

**PLEASE RETAIN THIS PACKET FOR MAY 9 PS/GO COMMITTEE**

**MEMORANDUM**

May 4, 2012

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** 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 Safety/Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for May 9 at 9:30 a.m.

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.

**Background**

Bill 45-10, Personnel - Disability Retirement- Eligibility - Total and Partial Incapacity, enacted on June 28, 2011, amended the disability retirement laws to create the same two-tier system for police and general government employees that already existed for fire and rescue employees. Under Bill 45-10, a service-connected partial incapacity disability retirement is at least 52½% of final pay and a service-connected total incapacity disability retirement is at least 70% of final pay for all employees. Bill 45-10 takes effect for a disability that occurs on or after July 1, 2012.

However, Bill 45-10 also contained an uncodified section that permitted either the FOP or MCGEO to bargain with the Executive over disability retirement as a separate issue this year.

See ©52-53. The parties were permitted to submit an impasse in bargaining to arbitration as a separate issue on a final offer basis this year only.<sup>1</sup> The FOP and the Executive negotiated this issue without reaching an agreement, and they submitted the impasse to an arbitrator for resolution. A copy of the arbitrator's decision is at ©14-27.

The arbitrator resolved the following issues by selecting the FOP's final offer.

1. The FOP and the Executive both proposed a 3-tier system before arbitration: 60% of final pay for partial, 66⅔% for total incapacity, and 90% for catastrophic incapacity. The parties did not agree on the definition of catastrophic incapacity or if the pension would be integrated with Social Security.
2. The Executive's final offer would reduce the amount of the pension when the retiree reaches normal Social Security retirement age (integrate with Social Security). Current disability retirement pensions do not integrate, but normal County retirement pensions do integrate. The FOP final offer did not integrate with Social Security benefits.
3. The Executive's final offer would prohibit a service-connected disability retirement award to an employee who is convicted of a significant criminal act. The FOP final offer would stop a disability retirement pension benefit only while the employee is incarcerated. Bill 45-10 prohibits a disability retirement award to a person who commits an offense that would justify termination for misconduct.

Although MCGEO did not participate as a party in the arbitration, the County Executive and MCGEO agreed in advance that the arbitrator's decision would include employees represented by MCGEO. See ©28. Therefore, Bill 18-12 includes employees represented by the FOP and employees represented by MCGEO.

*As required by the uncodified section of Bill 45-10, the Executive transmitted Bill 18-12 to the Council on April 23 to implement the arbitrator's decision. 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.***

## Issues

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

The County's actuary estimated that Bill 18-12, if enacted, would raise the County's required annual pension contribution by at least \$661,000 for Group F (Police) and an additional \$209,000 for MCGEO employees in FY13 and each year after. Mercer also estimated that the County's accrued liability due to the changes in this Bill would increase by at least \$5.566

---

<sup>1</sup> Disability retirement remains a subject for bargaining in future years as part of a collective bargaining agreement.

million for Group F and an additional \$1.681 million for MCGEO employees. See the OMB fiscal impact statement at ©29-51. The Executive did not include funding for this additional cost in his FY13 Recommended Budget or in his April 26 FY13 Budget Amendments. Based upon Mercer's actuarial valuation, the Executive's FY13 Recommended Budget assumes a savings of \$1.9 million due to the changes made by Bill 45-10 last year.

Based upon the County's experience with the two-tier system for fire and rescue employees since 2000, 85% of service-connected disability awards will be for partial incapacity. *Although Bill 18-12 creates a new, potentially costly, catastrophic incapacity category payable at 90% of final pay, the overwhelming majority of the extra expense from Bill 18-12 results from raising the minimum partial incapacity benefit from 52½% of final pay to 60% of final pay.*

## **2. What are the disability retirement provisions in other local jurisdictions?**

Bill 45-10 required the arbitrator to consider:

- (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.

The arbitrator considered other systems only with regard to whether the disability benefit should be integrated with Social Security benefits because both parties proposed 60% for partial, 66⅔% for total, and 90% for catastrophic incapacity. However, it is impossible to compare the disability benefits that would be established by Bill 18-12 to disability benefits in other jurisdictions without looking at the entire benefit. Council staff surveyed some of the police and fire<sup>2</sup> disability retirement plans in other jurisdictions to compare them with Bill 18-12. Here is a summary of the results of this survey.

**A. Fairfax.** Fairfax County police disability is covered by Fairfax Municipal Code §§ 3-7-28 to 3-7-29. Service-connected total disability retirement is 66⅔% of final salary until the employee's service credit reaches 25 years when it is reduced to 60% of final salary. Fairfax defines partial disability as the inability to perform some of the duties of the position. Employees on partial disability are not permitted to retire on disability if the Department has a job they can perform. If the Department does not have a light duty position for a partially disabled employee, the employee is permitted to retire on total disability and receives the same 66⅔% benefit. Again, the benefit drops to 60% when the disabled employee reaches 25 years of credited service or age 55. See ©54-55.

**B. Howard County.** Police and Fire receive 66⅔% of final salary for a catastrophic injury and 50% of final salary for a non-catastrophic injury. The catastrophic injury follows the

---

<sup>2</sup> Although the Executive agreed to include MCGEO employees in the results of the arbitration with the FOP, most jurisdictions provide a more generous disability retirement benefit for police and fire than for non-public safety employees. Council staff believes that a comparison with police and fire disability plans is more relevant.

Social Security disability standards and is similar to the definition of total incapacity in Bill 45-10. See ©56-58.

**C. Baltimore County.** Police and Fire employees receive 75% of average final earnings for dismemberment or paralysis of certain body parts. Police and Fire employees receive 66⅔% of average final earnings for the service-connected loss of use of certain body parts or major life functions. All lesser service-connected disabilities are paid at 50% of average final earnings. See ©59-60.

**D. District of Columbia.** Police and Fire employees are rated for a percentage of disability and receive 70% of final pay multiplied by the percent of disability. A service-connected disability pension must be at least 40% of final pay. See ©61-63.

**E. Anne Arundel County.** Police are eligible for a service-connected disability retirement pension of at least 66⅔% of average pay<sup>3</sup> for total and partial incapacity. However, an employee is disqualified from receiving a disability pension if the employee refuses to take another position with the County that the person can perform within the first 5 years after retirement. See ©64-65.

**F. Prince George's County.** Police and Fire employees hired after 1989 are eligible for a partial incapacity disability pension of 55% of final pay. Employees who are unable to perform any substantial gainful activity are eligible for a pension of 90% of final pay. According to Prince George's County Retirement staff, the 90% pension is very rare.

*It appears that the benefits provided in Bill 18-12 would be more generous than all of these other local jurisdictions, with the possible exception of Anne Arundel County.*

### **3. What is the history behind the Council's enactment of Bill 45-10?**

The Inspector General raised some significant concerns about the County's police disability retirement system in an interim report issued in September 2008.<sup>4</sup> The Inspector General found that 62% of the police officers who retired between 2004 and 2008 received disability retirement awards. The Council began looking at the police disability retirement law soon after receiving this report. At the same time, an Executive-appointed task force issued recommendations to reform the disability retirement system. Recognizing the County's policy that disability retirement is a mandatory topic of collective bargaining, the Council asked the Executive to try to negotiate reforms to the disability retirement system with the FOP. The Executive's negotiations with the FOP did not result in a final agreement, but some progress was made in 2009 on certain procedural issues.

