those whose partial disability allows them to work in another field.

Narrowing the gap between full and partial disability, as the County's arbitrator contends, ignores the incentives that led to the scandal in the first place. It would allow what amounts to a scam to continue, to the detriment of County taxpayers and County employees with disabilities who need to be protected.

The reforms previously passed by this Council bring benefits in line with surrounding counties. These benefits are adequate and treat County Employees fairly. Bill 18-12 seeks to keep Montgomery county taxpayers on the hook for the most generous benefits in the area, benefits which are more generous than necessary.

It is paramount that the county care for those with disabilities through a just system that provides for those who become disabled serving the county. Those goals were addressed properly by this Council in the previous bill. Allowing the Arbitrator to change the system and undo these necessary -- and thoughtful -- reforms would allow a scandalous system to continue, costing taxpayers unnecessary millions.

I urge you to defeat bill 18-12, which will protect the valuable reforms the council has already passed. Thank you.

**Drummer, Bob**

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**From:** Duchy Trachtenberg [duchy.trachtenberg@gmail.com]  
**Sent:** Tuesday, May 08, 2012 8:30 AM  
**To:** Greenberger, Neil  
**Cc:** Drummer, Bob; Farber, Steve  
**Subject:** Fwd: Letter re: Bill 18-12

FYI

Begin forwarded message:

**From:** Duchy Trachtenberg <duchy.trachtenberg@gmail.com>  
**Subject:** Letter re: Bill 18-12  
**Date:** May 8, 2012 8:26:00 AM EDT  
**To:** [roger.berliner@montgomerycountymd.gov](mailto:roger.berliner@montgomerycountymd.gov),  
[councilmember.berliner@montgomerycountymd.gov](mailto:councilmember.berliner@montgomerycountymd.gov)  
**Cc:** [phil.andrews@montgomerycountymd.gov](mailto:phil.andrews@montgomerycountymd.gov),  
[councilmember.andrews@montgomerycountymd.gov](mailto:councilmember.andrews@montgomerycountymd.gov)

11212 Empire Lane

N Bethesda, Maryland 20852

May 8, 2012

Montgomery County Council

Council President Roger Berliner

100 Maryland Avenue

Rockville, Maryland 20850

Dear Council President Berliner:

I am writing in reference to Expedited Bill 18-12, which was introduced at the request of the County Executive. I am most interested in this particular legislation as I helped draft and introduced (during my Council term) Bill 45-10, which eventually was passed by the Council and is current law. I understand that Bill 18-12 reflects the terms defined by the County arbitrator although importantly, these terms were defined outside of the normal collective bargaining process. Hence the Council does not need to indicate its intent to reject or approve this legislation by May 15.

I am concerned over the terms set forth in this proposed legislation, specifically in relation to the compensation/benefit levels outlined for the three-tier system of disability retirement. This multi-tiered approach is a best practice and with merit. However, the compensation levels as outlined are not in keeping with national best practices. Council staff has indicated that nearby jurisdictions have taken a more modest approach especially for any partial incapacity. In several conversations with national policy experts and local administrators from various jurisdictions, the following ranges are what have been recommended to me as appropriate and effective in the utilization of any three-tier system:

Partial Disability – 40% to 55% of salary as benefit

Full Disability – 55% to 70% of salary as benefit

5/8/2012

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Catastrophic Disability – 75% to 90% of salary as benefit

As outlined in Bill 18-12, the partial and full disability benefits are almost equal. This is problematic as a partial incapacity has far different parameters than a permanent full disability.

The financial implications of these compensation adjustments are very troubling. If these changes were agreed to, County government would need to identify well over a million dollars to cover the cost (firefighters would need an adjustment as well) of increased benefit levels, for just this next fiscal year alone. Given the uncertainty of state revenue and the pressing obligations of adequate funding for education and vital social programming, it would not be financially sound at this time to make such a large commitment, recognizing the unsustainable nature of such a commitment.

I believe investments in our County employees are important and would recommend that the Council consider some additional resources be applied to the area of occupational health (medicine). There is compelling evidence that such programming investments yield positive benefits. A focus on prevention contributes to more employee productivity and often times decreases the amount of disability retirement applications.

I thank you in advance for your thoughtful consideration of my letter. I am confident that a fair and equitable system of disability retirement for valued County employees will be maintained as the current law does reflect national best practices.

Respectfully,

Honorable Duchy Trachtenberg

CC: Councilmember Phil Andrews, Chair, Public Safety Committee