

Expedited Bill No. 37-08
Concerning: Personnel — Disability
Retirement - Amendments
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Ch. , Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Andrews and Councilmember Trachtenberg

AN EXPEDITED ACT to:

- (1) make disability retirement procedures consistent for all employees;
- (2) create a partial incapacity disability retirement benefit;
- (3) create a total incapacity disability retirement benefit;
- (4) create a Medical Review Panel;
- (5) create a Disability Review Board;
- (6) prohibit certain applications for service connected disability retirement due to an accident filed more than a certain time after separation from County service or the date of the accident;
- (7) prohibit an employee who commits certain offenses from retiring on a service connected disability;
- (8) require an independent medical examination for a disability retirement;
- (9) modify the appeal procedures for disability retirement; and
- (10) generally amend the law regarding disability retirement.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-43, 33-128, 33-129, 33-135, and 33-138

| | |
|------------------------------|--|
| Boldface | <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:

1 **Sec. 1. Section 33-43, 33-128, 33-129, 33-135, and 33-138 are amended**
 2 **as follows:**

3 **33-43 Disability retirement.**

4 (a) *Applicability.* This Section applies to[:(1)] an application for disability
 5 benefits filed [on or after March 1, 2000, by a member who is also a
 6 member of the Police Bargaining Unit; (2) an application for disability
 7 benefits after May 18, 1995,] by any [other] member[;] or [(3)] a
 8 medical reevaluation of a disability retiree under subsection (g)[,
 9 regardless of when an application for disability benefits was filed].

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

12 [(1)] *Applicant* means any member [defined in subsection (a)] who
 13 has filed an application for disability retirement under subsection
 14 (d)(1).

15 [(2)] *Certified representative* means an employee organization
 16 certified under Section 33-79, 33-106, or 33-151 to represent a
 17 bargaining unit.

18 [(3)] *Disability [Arbitration Board or Board] Arbitrator* means [the]
 19 one of [3 panels] the 4 neutral arbitrators designated under subsection
 20 (m)(1) to review an appeal of the Chief Administrative Officer's final
 21 decision regarding an application for disability benefits [filed by any
 22 member except a member of the Police Bargaining Unit].

23 [(4)] *Disability Review [Panel or Panel] Board* means the [3 medical
 24 doctors] the administrative board appointed [as Panel members] by
 25 the Chief Administrative Officer [in accordance with] under
 26 subsection (c).

27 Medical Review Panel or Panel means the 4 medical doctors

28 appointed as Panel members by the Disability Review Board under
29 subsection (d).

30 [(5) *Medical doctor* means a doctor of medicine or osteopathy who
31 [has] graduated from a medical school accredited by the American
32 Medical Association and [who] is licensed to practice medicine in [the
33 State of] Maryland.

34 [(6) *Medical specialty* means a field of medicine, such as orthopedic
35 surgery or neurology, which requires specialized training and
36 certification.

37 *Occupational medicine* means a medical specialty which focuses on
38 the health of workers, including the ability to perform work; the
39 physical, chemical, biological, and social environments of the
40 workplace; and the health outcomes of environmental exposures.
41 Practitioners of occupational medicine address the promotion of
42 health in the work place and the prevention and management of
43 occupational and environmental injury, illness, and disability.

44 *Partial incapacity* means a member's inability to perform one or more
45 essential functions of the position the member holds because of
46 impairment that is unlikely to resolve in the next 12 months and may
47 be permanent, while the member retains the ability to perform
48 substantial gainful activity.

49 [(7) *Police Disability Arbitration Board* or *Police Board* means the 3
50 persons designated under subsection (m)(1) to review an appeal of a
51 decision by the Chief Administrative Officer affecting a member of
52 the Police Bargaining Unit's right to disability benefits.]

53 [(8) *Residual functional capacity* means what the individual can still
54 do, despite the individual's impairment. The County must give the

55 term residual functional capacity the same meaning as the term is
56 given by the U.S. Social Security Administration.