The Council enacted amendments to the disability retirement system in Bill 37-08 on May 12, 2009. Bill 37-08, as enacted, incorporated only those interim agreements between the Executive and the FOP on procedural issues. One of the most significant amendments in the Bill as introduced, but not in the Bill as it was enacted, was to extend the two-tier fire system for service-connected disability benefits to police employees. At the Council's request, the Office of

---

<sup>3</sup> Average pay is generally less than final pay used in Bill 18-12.

<sup>4</sup> The Inspector General's Report can be found at

<http://www.montgomerycountymd.gov/content/inspectorg/disabfinalinterim090908.pdf>.

Human Resources provided information on the County's experience with the same two-tier system for fire and rescue employees. As of May 2009, only 10 of the 67 fire and rescue employees who received a service-connected disability retirement since the two-tier system began in 2000 were awarded the higher 70% benefit. Therefore, 85% of the awards were at the lower 52½% partial incapacity level. In 2009, the County's actuary, Mercer, estimated the annual savings to the County's retirement contribution for extending the two-tier fire system to Group F (Police) to be more than \$1.5 million based upon an assumption that 60% of the disability retirements would be at the lower level. If the Group G (Fire and Rescue) experience of 85% at the partial incapacity level was carried over to all employees, the actuary estimated the annual savings would be more than \$2.7 million.

After another year with no final agreement between the Executive and the FOP on substantive reforms to the police disability retirement system, Bill 45-10 was introduced in July 2010. After a public hearing and 5 joint Council Committee worksessions, the Council enacted Bill 45-10 on June 28, 2011.<sup>5</sup>

### **Chronology of the Disability Retirement Legislation**

Here is a chronology of significant events for the Council's consideration of changes to the disability retirement system.

1. September 2008 – Inspector General Interim Report
2. October 30, 2008 – MFP/PS Committee worksession on Report
3. December 9, 2008 – Bill 37-08 introduced
4. January 15, 2009 – Public Hearing on Bill 37-08
5. MFP/PS Committee worksessions on Bill 37-08
  - February 19, 2009
  - April 2, 2009
  - May 1, 2009
  - May 4, 2009
6. May 12, 2009 – Bill 37-08 enacted with amendments
7. July 27, 2010 - Bill 45-10 introduced
8. September 28, 2010 – Public Hearing on Bill 45-10
9. PS/MFP Committee worksessions on Bill 45-10
  - October 4, 2010
  - October 25, 2010
  - November 22, 2010
  - June 21, 2011 (PS/GO Committee worksession)
10. June 28, 2011 – Council enacted Bill 45-10
11. July 11, 2011 – Bill signed by the Executive

---

<sup>5</sup> The Executive and the FOP negotiated a new collective bargaining agreement while Bill 45-10 was pending that did not include any changes to the disability retirement system.

#### **4. What is the purpose of the two-tier disability retirement system?**

A service-connected disability retirement pension is intended to replace lost income that an employee would have earned if the employee had been able to continue to work in his or her position until normal retirement.<sup>6</sup> Total incapacity is defined as the inability to perform any substantial gainful activity. Partial incapacity is a disability that prevents the employee from continuing to perform the duties of his or her current position, but would still permit that person to perform the duties of another position. This distinction is most important in public safety positions where many employees suffer from injuries that prevent them from performing the essential duties of a public safety position, but do not prevent the employee from performing the essential duties of other positions. For example, a serious knee injury may become a permanent impairment that prevents an employee from passing a mandatory physical fitness test for a police officer, but would still permit that employee to work as a private security consultant.

If an employee suffers a permanent service-connected injury or illness that would prevent the employee from working at any job, a disability pension should replace the entire employee's lost income. Since disability pensions are exempt from Federal and State income taxes and Social Security taxes, a disability pension equal to 70% of final salary provides approximately the same take-home pay as an employee's full salary. At normal retirement age, an employee with a total incapacity disability retirement pension may receive more take-home pay than an employee on normal retirement because the disability pension remains higher than a normal retirement pension. Finally, at Social Security retirement age, the amount of a disability retirement pension stays the same and a normal County retirement pension decreases to account for the right to receive Social Security benefits.

If an employee suffers a permanent service-connected injury or illness that cuts short the employee's career as a public safety employee, but does not prevent the employee from working at another position, then the disability pension should only replace the extra income that the employee could have earned by continuing in his or her current position. A tax-free disability benefit of 52½% of final pay would produce the same take-home pay as approximately 75% of the employee's salary. The employee must earn only 25% of his or her former salary to make up the difference. Based upon the County's experience with the two-tier fire system since 2000, partial incapacity would make up 85% of the disability awards.

#### **5. What is catastrophic incapacity in Bill 18-12?**

Bill 18-12 would create a third tier for service-connected disability retirement called catastrophic incapacity. This benefit would pay 90% of the employee's final pay. This would be a tax-free benefit that will always provide significantly more take-home pay than the employee's former salary. Both total incapacity and catastrophic incapacity would require a finding that the employee could not perform any substantial gainful activity. Therefore, the 90% benefit for catastrophic incapacity is not an income replacement; it is an attempt to pay an enhanced benefit to compensate the employee for the nature of the injuries suffered by the employee.

Bill 18-12 defines a catastrophic incapacity as:

---

<sup>6</sup> Income replacement is rarely an adequate replacement for a serious injury or illness. The disability retirement system is not designed to provide fair compensation for an employee's pain and suffering due to the injury or illness.

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

- (1) both arms;
- (2) both eyes;
- (3) both feet;
- (4) both hands;
- (5) both legs;
- (6) functional deafness; or
- (7) a combination of any two of the following body parts:
  - (A) arm;
  - (B) eye;
  - (C) foot;
  - (D) hand; or
  - (E) leg.

This definition was taken, in part, from the definition of permanent total disability in the Maryland Worker's Compensation Law. See Md. Code Ann. Labor & Employment §9-636. It is important to note that "functional deafness" was added to the definition by the FOP. The definition of catastrophic incapacity raises several questions. For example, the loss of use of an arm necessarily includes the loss of use of a hand. Therefore, does the loss of use of one arm make an employee eligible for this enhanced benefit? The most important issue raised by this definition is the meaning of "functional deafness." The FOP included functional deafness in its last best offer to the arbitrator. It was not included in the Executive's last best offer. Unfortunately, it is not defined in the Bill. Deafness does not normally render a person unable to perform any substantial gainful activity.

Although this category was presented as an extremely rare occurrence, it is important to ensure that the definition is narrow enough to make that prediction accurate. The 90% benefit is very expensive. As Mercer pointed out in its April 4 letter, each 1% of disabilities that meet this definition instead of partial incapacity will raise the County's annual contribution by approximately \$58,000.

**6. Why prohibit 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>7</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>8</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 related to misconduct on the job.

This packet contains:	<u>Circle #</u>
Expedited Bill 18-12	1
Legislative Request Report	12
Transmittal Memo from County Executive	13
Arbitration Decision	14
Memo from Executive concerning MCGEO	28
Fiscal Impact Statement	29
April 4 Mercer Letter	33
April 9 Mercer Letter	41
Bill 45-10 excerpt	52
Fairfax County Code Excerpt	54
Howard County Code Excerpt	56
Baltimore County Code Excerpt	59
District of Columbia Code Excerpt	61
Anne Arundel County Code Excerpt	64

F:\LAW\BILLS\1218 Disability Retirement-Eligibility And Benefits\PH Memo.Doc

---

<sup>7</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>8</sup> See, [https://www.socialsecurity.gov/OP\\_Home/cfr20/404/404-0468.htm](https://www.socialsecurity.gov/OP_Home/cfr20/404/404-0468.htm).

