

**MEMORANDUM**

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 18-10, Personnel – Retirement – Furlough - Imputed Compensation

**Management and Fiscal Policy Committee recommended (3-0) to approve Expedited Bill 18-10 without amendment.**

Expedited Bill 18-10, Personnel – Retirement – Furlough - Imputed Compensation, sponsored by the Council President at the request of the County Executive, was introduced on April 13, 2010. A public hearing was held on April 27 and a Management and Fiscal Policy Committee worksession was held on April 29.

**Background**

The Executive's Recommended FY11 Operating Budget includes 10 furlough days for all non-public safety County employees. Under the current retirement laws, an employee who takes a furlough would also suffer a corresponding loss of retirement benefits due to the reduction in regular earnings. However, §30-2(b)(3) of the Personnel Regulation requires the County to ensure that retirement benefits are not adversely affected when an employee takes a furlough. Bill 18-10 would amend the definition of regular earnings in the retirement laws to include imputed income not received due to a furlough.

This Bill would ensure that a furlough does not reduce the employer and the employee contributions to the plan or any pension benefit. The Bill would also prevent a furlough from resulting in a reduced disability benefit for a member of the Retirement Savings Plan or the Guaranteed Retirement Income Plan.

**Public Hearing**

Wes Girling, Benefits Manager, OHR, testified in support of the Bill on behalf of the Executive. See ©8. Mr. Girling testified that the Bill would implement a personnel regulation that has existed for more than 15 years. Bob Stewart, Executive Director, UFCW Local 1994, also testified in support of the Bill.

## April 29 Worksession

The Committee reviewed the Bill and recommended (3-0) approval without amendment.

### Issues

#### 1. What is the fiscal impact of the Bill?

The OMB Fiscal Impact Statement (FIS) concludes that the Bill would have no fiscal impact because the Executive “assumed its effect in his March 15 recommended budget.” See ©7. Unfortunately, the FIS does not state what dollar amount was “assumed” in the budget. At the request of Council staff, OMB subsequently estimated the cost of this Bill if the Executive’s furlough plan is approved to be \$2.2 million in FY11. See ©9.

The Executive’s 10-day furlough plan would reduce an employee’s salary by 3.8%. Since employer and employee retirement contributions are based upon actual earnings,<sup>1</sup> both the County and the employee would contribute 3.8% less to the retirement plan. For example, an employee in the retirement savings plan (RSP) contributes 4% of actual earnings and the County contributes 8%. The Bill would require the County to contribute 8% of what the employee would have earned without a furlough, which would be more than 8% of actual earnings. The employee would similarly contribute more than 4% of actual earnings.

In addition to the cost of the additional employer contribution required by the Bill, a participant in the defined benefit retirement plan would receive an enhanced pension at retirement if FY11 is one of the participant’s highest 36 months of earnings. The County would have to contribute an additional amount to the ERS Trust Fund to account for this if the Bill is enacted. The County’s actuary has not yet estimated this cost. However, since a furlough is a temporary reduction in salary, the imputed compensation would not automatically carry over into the calculation of regular earnings in future years because it is assumed that the employee’s salary would automatically return to its FY10 level in FY12.

#### 2. How would this Bill benefit employees who are furloughed?

This Bill would benefit employees differently depending upon their retirement plan and their retirement date. RSP and GRIP employees would receive a marginal increase in the contribution made by the County to their individual retirement account. They would receive 8% of their full salary, which would be more than 8% of their actual earnings in FY11. These employees would also contribute more than 4% of actual earnings to their individual account. The result would be more money deposited in their account and a slightly smaller paycheck.

ERS employees in the defined benefit plan would be affected differently. All ERS employees contribute a set percent of regular earnings to the retirement plan. The Bill would require these employees to contribute a greater percentage of actual earnings. However, only ERS employees who retire in the next 3 years are likely to benefit from the Bill. If an employee’s highest 36 months includes FY11, then the employee would receive a higher pension

---

<sup>1</sup> The imputed general wage adjustment approved by the Council last year in Bill 18-09 is an exception to this general rule.

at retirement due to the imputed compensation. **If an employee's highest 36 months does not include FY11, even with the imputed compensation, then the employee would not benefit from this Bill.**

### **3. Should the Council enact the Bill?**

The Bill would lessen the financial burden of a furlough day on all RSP and GRIP employees and those ERS employees close to retirement. However, the cost does lower the savings from each furlough day. The estimated savings for each furlough day calculated by both the Executive and the Office of Legislative Oversight already assumes this change in law. **Committee recommendation (3-0):** approve the Bill without amendment.