57 [(9)] *Substantial gainful activity* means [the ability to perform a
58 substantial level of paid work that exists in significant numbers in the
59 national economy] a level of productive work that requires significant
60 physical or mental duties, or a combination of both, performed for pay
61 or profit on a full-time or part-time basis. An individual is able to
62 perform a substantial level of work if the individual is able to earn
63 more than the U.S. Social Security Administration's current monthly
64 earnings limit [that applies to the individual's impairment] for a
65 disabled person. The County must give the term substantial gainful
66 activity the same meaning as the term is given by the U.S. Social
67 Security Administration.

68 *Total Incapacity* means the member's inability to perform substantial
69 gainful activity because of an impairment that is unlikely to resolve in
70 the next 12 months and may be permanent.

71 (c) *Disability Review Board.*

72 (1) The Disability Review Board has 5 members.

73 (2) The Executive must appoint the following 3 voting, ex officio
74 members of the Board, subject to County Council confirmation:

75 (A) the Director of Finance;

76 (B) the Director of Human Resources; and

77 (C) the Director of the Office of Management and Budget.

78 Each member must serve indefinitely while that member holds
79 the respective office in either a permanent or acting capacity.

80 (3) The Executive must appoint for a 3 year term, subject to
81 Council confirmation, 1 voting member from a list of 6 active

82 members of the retirement systems nominated jointly by the
 83 certified representatives of all bargaining units.

84 (4) The Executive must appoint for a 3 year term, subject to
 85 Council confirmation, 1 voting member who:

86 (A) is a resident of the County;

87 (B) has never been a County employee; and

88 (C) has experience in quasi-judicial administrative
 89 proceedings.

90 (5) Vacancy. The Executive must appoint, subject to Council
 91 confirmation, a replacement to serve the unexpired term of any
 92 member appointed under subsections (c)(3) or (4) who resigns
 93 or is unable to serve due to incapacity, death, or any other
 94 reason.

95 (6) Compensation. Each member serves on the Board without
 96 additional compensation from the County and without
 97 compensation for that service from any other source.

98 (d) Selection of the [Disability] Medical Review Panel.

99 (1) The [Chief Administrative Officer] Disability Review Board
 100 must appoint [the 3] 4 members of the [Disability] Medical
 101 Review Panel from a list of 10 medical doctors [agreed upon by
 102 the certified representatives and the County] provided by an
 103 impartial medical organization retained by the Chief
 104 Administrative Officer.

105 (2) The [Chief Administrative Officer] Disability Review Board
 106 must [ensure that no 2 members of the Panel practice in the
 107 same medical specialty] appoint at least 2 members who are
 108 either:

- 109 (A) certified by the American Board of Preventive Medicine
 110 (or a successor organization) as a specialist in
 111 occupational medicine; or
- 112 (B) certified in a different medical specialty and have at least
 113 10 years of experience practicing occupational medicine.
- 114 (3) (A) The [Chief Administrative Officer] Disability Review
 115 Board must appoint members under subsection (c)(1) for
 116 staggered 3-year terms. To implement the staggered
 117 terms, the [Chief Administrative Officer] Board must
 118 appoint the first member to a 3-year term, the second
 119 member to a one-year term, and the third and fourth
 120 [member] members to a 2-year term. After these initial
 121 appointments, the [Chief Administrative Officer] Board
 122 must appoint all members to 3-year terms, except for any
 123 member appointed under subsection (c)(6) to fill a
 124 vacancy [created by a Panel member's death, disability,
 125 resignation, non-performance of duty or other cause].
- 126 (B) After the [Chief Administrative Officer] Disability
 127 Review Board appoints or reappoints a Panel member,
 128 the [Chief Administrative Officer] Board must promptly
 129 [provide] send each certified representative [with] a copy
 130 of the document confirming the appointment.
- 131 (4) [At the expiration of] When a Panel member's term expires, the
 132 Panel member [is eligible for reappointment] may be
 133 reappointed to a new 3-year term [unless, at any time within 30
 134 days to 60 days prior to the expiration of the term, a certified
 135 representative notifies the County and the other certified

136 representatives or the County notifies the certified
 137 representatives that it objects to the reappointment of the Panel
 138 member. If there is no objection, the Panel member is eligible
 139 to serve an additional term or terms].