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

---

By: Council President at the request of the County Executive

---

**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 66⅔ % 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.



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 66 $\frac{2}{3}$ % 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

***In the Matter of Arbitration Between:***

**FRATERNAL ORDER OF POLICE  
LODGE 35**

**and**

**MONTGOMERY COUNTY (MD)  
GOVERNMENT**

**Disability Retirement  
Interest Arbitration**

**Walt De Treux, Esq., Arbitrator**

*Hearing Date: 3/22/12*

*Decision Date: 3/29/12*

**Appearances:** For the FOP – Francis J. Collins, Esq., *KAHN SMITH & COLLINS, P.A.*  
For the County – Sylvia Kinch, Esq., *OFFICE OF COUNTY ATTORNEY*

**Introduction and Statement of Relevant Facts**

In July 2011, Montgomery County (Maryland) Council enacted Bill 45-10, which amended the County's disability retirement system for certain employees, including members of the police bargaining unit. Prior to enactment of the legislation, police officers who suffered injuries on the job that left them unable to perform the duties of a police officer were eligible for a disability retirement pension benefit equal to 66-2/3% of their final earnings. Bill 45-10 created categories of incapacity (partial or total incapacity) and levels of benefits for each category. Pursuant to the legislation, an officer incurring partial incapacity (inability to perform the duties of a police officer, but otherwise able to engage in other employment) would be entitled to a disability retirement pension equal to 52-1/2% of final earnings. A bargaining unit member who suffers total incapacity (an inability to engage in any substantial employment) would be entitled to a disability retirement pension equal to 70% of final earnings. Council also prohibited an

employee “who committed an offense that would justify termination for misconduct” from receiving disability retirement benefits.

While the legislation expressed Council’s desire that all Montgomery County employees have a multi-tier disability retirement system, Council recognized that disability benefits are a mandatory subject of bargaining. It, therefore, granted time for the County Executive to negotiate with the police bargaining unit over an appropriate multi-tier disability retirement system. If the parties failed to reach agreement, the parties were directed by the legislation to submit the issue for resolution through the applicable impasse procedures defined in the police labor relations law.

The parties attempted to negotiate, together and with a mediator, an appropriate multi-tier system. To that end, they agreed to a three-tier system and benefit levels for each tier, as follows:

Partial incapacity – 60% of final earnings

Total incapacity – 66-2/3% of final earnings

Catastrophic incapacity – 90% of final earnings<sup>1</sup>

However, the parties were unable to agree to the County Executive’s proposed reduction in disability retirement benefits when an officer reaches Social Security Normal Retirement Age (SSNRA). While both parties found overly broad the Council’s intent to strip an officer of disability retirement benefits for

---

<sup>1</sup> Catastrophic incapacity has been defined as the loss of both arms, both eyes, both feet, both hands, both legs, or a combination of any two of the following: arm, eye, feet, hand, leg. The FOP proposal also included functional deafness, the definition of which had not been fully resolved by the parties at the time of hearing.

dischargeable misconduct, they could not agree on the appropriate standard that would disqualify a bargaining unit member from receiving benefits.

Pursuant to the impasse procedures provided in the police labor relations law, an arbitrator was appointed to hear the dispute. The parties submitted last best final offers to each other and the Arbitrator. On March 23, 2012, a hearing was held in Gaithersburg, Maryland, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The parties rested their cases on the record, and the matter was submitted to the Arbitrator for a decision.

### **Issue**

Which of the parties' last best final offers is to be adopted?

### **Last Best Final Offers**

As noted, the parties agreed on the appropriate tiers and benefit levels. Accordingly, both parties' last best final offers include the following tiers and benefit levels: Partial incapacity – 60% of final earnings; Total incapacity – 66-2/3% of final earnings; Catastrophic incapacity – 90% of final earnings.

The County included three other items in its last best final offer, summarized as follows:

- 1) at normal social security retirement age, a reduction in the disability retirement benefit to 1.65% of final earnings, multiplied by the greater of

25 and the number of years of service at disability, limited to 36, and increased for the same COLAs that were applied to the pre-normal social security retirement age disability benefit.;

- 2) the denial of disability retirement benefits to an employee who commits a "significant criminal act" which leads to a conviction, provided the act occurs after date of hire and before separation from service with the County; and
- 3) for catastrophic incapacity, the calculation of final earnings as the member's final earnings or the final earnings for a Police Officer III with 20 years of service, whichever is greater.

The FOP rejected the County proposal for a reduction in benefits at SSNRA. While not expressly rejecting the final earnings calculation for a catastrophically incapacitated employee, the FOP noted that it did not receive the County proposal on this issue until the day of hearing and was not given sufficient time to review it and/or incorporate it into its own proposal.

The FOP's final offer accepted the 60%-66-2/3%-90% tier levels and benefits, as noted. It also included the following two items summarized below:

- 1) prohibiting an employee from receiving disability retirement benefits while incarcerated; and
- 2) confirming that tentative agreements reached by the parties during negotiations are part of the final award.<sup>2</sup>

---

<sup>2</sup> At hearing, the County did not contest that the tentative agreements are part of the final Award, although it did not include such a statement in its final offer. It was evident at hearing that both parties intended for the tentative agreements to be

## **Analysis and Decision**

Due to the parties' dedicated and good faith efforts at reaching an agreement, the dispute presented to this Arbitrator is effectively limited to two issues – the reduction, if any, in disability retirement benefits when an officer reaches Social Security Normal Retirement Age; and the standard by which an officer will be ineligible for benefits because of criminal activity.

Pursuant to the parties' impasse procedure and Bill 45-10, the arbitrator is required to select either party's last best final offer in its entirety. He is not free to select specific provisions from each, or to craft compromises between the parties' proposals. In short, an arbitrator must select either the County's last best final offer or the FOP's last best final offer. In Bill 45-10, County Council specified the standards by which the arbitrator must evaluate the parties' last best final offers. In the legislation, the Council noted,

[the arbitrator] "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.

---

binding on the parties regardless of which last best final offer is adopted in this Award.

## **Reduction of benefits at Social Security Normal Retirement Age**

In Bill 45-10, County Council expressly stated in Section 33-131(4)(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.

The Council did not specify why it determined such a policy was appropriate; but in legislating a multi-tier system that provided a lesser benefit for partial incapacity, the Council acknowledged its concern with a partially incapacitated officer, able to engage in other employment, receiving the same benefit as a totally incapacitated officer, who is precluded from earning additional income.

It can be reasoned that the primary goal of Council in passing Bill 45-10 was accomplished when the parties agreed to the partial (60%)-total (66-2/3%)-catastrophic (90%) tier and benefit levels. It must be noted, however, that Bill 45-10 also resulted in projected savings to the County (in the form of reduced contributions) of approximately \$1.3 million for FY2013. According to plan actuary Douglas Rowe of Mercer, the parties’ three-tier system provides for a savings of \$631,000.<sup>3 4</sup>

---

<sup>3</sup> Rowe also provided savings projections for non-union employees. Those figures are not considered in this Award.

<sup>4</sup> Joseph Duda, of Duda Actuarial Consulting, retained by the FOP, projected savings of \$771,000, an amount that he considered actuarially consistent with Rowe’s projections. Because Rowe also provided cost estimates for the County’s last best final offer and the competing actuaries have no substantial disagreement, this Award adopts Rowe’s projections throughout.