This packet contains:

	<u>Circle #</u>
Expedited Bill 18-10	1
Legislative Request Report	5
Executive Memo	6
Fiscal Impact Statement	7
Testimony of Wes Girling	8
Joe Beach email dated 4-27-10	9

Expedited Bill No. 18 -10  
Concerning: Personnel - Retirement –  
Furlough-Imputed Compensation  
Revised: April 8, 2010 Draft No. 1  
Introduced: April 13, 2010  
Expires: October 13, 2011  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

By: Council President at the Request of the County Executive

---

**AN EXPEDITED ACT** to:

- (1) amend the definition of regular earnings under the employees' retirement system and the retirement savings plan to include certain imputed compensation not received due to a furlough; and
- (2) generally amend the law regarding the employees' retirement system and the retirement savings plan.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-35, 33-113 and 33-128

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

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

**Sec. 1. Sections 33-35, 33-113 and 33-128 are amended as follows:**

**33-35. Definitions**

In this Article, the following words and phrases have the following meanings:

\* \* \*

*Regular earnings:* Except as otherwise provided, gross pay for actual hours worked, including paid leave, but not including overtime. Regular earnings for a Group A, E, or H member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.5% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. Regular earnings for a Group F member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.25% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. Regular earnings for a Group G member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. If a member is required to take any furlough, as defined in personnel regulations adopted under Section 33-7(b), regular earnings must include any amount the member would have received if the member had not been required to take any furlough. Regular earnings for an elected official is gross pay for services rendered to the County. Regular earnings must not exceed the limit under Internal Revenue Code Section 401(a)(17), as adjusted by the Internal Revenue Service. Gross pay must be used to determine benefits even if the County implements a pick-up plan under Section 414 of the Internal Revenue Code. Gross pay must be

28 used to determine benefits even if a member has agreed to a reduction in earnings  
29 under:

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

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

34 \* \* \*

35 **33-113. Definitions.**

36 In this Division the following words and phrases have the following  
37 meanings:

38 \* \* \*

39 (p) *Regular earnings* means gross pay for actual hours worked, including  
40 paid leave, but not including [exclusive of] overtime, without  
41 reduction for participant contributions that are picked up under  
42 Section 33-116(a), or contributions to any County deferred  
43 compensation plan or statutory fringe benefit program. If a  
44 participant is required to take any furlough, as defined in personnel  
45 regulations under Section 33-7(b), regular earnings must include any  
46 amount the participant would have received if the participant had not  
47 been required to take any furlough.

48 \* \* \*

49 **33-128. Definitions.**

50 In this Division, the following words and phrases have the following  
51 meanings:

52 \* \* \*

53 *Final earnings* means the annual average of the regular salary of an employee less  
54 any shift pay differential for the 18-month period immediately before the disability

55 or any period of 18 consecutive months, whichever is greater. If a participant is  
56 required to take any furlough, as defined in personnel regulations adopted under  
57 Section 33-7(b), final earnings must include any amount the participant would  
58 have received if the participant had not been required to take any furlough.

59 \* \* \*

60 **Sec. 2. Effective Date.** The Council declares that this Act is necessary for  
61 the immediate protection of the public interest. This Act takes effect on July 1,  
62 2010.

63 *Approved:*

64

65

---

Nancy Floreen, President, County Council Date

66 *Approved:*

67

---

Isiah Leggett, County Executive Date

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

69

---

Linda M. Lauer, Clerk of the Council Date

# LEGISLATIVE REQUEST REPORT

Expedited Bill 18 -10

*Personnel – Retirement – Furlough - Imputed Compensation*

**DESCRIPTION:** The requested expedited legislation would amend the definition of regular earnings in the Employee Retirement System and the Retirement Savings Plan to include any amount the employee would have received if the employee had not been required to take a furlough.

**PROBLEM:** The Executive's Recommended FY11 Operating Budget includes 10 furlough days for most County employees. Under the current retirement laws, an employee who takes a furlough would also suffer a corresponding loss of retirement benefits due to the reduction in regular earnings.

**GOALS AND OBJECTIVES:** Under §30-2(b)(3) of the Personnel Regulation, the County must ensure that retirement benefits are not adversely affected when an employee takes a furlough. This Bill would amend the definition of regular earnings in the retirement laws to include imputed income not received due to a furlough. This Bill would thereby prevent a furlough from resulting in lower employer and employee contributions to the plan and a lower pension benefit.

**COORDINATION:** Office of Human Resources, County Attorney's Office

**FISCAL IMPACT:** Office of Management and Budget

**ECONOMIC IMPACT:** Fiscal impact statement to be provided at a later date.

**EVALUATION:** n/a



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

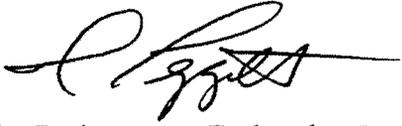
Isiah Leggett  
County Executive

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL  
2010 APR -9 AM 9:44

MEMORANDUM

April 8, 2010

TO: Nancy Floreen, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation – Personnel – Retirement – Furlough – Imputed Compensation

Section 30-2 (b) (3) of the Personnel Regulations provides that the County must ensure that retirement benefits are not adversely affected when an employee takes a furlough day. To ensure no loss of retirement benefit when County employees are furloughed in FY 2011, I am proposing the attached legislation that will amend the definition of regular earnings in the Employees Retirement System and the Retirement Savings Plan to include any amount the member would have received if the member had not been required to take a furlough.