140 (5) [In the event] If a Panel member declines to be reappointed to
 141 the Panel, [a new medical doctor must be appointed by] the
 142 [Chief Administrative Officer] Disability Review Board must
 143 appoint a new Panel member from a list of 5 medical doctors
 144 [agreed upon by the certified representatives and the County]
 145 provided by an impartial medical organization retained by the
 146 County.

147 (6) If a vacancy on the Panel is created by a Panel member's death,
 148 disability, resignation, non-performance of duty, or other cause,
 149 the [Chief Administrative Officer] Disability Review Board
 150 must appoint a medical doctor to complete the Panel member's
 151 term[. The Chief Administrative Officer must appoint the
 152 Panel member] from a list of 5 medical doctors [agreed upon by
 153 the certified representatives and the County] provided by an
 154 impartial medical organization retained by the County.

155 (7) The County must pay the impartial medical organization
 156 retained by the County and each Panel member reasonable
 157 compensation, as determined by the Chief Administrative
 158 Officer, for [his or her] services rendered.

159 [(d)] (e) *Disability retirement procedures.*

160 (1) An application for disability retirement may be filed with the
 161 Chief Administrative Officer by:

162 (A) a member;

- 163 (B) a certified representative on behalf of a represented
164 member; or
- 165 (C) the department, office, or agency head under subsection
166 (k).
- 167 (2) [The Disability] Three members of the Medical Review Panel
168 must consider [an] each application for disability retirement
169 benefits filed by a member or a certified representative. [The
170 Panel must determine if an applicant is eligible for non-service-
171 connected disability or service-connected disability in
172 accordance with subsections (e)(2) through (4) and subsection
173 (f).]
- 174 (3) Subject to the limitations in subsection (f)(4)(E), the Panel may
175 consider any information or material submitted by the
176 applicant, the certified representative, or the County.
- 177 (4) Before the Panel meets to review an application for a member
178 other than a member of the Firefighter/Rescuer Bargaining
179 Unit, the Panel must advise each party of the deadline [date for
180 submitting] to submit information to the Panel. The Panel must
181 [allow] give each party a reasonable amount of time [for the
182 parties] to submit additional information, and may extend the
183 deadline at the request of either party for good cause [shown].
- 184 (5) Except for information from a member of the
185 Firefighter/Rescuer Bargaining Unit, the Panel must not accept
186 or consider information from a member if the information is
187 received after the established deadline date unless the
188 information is related to:

- 189 (A) [the applicant's] a reinjury to the applicant that occurred
 190 or was diagnosed after the deadline [date]; or
 191 (B) a change in the applicant's medical condition that
 192 occurred or was diagnosed after the deadline [date].
- 193 (6) The Panel must meet [as a body] in person and review and
 194 consider all evidence submitted to it no later than 60 [calendar]
 195 days after the application is filed. A majority vote [on a
 196 decision] of 3 members is required to take any action [in
 197 accordance with the provisions of] under this Section. [will
 198 prevail. If only 2 Panel members participate in the decision-
 199 making process, the vote on a decision to take any action must
 200 be unanimous. No action may be taken upon a decision made
 201 by one Panel member] A dissenting member must issue a
 202 minority recommendation.
- 203 (7) [Within 30 calendar days after the Panel's last meeting at which
 204 the application was considered, the] The Panel must issue a
 205 written recommendation to the [Chief Administrative Officer]
 206 Disability Review Board [regarding whether the applicant
 207 meets the criteria for disability retirement benefits for non-
 208 service-connected disability in accordance with subsections
 209 (e)(2), (3) and (4) or service-connected disability in accordance
 210 with subsection (f)] on the following medical issues:
- 211 (A) Is the applicant mentally or physically incapable of
 212 performing one or more essential duties of the applicant's
 213 job as described in the current job description?
- 214 (B) Is the applicant's medical condition likely to be
 215 permanent?