The County Executive deemed it necessary to present a proposal that roughly matched the savings anticipated by Bill 45-10. Accordingly, it introduced the concept of a reduction in disability benefits when an officer reached Social Security Normal Retirement Age. It adopted a reduction to 1.65% of final earnings from a provision in the normal service retirement system, which reduces the benefit of an officer on service retirement to that amount when he/she reaches SSNRA. The projected savings achieved by the multi-tier system with the SSNRA-triggered reduction total \$1.235 million in FY2013<sup>5</sup>.

While the County's effort to maintain a certain level of savings is understandable, Council did not specify in Bill 45-10 that the parties had to achieve the level of savings generated by County Council's 52.5%-70% disability retirement system. Rather, it instructed the parties to negotiate "an appropriate multi-tier system" and mandated that the arbitrator apply four specific factors to his evaluation of the parties' last best final offer. The County's proposal for a reduction in disability retirement benefits at SSNRA does not withstand scrutiny under the four factors provided by Bill 45-10.

The County could not identify any service-connected disability retirement systems for similar employees of other public employers in the Washington Metropolitan Area and in Maryland that provide for a reduction in disability benefits at SSNRA. Both Director of Human Resources Joseph Adler and Plan Actuary Rowe testified that they were not aware of any jurisdiction in Maryland that provided for such a reduction in benefits. Rowe, who also found no such system in the Metro DC

---

<sup>5</sup> This figure includes the final earnings formula in the County's last best final offer for an officer who has a catastrophic incapacity.

area, cited Frederick County, Maryland as a jurisdiction that converts a disability retirement benefit to a normal service retirement benefit at SSNRA. But the County is not seeking a conversion as exists in Frederick County; but rather, it is seeking a reduction in disability retirement benefits at SSNRA. The systems do not compare.

Rowe noted that Montgomery County reduces a normal service retirement benefit to 1.65% of final earnings at SSNRA. Bill 45-10 does not require this Arbitrator to look within the County itself, but rather, at the surrounding jurisdictions. Even if the County's own practice was taken into consideration, it stands alone among surrounding jurisdictions in mandating such a reduction.

The second factor to be evaluated under Bill 45-10 is "best practices for service-connected disability retirement systems for similar employees in the United States." "Best practices" presumes that other jurisdictions in the United States have adopted the provision in dispute and that it has gained some widespread recognition or acceptance as an appropriate method to manage disability retirement benefits. The County could not cite any jurisdiction in the United States that includes such a SSNRA-triggered reduction provision in its disability retirement system. FOP Actuary Duda had also never come across such a provision.

"The interest and welfare of the public" is the third factor to be examined. The County did not offer testimony as to how the public interest and welfare is improved or protected by reducing a disabled officer's retirement benefits at SSNRA. FOP President Marc Zifcak offered that the public is better protected by an officer who knows he/she will not suffer financially if he/she is injured on the job. Zifcak theorized that the public couldn't afford to have an officer hesitate to act out

of concern for injury and any negative financial consequences that could result. Neither parties' presentation persuasively established that the inclusion or absence of a reduction provision would have any significant impact on the interest and welfare of the public.

Finally, Bill 45-10 requires this Arbitrator to consider the long-term ability of the County to finance a disability retirement system and the effect of the cost of the system on public services. The parties' agreement on a multi-tier system of incapacity and benefit levels results in considerable savings to the County, thereby strengthening its ability to finance the disability system and freeing money to be used for other public services. Certainly, the County Executive's proposal for a reduction in benefits at SSNRA increases those savings. But it is an unconventional and untried approach that does not share acceptance or recognition in the Washington Metropolitan Area, in Maryland, or anywhere in the United States. And it has not been demonstrated that it has any beneficial effect on the interest and welfare of the public.

If the only focus of Bill 45-10 was to generate savings, Council could have crafted a system that provided for even more drastic reductions in benefits either at the time of disability or at SSNRA. It did not do so; rather it encouraged the parties to negotiate an appropriate disability retirement system that mirrored the systems in other jurisdictions, served the interest and welfare of the public, and provided long-term financial stability to the system with a positive effect on other public services.

The parties' agreement on a multi-tier system of incapacity and benefit levels achieves these goals. The County's proposal to reduce benefits at SSNRA was solely motivated by a desire to reach approximately the same level of savings as would be realized under Bill 45-10. Council did not require such a level of savings; and the parties' agreement already produces substantial savings in FY2013 and for many years to come.

The County's proposal for a reduction in benefits at SSNRA does not comport with the factors to be considered under Bill 45-10. The parties' agreement on a multi-tier system that provides for a 60% benefit for partial incapacity, 66-2/3% for total incapacity, and 90% for catastrophic incapacity creates an appropriate disability retirement system consistent with the policy goals of Bill 45-10.

#### **Denial of benefits for criminal conduct**

Bill 45-10 contains a provision denying disability retirement benefits to an officer who commits an offense "that would justify termination for misconduct." Both parties recognize that prohibition as overly broad, and neither could adequately explain the Council's motivation for including such a provision in the legislation.

The County asserted that officers charged with misconduct often file disability claims, suggesting that those claims were suspect; but it acknowledged that such claims had to be evaluated and found to have merit by a disability review board. There was no evidence or allegation that the review board granted disability retirement benefits to officers with meritless claims.

Nonetheless, Bill 45-10's broad misconduct language compelled the parties to craft alternatives. The County proposed in its last best final offer that officers committing a "significant criminal act"<sup>6</sup> resulting in a conviction be denied eligibility for disability retirement benefits. The FOP's proposal requires the suspension of benefits during any period of incarceration. Those proposals have to be evaluated under the four factors enunciated in Bill 45-10.

There is no question that the County worked diligently and in good faith to craft a proposal that addressed what it perceived as Council's concern. But Lieutenant David Anderson admitted that the "significant criminal act" standard was not adopted from other public employers in the Metro Washington Area or in Maryland. Rather, the standard was the result of internal deliberations among County and Police Department representatives.

The FOP proposal for suspension of benefits during incarceration did not specifically arise from surrounding jurisdictions, but it was adopted from Social Security regulations. Code of Federal Regulations §404.468(a) provides,

"No monthly benefits shall be paid to any individual for any month any part of which the individual is confined in a jail, prison, or other penal institution or correctional facility for conviction of a felony. This rule applies to disability benefits..."

In the absence of any evidence that other jurisdictions around Montgomery County or elsewhere have adopted criminal act provisions in their disability retirement systems, the Social Security standard, applicable throughout the United

---

<sup>6</sup> The proposal defines "significant criminal act" as one resulting "in confinement of at least 30 days and/or any type of probation of at least 60 days", excluding traffic code violations.

States, stands as a “best practice” for handling the effects of a criminal conviction on disability retirement benefits.

The County generally offered that the interest and welfare of the public is not served by officers filing for disability retirement benefits prior to or after being charged with a criminal act. The unstated implication was that the officers are attempting to secure these benefits to ensure income in the face of likely termination of employment. Yet the County admitted that it had no evidence as to whether the alleged problem is widespread. It conceded that all disability claims have to be vetted by the disability review board, and it acknowledged that an investigation by the Inspector General did not uncover any systemic fraud.

The FOP asserted its position that the interest and welfare of the public is best served by officers who, when incurring injuries in the line of duty, are financially protected from the effects of those injuries. It labeled the County proposal as “draconian”, and it cited a hypothetical situation of a 25-year old officer, injured in the line of duty, who loses a lifetime of benefits because he engaged in some minor criminal conduct that resulted in 60 days probation. The FOP argues that the officer pays his debt to society by serving the 60 days probation, but pays a much greater penalty imposed by the County when he loses benefits, to which he is otherwise entitled, for the remainder of his life. Such a disproportionate penalty serves no public interest.