With this bill, there will be no reduction in the employee and employer contribution for retirement as a result of the furlough. Please let me know if you have any questions or concerns regarding this proposed amendment.

cc: Joseph Adler, Director, Office of Human Resources

D18-10



056247

BD  
ce  
SDF  
LL

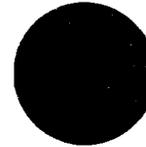
OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

April 23, 2010



TO: Nancy Floreen, President, County Council  
FROM: Joseph F. Beach, Director  
SUBJECT: Expedited Bill 18 -10, Personnel – Retirement – Furlough – Imputed Compensation

2010 APR 26 AM 8:55

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

**LEGISLATION SUMMARY**

Expedited Bill 18 -10 ensures that retirement benefits are not adversely affected when an employee takes a furlough. The County Executive's Recommended FY11 Operating Budget includes a furlough requirement of 10 days (80 hours) for most County employees. It does this by amending the definition of regular earnings under the Employees' Retirement System (ERS) and the Retirement Savings Plan (RSP) to include certain imputed compensation not received during a furlough.

**FISCAL SUMMARY**

This Bill does not have a fiscal impact on the County because the County Executive assumed its effect in his March 15 recommended budget. It ensures that the same retirement contributions to the RSP and to all pension plans in the ERS, including the Guaranteed Retirement Income Plan (GRIP), will be made by the County and by affected employees as would have been made absent the furlough requirement. It provides in legislation what is required under §30-2(b)(3) of the Personnel Regulations. The Bill also prevents a reduced disability benefit for members of the RSP and the GRIP due to the furlough requirement.

The following contributed to and concurred with this analysis: G. Wesley Girling, Office of Human Resources, Alex Espinosa and Lori O'Brien, Office of Management and Budget.

JFB:lob

Attachment

- c: Joseph Adler, Director, Office of Human Resources
- Kathleen Boucher, Assistant Chief Administrative Officer
- Dee Gonzalez, Offices of the County Executive
- G. Wesley Girling, Office of Human Resources
- Alex Espinosa, Office of Management and Budget
- Lori O'Brien, Office of Management and Budget

Office of the Director

7



OFFICE OF HUMAN RESOURCES

Isiah Leggett  
*County Executive*

Joseph Adler  
*Director*

MEMORANDUM

April 27, 2010

TO: Nancy Floreen, President  
Montgomery County Council

FROM: Wes Girling, Benefits Manager  
Office of Human Resources

SUBJECT: Testimony for Public Hearing on Expedited Bill 18-10, Personnel – Retirement –  
Furlough – Imputed Income

Good afternoon. For the record, I am Wes Girling, Benefits Manager with the Office of Human Resources. I am here today on behalf of County Executive Isiah Leggett to testify in support of Expedited Bill 18-10.

Section 30-2 (b) (3) of the Montgomery County Personnel Regulations provides that an employee's retirement benefits will not be adversely affected when the employee is furloughed. This Personnel Regulation conflicts with provisions of the County Code governing the County's retirement system because the definition of "regular earnings" in the Code does not include pay that is not received because of a furlough. Without Expedited Bill 18-10, both the employer and employee contributions toward retirement would be based on a lower salary and would result in a lower retirement benefit.

Expedited Bill 18-10 amends the definition of "regular earnings" in both the Employees' Retirement System (ERS), and the Retirement Savings Plan (RSP) to include imputed income not received due to a furlough. By including the lost salary as imputed income for retirement purposes, there would be no reduction to a furloughed employee's retirement benefit. The bill also makes it clear that disability benefits for RSP and Guaranteed Retirement Income Plan (GRIP) participants will not be adversely impacted by the furlough.

We urge the Council to approve Expedited Bill 18-10 and we look forward to working with the Council as it considers this legislation.

cc: Kathleen Boucher  
Joseph Adler

**Drummer, Bob**

---

**From:** Beach, Joseph  
**Sent:** Tuesday, April 27, 2010 6:50 PM  
**To:** Drummer, Bob; Espinosa, Alex; O'Brien, Lori; Girling, Wes; Boucher, Kathleen  
**Subject:** FW: E-Bill 18-10, Furlough - Imputed Compensation

Bob,

The amount included in the budget to continue making retirement contributions on behalf of employees who will be furloughed in FY11 is \$2.2 million. We do not believe there is a continuing cost related to this recommendation, but we will verify with the actuary.

Joseph F. Beach, Director  
Montgomery County Government  
Office of Management and Budget  
101 Monroe Street, 14th Floor  
Rockville, Maryland 20850  
240-777-2777  
240-777-2756 (fax)