- 216 (C) Did the applicant sustain the injury or undergo the hazard
 217 while performing his or her job duties?
- 218 (D) Does the applicant have the residual functional capacity
 219 to perform substantial gainful activity?
- 220 (8) (A) [If] Before making its recommendation, the Panel [is
 221 unable to make a determination based on the evidence
 222 presented to it, the Panel may] must:
- 223 (i) direct the applicant to undergo [a] an independent
 224 medical examination (including all relevant
 225 medical tests) by a medical doctor who is not a
 226 member of the [Disability Review] Panel; and
- 227 (ii) if required for the Panel to make a
 228 recommendation [under Section 33-43(i)(2)] as to
 229 residual functional capacity or substantial gainful
 230 capacity, request an independent vocational
 231 assessment.
- 232 (B) The County must pay the cost of the examination and
 233 assessment.
- 234 (C) The Panel must issue its written recommendation within
 235 30 [calendar] days after the Panel receives the later of:
- 236 (i) the full report from the medical doctor who
 237 conducted the examination; or
- 238 (ii) the full report of the results of the independent
 239 vocational assessment.
- 240 (9) Within [20 calendar] 45 days [following receipt of] after
 241 receiving the Panel's written recommendation, the [Chief
 242 Administrative Officer or designee] Disability Review Board

243 must issue a final decision regarding whether the applicant
 244 meets the criteria for disability retirement benefits for non-
 245 service-connected disability [in accordance with] under
 246 subsection (e) or service-connected disability [in accordance
 247 with] under subsection (f) and, if the applicant meets the
 248 requirements for service-connected disability, whether the
 249 applicant is eligible for total or partial incapacity. The Board
 250 may:

251 (A) consider any evidence presented by the applicant or the
 252 County;

253 (B) review the applicant's personal file;

254 (C) review the applicant's worker's compensation file;

255 (D) review any accidental injury reports; and

256 (E) remand the case to the Medical Review Panel for further
 257 consideration.

258 (10) A disability retirement [is effective] takes effect on the earlier
 259 of:

260 (A) the date a member exhausts all accrued sick leave and
 261 accrued compensatory leave [in excess of] over 80 hours,
 262 if any, or [on]

263 (B) the date [the application is approved by] the [Chief
 264 Administrative Officer] Board approves the application [,
 265 whichever comes first].

266 (11) [For a Group G member, the] The amount of any lump sum
 267 retroactive disability retirement benefit must be reduced by the
 268 total amount of any temporary total disability, temporary partial
 269 disability, or permanent partial disability payments that the

270 County [made] paid to the employee under the Workers
271 Compensation laws after [the effective date of] the disability
272 retirement took effect.

273 ~~[(e)]~~ (f) * * *

274 ~~[(f)]~~ (g) *Service-connected disability retirement.*

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

277 (A) the member is totally incapacitated for duty or partially
278 and permanently incapacitated for duty as the natural and
279 proximate result of an accident occurring, or an
280 occupational disease incurred or condition aggravated,
281 while in the actual performance of duty; [the incapacity is
282 not due to willful negligence, and the incapacity is likely
283 to be permanent. In extenuating circumstances, the Chief
284 Administrative Officer may waive the requirement that a
285 member's incapacity is likely to be permanent and may
286 approve a temporary disability retirement for one or more
287 one-year periods until the incapacity is either removed or
288 it becomes apparent that it is likely to be permanent; and]

289 (B) the incapacity is not due to the member's willful
290 negligence;

291 (C) the incapacity is likely to be permanent; [and]

292 (D) the member is unable to perform the duties of either:

293 (i) the occupational classification to which the
294 member was assigned [at the time] when the
295 disability occurred; or

296 (ii) a position of comparable status [within] in the
 297 same department for which the member is
 298 qualified;

299 (E) the member has not committed an offense that would
 300 justify removal for cause;

301 (F) for an accidental injury, the member:

302 (i) reports the claimed accidental injury at the time of
 303 the event;

304 (ii) applies for disability retirement within 1 year after
 305 separation from County service; and

306 (iii) applies for disability retirement within 5 years
 307 after the date of the claimed accident, unless the
 308 Board waives this requirement for good cause.