The FOP argument against the County proposal is persuasive, and the FOP proposal, borrowed from federal regulations, better serves the public interest and welfare.

The parties agree that incidents of officers engaging in criminal conduct that result in incarceration or probation are rare. Inclusion of either party's proposal will have no significant effect on the long-term ability of the County to finance the disability retirement system.

Considering that no surrounding jurisdiction includes a criminal conviction provision in its disability retirement system, that the FOP proposal adopts the "best practices" on criminal conviction from Social Security regulations, that the FOP proposal better serves the public interest and welfare, and that the parties' proposals do not impact the financial stability of the County's disability retirement system, I find that only the FOP proposal comports with the factors enunciated in Bill 45-10.

In conclusion, applying the factors in Bill 45-10 as explained above, I find that the FOP last best final offer creates an appropriate multi-tier disability retirement system that achieves the goals set forth by County Council.

**Award**

The FOP last best final offer is adopted. The County Executive is directed to submit this Award to Council pursuant to Bill 45-10, Section 33-131(4)(d) no later than April 1, 2011.



WALT De TREUX



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

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.

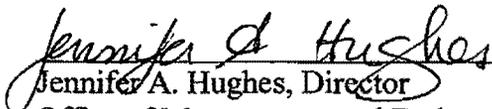
Not applicable.

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

4/11/12  
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.

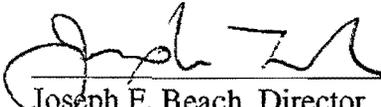
The Department of Finance relied on the analysis performed by Mercer, the retirement plan's actuary. Mercer indicated the minimum annual cost of this legislation (to implement the arbitration award at \$852,000 and a minimum cost over six years of \$5.112 million. There could be an additional six-year 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

4-11-12  
\_\_\_\_\_  
Date



Douglas Rowe, FSA, EA, MAAA  
Principal

One South St., Suite 1001  
Baltimore, MD 21202  
410 347 2806 Fax 410 727 3347  
douglas.rowe@mercer.com  
www.mercer.com

**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.

Page 2  
April 4, 2012  
Mr. Joseph Adler  
Montgomery County Government

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

Page 3  
 April 4, 2012  
 Mr. Joseph Adler  
 Montgomery County Government

- 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.

Page 4  
 April 4, 2012  
 Mr. Joseph Adler  
 Montgomery County Government

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.

Page 5  
April 4, 2012  
Mr. Joseph Adler  
Montgomery County Government

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

Page 6  
April 4, 2012  
Mr. Joseph Adler  
Montgomery County Government

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.

Page 7  
April 4, 2012  
Mr. Joseph Adler  
Montgomery County Government

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.

Page 8  
April 4, 2012  
Mr. Joseph Adler  
Montgomery County Government

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

One South St., Suite 1001  
Baltimore, MD 21202  
410 347 2806 Fax 410 727 3347  
douglas.rowe@mercer.com  
www.mercer.com

**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.

Page 2  
April 9, 2012  
Mr. Joseph Adler  
Montgomery County Government

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

Page 3  
 April 9, 2012  
 Mr. Joseph Adler  
 Montgomery County Government

- 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.

Page 4  
 April 9, 2012  
 Mr. Joseph Adler  
 Montgomery County Government

**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

Page 5  
 April 9, 2012  
 Mr. Joseph Adler  
 Montgomery County Government

## 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

Page 6  
 April 9, 2012  
 Mr. Joseph Adler  
 Montgomery County Government

### 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

Page 7  
April 9, 2012  
Mr. Joseph Adler  
Montgomery County Government

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.

Page 8  
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

Page 9  
April 9, 2012  
Mr. Joseph Adler  
Montgomery County Government

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.

Page 10  
April 9, 2012  
Mr. Joseph Adler  
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.

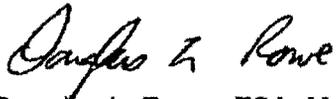
All costs, liabilities, and other factors under the plan were determined in accordance with generally accepted actuarial principles and procedures. Funding calculations reflect the provisions of current statutes and regulations issued hereunder. In our opinion, the actuarial assumptions are reasonable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

Page 11  
April 9, 2012  
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.**

\\waswps01\data3\dlc\imgewas\2012\special studies\la e and h disability study\disability study letter\_groups a e and h.doc

## 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.

## Fairfax County

**Section 3-7-28. - Service-connected disability.**

- (a) Any member who in the discharge of his official duties has become totally disabled as a result of an accident or personal injury on or before June 30, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six and two-thirds percent (662/3%) of the salary that would have been received had no injury occurred and the performance of duty had continued. Such pension and benefits shall continue during the existence of such total disability, or until such time as eligibility is reached for retirement pursuant to Section 3-7-26(a).
- (b) Any member who in the discharge of his official duties has become totally disabled as a result of an accident or personal injury on or subsequent to July 1, 1981, shall receive an annual retirement allowance, payable monthly, equaling sixty-six and two-thirds percent (662/3) of the salary the member received on the date of accident or personal injury subject to the provisions of Section 3-7-37. Such allowance shall continue during the existence of such total disability, or until such time as eligibility is reached for retirement pursuant to Section 3-7-26(b)(2).
- (c) The amount of compensation awarded under the Virginia Workers' Compensation Act ("the Act") to such members for temporary total or partial incapacity, including any awards of cost-of-living increases under the Act, shall be deducted from such retirement allowance. Whenever the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, such payments shall no longer be used to reduce the monthly retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without reduction for such payments.
- (d) Any member who applies for a service-connected disability retirement and an allowance pursuant to Subsection (a) or (b) of this Section, or who applies pursuant to Section 3-7-29, and who receives the allowance prescribed by this Section as a result thereof, on or after the effective date of this Subsection [July 1, 1988], shall receive the allowance so provided during the existence of such disability, until the total membership service credit period equals twenty-five (25) years, whereafter said allowance shall be reduced to sixty percent (60%) of the salary that would have been received had no injury occurred and the performance of duty continued.
- (e) With respect to all retirements after the effective date of this Subsection [January 11, 1993] pursuant to this Section or as a result of an application pursuant to Section 3-7-29 as a result of which the member receives the allowance provided by this Section, if a member receives some or all of his compensation for temporary total or partial incapacity under the Act in the form of a lump sum payment, he shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he would have received equal the amount of his lump sum benefit under the Act; provided, however, neither a lump sum payment or any portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or a portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under this Section shall be offset against the member's allowance under this Section; and provided further that in the event that the member receives a lump sum settlement of benefits that he is or may be entitled to in the

future under the Act, and said settlement does not specify how much of the sum represents settlement of his entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such sum which in its judgment represents compensation for such benefits. (20-81-3; 8-82-3; 4-83-3; 36-88-3; 13-92-3; 1-93-3.)

**Section 3-7-29. - Partial service-connected disability.**

- (a) For purposes of this Article, "total disability" shall be defined as the inability of the member to reasonably perform his or her duties as a police officer. "Partial disability" shall be defined as the inability of the member to perform some part of the duties of a police officer, such as in administrative or desk assignments.
- (b) Members granted pension and benefits for partial disability shall be subject to recall to active service by the Board when police officer positions are available in the Police Department that they are capable of performing, as determined by the Chief of Police. If so recalled, all pension and benefits for partial disability shall terminate from and after the date of such recall.
- (c) Any member becoming partially disabled in the manner provided in this Section, who shall remain in the Police Department in a police officer position which he or she is capable of performing, shall not receive pension and benefits until such service credit is acquired as would otherwise be required for service retirement.
- (d) If the Chief of Police determines that there is no suitable police officer position available for a partially disabled member, such member shall then be treated as totally disabled under the provisions of this Article from and after the date of his or her separation from employment with the Police Department.
- (e) The surviving spouses and dependants of all members who have been retired before and of those who are retired on or after July 7, 2003, on account of service-connected partial disability shall be entitled to benefits under Section 3-7-41. (20-81-3; 33-03-3).