309 * * *

310 [(g)] (h) *Medical reexamination of disability retiree.* The Chief
 311 Administrative Officer may require a member receiving disability
 312 pension payments to undergo a yearly physical examination during
 313 the [5-year period following] 5 years after retirement, and once in
 314 every [3-year period] 3 years thereafter, until age 55 [if] for a member
 315 of group B, E, F, or G, or age 60 [if] for a member of group A or H.
 316 The Chief Administrative Officer must review the findings of the
 317 physical examination and take appropriate action, which may include
 318 submitting the results of the evaluation to the [Disability] Medical
 319 Review Panel and the Disability Review Board for a redetermination
 320 [as to] whether the individual qualifies for disability benefits in
 321 accordance with subsection [(d)] (e). If a member [refuses to] does
 322 not submit to the examination, the Chief Administrative Officer may

323 reduce or discontinue any disability pension payments which the
 324 member receives.

325 * * *

326 [(i)] (j) *Amount of pension at service-connected disability retirement.*

327 (1) Total incapacity. The County must pay a member[, other than a
 328 Group G member,] who retires on service-connected disability
 329 retirement with total incapacity an annual pension calculated
 330 under Section 33-42(b)(1), [subject to the following exceptions]
 331 except that:

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

334 (B) the pension must be at least [66 2/3 percent] 70% of the
 335 member's final earnings.

336 (2) [The County must pay a Group G member who retires on a
 337 service-connected disability retirement an annual pension
 338 calculated under Section 33-42(b)(1), except that the County
 339 must substitute final earnings for average final earnings.]
 340 However, if [this] the benefit calculation under Section 33-
 341 42(b)(1) is greater than any other benefit under this subsection,
 342 the County must pay a Group G member who retires on a
 343 service-connected disability retirement between June 26, 2002,
 344 and June 30, 2007, a pension based on the member's average
 345 final earnings if that member's average final earnings result in a
 346 greater benefit than final earnings.

347 (3) [The County must pay a Group G member who retires on a
 348 service-connected disability retirement an annual pension
 349 calculated under Section 33-42(b)(1), but the benefit must be at

350 least 70 percent of final earnings if the Chief Administrative
351 Officer finds, based on a recommendation from the Disability
352 Review Panel, that] The Disability Review Board, based on a
353 recommendation from the Medical Review Panel, must find
354 total incapacity if the member's service-connected disability is
355 severe enough to meet the Social Security Administration's
356 requirements for disability, meaning that the member is unable
357 to engage in any substantial gainful activity because of a
358 medically determinable physical or mental impairment that can
359 be expected to end in death or has lasted, or can be expected to
360 last, for a continuous period of at least 12 months. The member
361 does not have to qualify for Social Security disability benefits
362 to be eligible for benefits under this subsection.

363 (A) The Panel must base its [determination] recommendation
364 of whether [or not] an individual is able to engage in any
365 substantial gainful activity on an assessment from an
366 independent vocational expert that considers the
367 member's age, education, work experience, transferable
368 skills, and residual functional capacity.

369 (B) The Panel must determine the member's residual
370 functional capacity and provide this information to the
371 independent vocational expert.

372 (C) A Panel determination that the member's service-
373 connected disability is severe enough to be considered a
374 disability by the Social Security Administration is not a
375 recommendation that the member is entitled to, or should

376 be granted, a disability benefit by the Social Security
377 Administration.

378 (D) If a member has already been granted disability benefits
379 by the [U.S.] Social Security Administration when the
380 member applies for a service-connected disability
381 pension, the County must pay the member a pension of at
382 least [70 percent] 70% if the Disability Review [Panel]
383 Board finds that the award of disability benefits from the
384 Social Security Administration was based primarily on
385 the same medically determinable physical or mental
386 impairment on which the [Disability Review Panel]
387 Board awards the member a service-connected disability
388 benefit.

389 (4) The County must pay a [Group G] member who retires with
390 partial incapacity on a service-connected disability retirement
391 an annual pension calculated under Section 33-42(b)(1), but the
392 benefit must be at least 52½ % [percent] of final earnings [if the
393 Chief Administrative Officer finds, based on a recommendation
394 from the Disability Review Panel, that:

395 (A) the member meets the standards to receive a service-
396 connected disability benefit under subsection (f); and

397 (B) the member is not eligible to receive a benefit under
398 subsection (i)(3)].