# Howard County

## Sec. 1.431A. - Disability benefits.

The Plan shall pay disability benefits determined in accordance with the following provisions:

- (a) *Ordinary Disability.* If a participant reaches a termination date by reason of total and permanent disability, the participant shall be entitled to receive a monthly disability benefit equal to the greater of the amount determined in accordance with paragraph (1) or paragraph (2), as follows:
- (1) If the participant has completed at least five years of creditable service, the monthly benefit payable pursuant to this paragraph (1) shall be 20 percent of the participant's average compensation.
  - (2) If the participant has completed at least five years of creditable service, the monthly benefit payable pursuant to this paragraph (2) shall be the participant's accrued benefit (based upon the participant's actual years of creditable service and average compensation at his or her termination of employment), without actuarial reduction and, notwithstanding the provisions of subsection (c) of this section, without reduction for any benefits payable under the Workers' Compensation Law of Maryland.
- (b) *Line of Duty Disability.*
- (1) Except as provided in paragraphs (2) and (3) of this subsection, a participant (regardless of his or her length of service) who terminates employment by reason of total and permanent disability, incurred as a result of an accident or injury which has been sustained as an active covered employee and which has been ruled compensable under the Workers' Compensation Law of Maryland, shall be entitled to receive a monthly benefit equal to the greater of:
    - (i) The benefit determined pursuant to (a) above; or
    - (ii) The lesser of:
      - a. A monthly amount which, when combined with any Social Security disability benefits the participant is entitled to receive, equals 100 percent of his or her compensation determined, as of the onset of the participant's disability; or
      - b.  $66\frac{2}{3}$  percent of the participant's compensation.
  - (2) Except as provided in paragraph (3) of this subsection, a participant, regardless of his or her length of service, who is a Firefighter who terminates employment after December 31, 1997 or a Police Officer who terminates employment after March 31, 1998 by reason of a line of duty disability shall be entitled to receive:
    - (i) If the line of duty disability is a catastrophic disability, as defined in subparagraph (iv) below, a monthly benefit equal to  $66\frac{2}{3}$  percent of the participant's compensation; or
    - (ii) If the line of duty disability is a noncatastrophic disability, as defined in subparagraph (v) of this paragraph, a monthly benefit equal to 50 percent of the participant's compensation.
  - (3) A participant who is receiving a monthly benefit pursuant to paragraph (1) of this subsection may make a one-time irrevocable election to cease his or her receipt of benefits under paragraph (1) of this subsection in exchange for benefits under paragraph (2)(ii) of this subsection. Such election shall be made

between the effective date of this amendment and November 30, 2000 and shall take effect on January 1, 2001.

- (4) In paragraphs (2) and (3) of this subsection the following terms have the meanings indicated:
- (i) *Line of duty disability* means a total and permanent disability which, as determined in accordance with rules established by the Committee, is incurred as a result of an accident or injury which has been sustained as a result of service as an active covered employee and which has been ruled compensable under the Workers' Compensation Law of Maryland.
  - (ii) *Catastrophic disability* means a line of duty disability:
    - a. By reason of which the participant will be permanently prevented from engaging in any substantial gainful employment; or
    - b. Which severely limits one or more major life activities. Substantial gainful employment means the ability to perform a moderate amount of work with reasonable regularity, without reference to the type of work performed by the participant before his or her termination date. Major life activities include caring for one's self, walking, seeing, hearing, speaking, breathing or learning.
  - (iii) *Noncatastrophic disability* means a line of duty disability which is not a catastrophic disability.
- (c) *Payments Considered in the Nature of Workers' Compensation Payments.* Any payments made to Police and Fire employees for injuries received in the line of duty pursuant to any retirement disability provisions of this plan shall be considered to be in the nature of Worker's Compensation payments made pursuant to Title 9 of the Labor and Employment Article of the Annotated Code of Maryland.
- (d) *Adjustments to Compensation.* For purposes of (b) above, "compensation" includes adjustments to the legislated base annual salary for employees in the same position classification as the participant at the time of the onset of the participant's disability through the date the participant's disability benefits commence. In addition, such participant shall be entitled to receive individual health insurance coverage under the health plan in effect for covered employees as of the participant's termination date (or if the plan is no longer offered by the County, coverage under the most comparable health plan offered by the County). The premiums for such health insurance coverage will be paid by the County.
- (e) *General Provisions Relating to Disability.*
- (1) *Commencement of disability benefits.* Disability benefits shall commence on the first day of the month coincident with or otherwise next following the determination of disability by the County; provided, however, that benefits payable pursuant to this section shall be reduced by any benefits payable from workers' compensation.
  - (2) *Forms of benefit.* The benefits payable pursuant to this section shall be payable in the normal form provided by section 1.428A, unless an optional form of payment has been elected pursuant to section 1.442A.
  - (3) *Definition.*
    - (i) Total and permanent disability shall mean a medically determinable physical or mental impairment which can be expected to be permanent or result in death, and by reason of which the participant will be

- prevented from performing the usual duties of his or her position with the County as required by the County Code.
- (ii) Such total and permanent disability must be evidenced by a certificate of a physician selected or approved by the County.
  - (iii) However, total and permanent disability shall not include any injury or disease which:
    - a. Resulted from or consists of chronic alcoholism or addiction to narcotics;
    - b. Was contracted, suffered or incurred while the participant was engaged in, or resulted from his or her having engaged in, a criminal enterprise;
    - c. Was intentionally self-inflicted; or
    - d. Arose as a result of willful negligence on the part of the participant.
- (4) *Continuing disability.*
- (i) Until a participant who has reached a termination date by reason of disability attains his or her normal retirement date, the continuation of the participant's right to receive disability benefits shall depend on the participant's continued survival, and the case shall be subject to periodic review in accordance with rules established by the County to determine the participant's employment status, including the requirement that the participant furnish to the County a copy of his or her Federal income tax return each year.
  - (ii) In the event a disabled participant ceases to submit to such review, prior to his or her normal retirement date, the disability benefits payable pursuant to this section shall cease.
  - (iii) Except as provided in subparagraph (iv) of this paragraph, if, during a calendar year, the amount of a participant's earned income, worker's compensation benefits, and disability benefits paid to the participant pursuant to this section for such year exceed the participant's annualized average compensation at his or her termination date plus \$3,000.00 (adjusted for c/l increases), effective as of the first day of the next following plan year, the disability benefit payable under the plan shall be reduced, dollar for dollar, to the extent of the excess.
  - (iv) Subparagraph (iii) of this paragraph does not apply to participants who retire pursuant to the provisions of subsection (b)(2) of this section.
- (5) *Death of disabled participant.* In the event of the death of a disabled participant, no benefits with respect to the participant shall be payable except as otherwise provided in sections 1.439A and 1.440A.
- (6) *Termination of employment after normal retirement date.* Notwithstanding any of the foregoing provisions, if a participant terminates employment with the County on a date at which he or she would be entitled to benefits pursuant to section 1.428A, the participant shall be deemed to have elected retirement and shall receive the benefits provided under section 1.428A, as the case may be; provided, however, that if the participant qualifies for benefits payable pursuant to this section 1.431A the participant may elect to receive disability benefits under this section 1.431A in lieu of benefits under section 1.428A.