399 (5) (A) The County must increase the partial incapacity service-
400 connected disability pension benefit of a [Group G]
401 member calculated under Section 33-42(b)(1), from a
402 benefit of at least 52 ½ [percent] % to a benefit of at least

- 403 70 [percent] %, if:
- 404 (i) the [U.S.] Social Security Administration awards
- 405 disability benefits to the member;
- 406 (ii) the member submits all relevant information about
- 407 the award of disability benefits from the Social
- 408 Security Administration to the [Disability] Medical
- 409 Review Panel within 60 days after the member
- 410 receives the award;
- 411 (iii) the Disability Review [Panel] Board, based on a
- 412 recommendation from the Medical Review Panel,
- 413 finds that the award of disability benefits from the
- 414 Social Security Administration was based
- 415 primarily on the same medically determinable
- 416 physical or mental impairment on which the
- 417 Disability Review [Panel] Board originally
- 418 awarded the member a service-connected disability
- 419 benefit; and
- 420 [(a)] (iv) the member applies for disability benefits with
- 421 the Social Security Administration within 90 days
- 422 after the [date on which the Chief Administrative
- 423 Officer] Board notified the member that the
- 424 [amount of the] service-connected disability
- 425 pension benefit would be calculated [under Section
- 426 33-42(b)(1), but at least 52 ½ percent; or] as a
- 427 partial incapacity.
- 428 [(b) the Chief Administrative Officer awards a
- 429 service-connected disability pension benefit

430 calculated under Section (b)(1), but at least
 431 52 ½ percent to the member between March
 432 1, 2000, and December 1, 2003, and the
 433 member applies for disability benefits with
 434 the Social Security Administration no later
 435 than February 29, 2004.]

436 (B) [For] If a member [who] qualifies for an increased
 437 pension benefit under [subsection (5)] subparagraph (A)
 438 [above], the County must increase the member's service-
 439 connected pension retroactively to the date [on which]
 440 when the pension began.

441 * * *

442 (7) The County must pay a Group F member who retires on a
 443 service-connected disability retirement with total incapacity on
 444 or after June 26, 2002, an annual pension calculated under
 445 subsection [(i)] (j)(1). However, if [the] a greater benefit results
 446 from the calculation under Section 33-42(b)(1), the County
 447 must pay a Group F member a pension based on the member's
 448 average final earnings if that member's average final earnings
 449 result in a greater benefit than final earnings.

450 [(j)] (k) *Adjustment or cessation of disability pension payments.*

451 (1) If a member receiving service-connected disability pension
 452 payments reaches the first day of the month [following] after
 453 the member's normal retirement date, the amount of pension
 454 then payable must not be less than the amount that would have
 455 been payable under [the provisions of] Section 33-45(c)[,] if the
 456 member had terminated service [on] when the [date] disability

457 pension [commenced] began and had not elected a return of
458 member contributions with credited interest.

459 (2) (A) The Chief Administrative Officer may reduce the amount
460 of the disability pension payments of a member retired
461 with total incapacity who:

462 (i) has not reached the normal retirement date; and

463 (ii) is engaged in, or is able to engage in, an
464 occupation that pays more than the difference
465 between [the amount of] the disability pension
466 payments and the current maximum earnings of
467 the occupational classification from which the
468 [employee] member was disabled.

469 (B) [For] If a member other than a Group F member [who]
470 meets the criteria in subparagraph (A), the Chief
471 Administrative Officer may reduce the member's
472 disability [person] pension payments until [the amount
473 of] the disability pension payments plus the amount that
474 the employee earned or is able to earn equals the
475 maximum earnings of the occupational class from which
476 the member was disabled.

477 (C) [For] If a Group F member [who] receives a non-service
478 connected disability pension and [who] meets the criteria
479 in subparagraph (A), the Chief Administrative Officer
480 may reduce the member's disability pension payments
481 until [the amount of] the disability pension payments plus
482 the amount the employee earned or is able to earn equals
483 120 percent of the maximum earnings of the occupational

484 class from which the employee was disabled. If a
 485 member receives a disability retirement pension from
 486 another employer for the same impairment, the Chief
 487 Administrative Officer may reduce the member's
 488 disability pension payments by the amount of the other
 489 disability retirement pension.