(C.B. 83, 1995; C.B. 60, 1997; C.B. 79, 1997; C.B. 21, 2000; C.B. 10, 2001; C.B. 7, 2004, § 2; C.B. 22, 2008, § 1)

## Baltimore County Police & Fire Disability

### § 5-1-226. SAME--POLICE AND FIRE DEPARTMENTS.

Upon retirement for accidental disability, such member shall receive an accidental disability retirement allowance which shall be as follows:

(1) (i) *Dismemberment or paralysis.* Member shall be eligible to receive an accidental disability allowance, regardless of age, if the member has sustained any of the losses listed in the schedule below and which loss has been determined to be the direct result of bodily injury arising through an accident, independent of all other causes, occurring while in the actual performance of duty with the county at a definite time and place, without willful negligence on the part of the member. The accidental disability allowance under this section shall be an amount equal to seventy-five (75) percent of the member's average final compensation.

(ii) Schedule of losses:

1. Both hands or both feet;
2. One hand and one foot;
3. One hand and the sight of one eye;
4. One foot and sight of one eye;
5. Sight of both eyes;
6. Paralysis (para or quadriplegia);

with respect to a hand or foot, "loss" means dismemberment by severance through or above the wrist or ankle joint. "Loss" also means partial dismemberment of a hand or foot that results in the loss of all functional use of the partially dismembered hand or foot. With respect to eyes, "loss of sight of one eye" shall mean central visual acuity of twenty two-hundredths (20/200) or less in one eye with the use of correcting lenses, or visual acuity of greater than twenty two-hundredths (20/200) if accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees. "Loss of sight of both eyes" shall mean central acuity of twenty two-hundredths (20/200) or less in the better eye with the use of correcting lenses, or visual acuity greater than twenty two-hundredths (20/200) if accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.

(2) (i) *Accidental disability – schedule of impairments.* A member shall be eligible to receive a full accidental disability allowance, regardless of age, if the member has sustained an impairment or impairments to the extent listed below under "schedule of impairments" as a direct result of the actual performance of duties with the county and which has permanently incapacitated the member for the further performance of the duties of the member's job classification. The full accidental disability allowance under this paragraph shall be an amount equal to sixty-six and two-thirds (66 2/3) percent of the member's average final compensation.

(ii) *Schedule of impairments:* A seventy-five (75) percent anatomical loss of the use of the impairments listed below or a fifty (50) percent or more anatomical loss of each of two (2) or

more of the impairments below; or, except as to Group 3 members, a one hundred (100) percent or more anatomical loss of the use of any combination of the impairments listed below, if the loss is caused by the same accident or incident, and, as a result of the loss, the member's employment is involuntarily terminated:

1. Speech;
2. Sight;
3. Neck;
4. Back;
5. Vital bodily organ;
6. A part of the central nervous system;
7. Arm;
8. Hip, leg, or lower extremity;
9. Shoulder;
10. Hearing;
11. Mentally incapacitated whereby a member applies for and is granted a disability benefit under the federal old-age survivor's and disability insurance act.

(iii) The percentage of anatomical loss shall be determined in accordance with the American Medical Association guides to evaluation of permanent impairment, such determination shall include information about function and range of motion.

(3) *Accidental disability.* A member shall be eligible to receive an accidental disability allowance, regardless of age, if the member has sustained an impairment as a direct result of the actual performance of duties with the county and which has permanently incapacitated the member for the further performance of the duties of the member's job classification but does not reach the extent of incapacity as found in paragraphs (1) and (2) of this section. For pay schedules IV, V, VII, and VIII, the accidental disability allowance under this section shall be an amount equal to one-fortieth (1/40) of the member's average final compensation multiplied by the number of years of creditable service not in excess of twenty (20) and one-fiftieth (1/50) of the member's average final compensation multiplied by the number of years of creditable service in excess of twenty (20). The minimum retirement allowance shall be equal to fifty (50) percent of the member's average final compensation. The retirement allowance for a Group 3 member shall be equal to fifty (50) percent of the member's average final compensation but not less than the normal service retirement benefit that the member would have been entitled to on the date of retirement.

(1988 Code, § 23-57.1) (Bill No. 84-94, § 2, 7-1-1994; Bill No. 91-95, § 1, 7-1-1995; Bill No. 82-01, § 1, 10-5-2001; Bill No. 32-03, § 1, 7-1-2004; Bill No. 30-10, § 2, 7-1-2010)

## District of Columbia Police & Fire Disability

DC ST § 5-710

Formerly cited as DC ST 1981 § 4-616

District of Columbia Official Code 2001 Edition Currentness

Division I. Government of District.

Title 5. Police, Firefighters, Medical Examiner, and Forensic Sciences.

Chapter 7. Police and Firefighters Retirement and Disability.

Subchapter I. Retirement and Disability, 1916.

### § 5-710. Retirement for disability--Incurred or aggravated in performance of duty.

(a) Except as provided in subsections (e) and (e-1) of this section, whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall, upon retirement for such disability, receive an annuity computed at the rate of 2 1/2 of his average pay for each year or portion thereof of his service; provided, that such annuity shall not exceed 70% of his average pay, nor shall it be less than 66 2/3 of his average pay.

(b) In any case involving a member who is an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, in which the proximate cause of injury incurred or disease contracted by the member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2 1/2 of his average pay for each year or portion thereof of his service; provided, that such annuity shall not exceed 70% of his average pay, nor shall it be less than 66 2/3 of his average pay.

(c) A member shall be retired under this section only upon the recommendation of the Board of Police and Fire Surgeons and the concurrence therein by the Mayor, except that in any case in which a member seeks his own retirement under this section, he shall, in the absence of such recommendation, provide the necessary evidence to form the basis for the approval of such retirement by the Mayor.

(d)(1) A member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia may not retire and receive an annuity under this section on the basis of the aggravation in the performance of duty of an injury incurred or a disease contracted in the performance of duty unless:

(A) In the case of the aggravation of a disease, the disease was reported to the Board of Police and Fire Surgeons within 30 days after the disease was first diagnosed; or

(B) In the case of the aggravation of an injury, the injury was reported to the Board of Police and Fire Surgeons within 7 days after the injury was incurred or, if the member was unable (as determined by such Board) as a result of the injury to report the injury within such 7-day period, within 7 days after the member became able (as determined by such Board) to report the injury.

(2) The burden of establishing inability to report an injury in accordance with subparagraph (B) of paragraph (1) of this subsection within 7 days after such injury was incurred and of establishing that such injury was reported within 7 days after the end of such inability shall be on the member claiming such inability. Any report under this subsection shall include adequate medical documentation. Nothing in this subsection shall be deemed to alter or affect any administrative regulation or requirement of the Metropolitan Police force or the Fire Department of the District of Columbia with

respect to the reporting of an injury incurred or aggravated, or any disease contracted or aggravated, in the performance of duty.

(e)(1) Whenever any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the 90-day period beginning on November 17, 1979, is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed in accordance with paragraph (2) of this subsection.

(2)(A) In the case of any member who retires under this subsection or subsection (b) of § 4-615, the Board of Police and Fire Surgeons shall determine, within a reasonable time and in accordance with regulations which the Mayor shall promulgate, the percentage of impairment for such member and shall report such percentage of impairment to the Police and Firemen's Retirement and Relief Board.

(B) In the case of any member described in subparagraph (A) of this paragraph, the Police and Firemen's Retirement and Relief Board shall determine within a reasonable time the percentage of disability for such member giving due regard to:

(i) The nature of the injury or disease;

(ii) The percentage of impairment reported pursuant to subparagraph (A) of this paragraph;

(iii) The position in the Metropolitan Police force or the Fire Department of the District of Columbia held by the member immediately prior to his retirement;

(iv) The age and years of service of the member; and

(v) Any other factors or circumstances which may affect the capacity of the member to earn wages or engage in gainful activity in his disabled condition, including the effect of the disability as it may naturally extend into the future.

(C) The percentage of impairment or the percentage of disability for a member to whom this subsection applies may be redetermined at any time prior to the time such member reaches the age of 50 and his annuity shall be adjusted accordingly.

(D) The annuity of a member who is retired under this subsection shall be 70% of his basic salary at the time of retirement multiplied by the percentage of disability for such member as determined in accordance with subparagraph (B) of this paragraph, except that such annuity shall not be less than 40% of his basic salary at the time of retirement.

(E) For purposes of this subsection:

(i) The term "impairment" means any anatomic or functional abnormality or loss existing after maximal medical rehabilitation has been achieved.

(ii) The term "disability" means any actual or presumed reduction in or absence of ability to engage in gainful activity which is caused, in whole or in part, by an impairment.

(e-1) Whenever the Board of Police and Fire Surgeons receives a recommendation from the Director for a disability retirement of a Metropolitan Police Department or Fire and Emergency Medical Services Department member pursuant to Chapter 6A of this title, the Board of Police and Fire Surgeons shall make a disability assessment and, if the member is unable to perform the full range of duties, shall retire the member as disabled regardless of whether the member is performing useful and efficient services that are less than the full range of duties. The member shall be retired on an annuity determined in accordance with subsection (e)(2) of this section.

(f) Not later than 90 days after November 17, 1979, the Board of Police and Fire Surgeons shall submit to the Mayor recommendations for regulations to establish specific criteria for determining whether an injury was incurred, or a disease was contracted, in the performance of duty and whether an injury or disease was aggravated in the performance of duty. The Mayor shall promulgate regulations establishing such criteria in a timely manner based on the recommendations of the Board.

(g)(1) In making determinations under this section and under § 4-615, the Board of Police and Fire Surgeons and the Police and Firemen's Retirement and Relief Board shall make full use of the medical resources in the District of Columbia and shall make the widest practical use of the medical expertise available to them consistent with fair and even administration of Chapter 7 of Title 1.

(2) Not later than 90 days after November 17, 1979, the Board of Police and Fire Surgeons and the Police and Firemen's Retirement and Relief Board shall each submit to the Mayor recommendations for regulations to carry out the requirements of paragraph (1) of this subsection. The Mayor shall, in a timely manner and based on the recommendations of such Boards, promulgate regulations to carry out the requirements of such paragraph.

(3) Failure to promulgate such regulations, or failure to comply with such regulations, shall not invalidate any decision of the Mayor or the Police and Firemen's Retirement and Relief Board with respect to the retirement of any individual.

## Anne Arundel Police Disability

### § 5-5-205. Disability pensions.

(a) **Limitation on “total and permanent disability”.** In this section, “total and permanent disability” does not include disability resulting from or consisting of the participant currently engaging in the illegal use of drugs or narcotics; a willful effort on the participant’s part to bring about injury or illness to the participant or another person, while the participant is sane or insane; the participant engaging in any illegal or criminal enterprise or activity; injuries incurred on the job while under the influence of alcohol; or injuries incurred as a result of military service, other than as set forth in subsection (d)(4).

(b) **Scope of “total and permanent disability”.** A participant has a total and permanent disability if the Personnel Officer determines, on the basis of a medical examination by one or more physicians selected by the Personnel Officer, that the participant is wholly and permanently prevented as a result of bodily injury or disease from engaging in any occupation or employment for remuneration or profit or continuing as an employee in the participant’s regular assignment or in some other assignment within the Police Department.

(c) **Eligibility.** A participant is eligible for a disability retirement pension under this title on the first day of the month that the participant is determined to have a total and permanent disability and was making employee contributions to the plan immediately prior to the date of disability. A participant is not eligible to commence receiving a disability retirement pension on and after the participant’s normal retirement date unless the disability is the result of a bodily injury or disease arising out of and occurring in the course of the participant’s active performance of duties.

(d) **Annual disability retirement pension.**

(1) The annual amount of a disability retirement pension payable to each eligible participant shall be determined as provided in this subsection.

(2) If a participant has a total and permanent disability that is the result of bodily injury or disease arising out of and occurring in the course of the participant’s employment, the participant is entitled to receive an annual disability retirement pension equal to the greater of the participant’s accrued benefit or 66 2/3% of:

(i) the participant’s final average basic pay; or

(ii) if the participant is assigned to a higher classification and is disabled while acting in the higher classification, the final average basic pay that the participant would have received had the participant been promoted to the higher classification under § 6-1-208 of this Code.

(3) (i) If a participant has a total and permanent disability solely because the participant is prevented from engaging in any occupation or employment for remuneration or

profit as a result of a non-duty related cause, the participant is entitled to receive an annual disability retirement pension equal to the participant's accrued pension as of the participant's date of disability computed in accordance with the provisions of § 5-5-203 or 66 2/3% of the participant's final average basic pay, whichever is greater.

(ii) If a participant has a total and permanent disability solely because the participant is prevented from continuing as an employee in the participant's regular assignment or in some other assignment within the Police Department, as a result of a non-duty related cause, the participant is entitled to receive an annual disability retirement pension equal to the participant's accrued pension as of the participant's date of disability, computed in accordance with the provisions of § 5-5-203, or 20% of the participant's final average basic pay, whichever is greater.

(4) If a participant has a total and permanent disability as a direct result of performing military service that qualifies as credited in-plan military service, has been discharged from the military and awarded a monthly military disability pension, and is prevented from continuing in the participant's regular assignment within the Police Department as a result of this disability, the participant is entitled to receive an annual disability retirement payment equal to the participant's accrued pension as of the date of disability, computed in accordance with the provisions of § 5-5-203, or 66 2/3% of the participant's final average basic pay less the monthly amount of the military disability payment being received by the participant from the United States Government at the time of retirement calculated on an annualized basis, or 20% of the participant's final average basic pay, whichever is greater.

(e) **Disqualification.** Except for a participant whose disability retirement pension has been in effect for at least five years, a participant ceases to qualify for a disability retirement pension when:

(1) the Personnel Officer determines, on the basis of a medical examination by one or more physicians selected by the Personnel Officer, that the participant no longer has a total and permanent disability or has sufficiently recovered but refuses to resume the participant's regular occupation as an employee or to be reemployed by the County in some other position for which the participant is suited by, or that is appropriate to, the participant's training and experience; or

(2) the participant refuses to undergo a medical examination requested by the Personnel Officer, provided the participant may not be required to undergo a medical examination more than once a year.

(f) **Normal retirement date.** Disability retirement benefits payable to a disabled participant shall continue notwithstanding the fact that the participant reaches the participant's normal retirement date.

(g) **Benefits received under State law.** Notwithstanding any other provision of this section to the contrary, benefits received under this section are not affected by benefits received under the Labor and Employment Article, Title 9, of the State Code.

(1985 Code, Art. 7, § 5-205) (Bill No. 90-01; Bill No. 23-04; Bill No. 58-07; Bill No. 6-10)