490 (3) If the earnings capacity of a disability retiree with a total
 491 incapacity changes, the Chief Administrative Officer may
 492 change the amount of the disability retirement pension. [For
 493 the purpose of] In this subsection, “disability pension” is the
 494 amount of pension payable without election of a pension
 495 payment option.

496 (A) For a disability retiree other than a group F member, [the
 497 Chief Administrative Officer must ensure that] the
 498 amount of the revised pension [does] must not exceed:

499 (i) the original disability retirement pension plus all
 500 applicable cost-of-living increases; or
 501 (ii) an amount that, when added to the amount the
 502 member earns or is able to earn, equals the
 503 maximum earnings of the occupational
 504 classification from which the member was
 505 disabled.

506 (B) For a Group F member who receives a non-service
 507 connected disability pension, [the Chief Administrative
 508 Officer must ensure that] the amount of the revised
 509 pension must not exceed:

- 510 (i) the original disability retirement pension plus all
 511 applicable cost-of-living increases; or
- 512 (ii) an amount that, when added to the amount [that]
 513 the member earns or is able to earn, equals 120
 514 percent of the maximum earnings of the
 515 occupational classification from which the member
 516 was disabled.
- 517 (4) A member who receives a disability retirement pension for a
 518 total incapacity must submit to the Chief Administrative Officer
 519 by May 30 of each year a copy of that portion of the member's
 520 federal income tax return which shows the member's earned
 521 income. If a member [receiving] who receives disability
 522 pension payments [fails or refuses to] does not supply the Chief
 523 Administrative Officer [whatever] any information [is
 524 determined necessary] the Chief Administrative Officer needs
 525 to [make a decision on] decide the amount of retirement pay
 526 legally due, the Chief Administrative Officer must suspend the
 527 member's pension payments [must be discontinued] until the
 528 member submits the [requested] needed information.
- 529 (5) If a member [receiving] who receives disability pension
 530 payments returns to [the service of the] County employment or
 531 is appointed or elected to any office, the salary or compensation
 532 of which is paid wholly or in part by the County, the Chief
 533 Administrative Officer must stop the member's pension
 534 payments [will cease,] and the [individual will again become a]
 535 member [of] must rejoin the retirement system and resume
 536 member contributions.

537 (6) For [those employees] any employee who enrolled or re-
 538 enrolled in the retirement system on or after July 1, 1978, the
 539 member's disability retirement benefit for any month must be
 540 integrated with the primary disability benefits received from
 541 Social Security, and the total benefits from both sources must
 542 not exceed 100% of the member's average final earnings, [of
 543 the member; provided, however, that this limitation] This limit
 544 does not apply to [the] cost-of-living adjustments [issued
 545 pursuant to] made under Section 33-44(c).

546 (7) The Chief Administrative Officer must not reduce the service-
 547 connected disability pension payments of a Group F or G
 548 member by earned income received from [sources] any source
 549 other than County Government employment.

550 [(k)] (l) *Administrative disability retirement.* [Whenever] If any member
 551 becomes disabled [or incapacitated] and is demonstrably not capable
 552 of performing the duties and responsibilities of the position to which
 553 the member is assigned at an acceptable level of competence [for
 554 medical reasons] because of the member's disability, the Department
 555 or Office Director must notify the member [must be notified by the
 556 head of the department, office or agency] that [in consideration]
 557 because of the member's [medical condition] disability, the member
 558 should apply for a disability retirement [application should be
 559 initiated]. If the member [fails or refuses to make an application] does
 560 not apply for disability retirement, the [department, office or agency
 561 head] Director may [initiate] apply for a disability retirement
 562 [application] on behalf of the member. [All] The Director must
 563 transmit all pertinent information, including the member's attendance

564 record, job performance record, and medical record, [must be
565 transmitted] to the [Disability] Medical Review Panel.

566 [(1)] (m) *Appeal procedures.*

567 (1) An applicant [who is a member of the Police Bargaining Unit]
568 or the certified representative on behalf of the [Police
569 Bargaining Unit] applicant may appeal a decision of the [Chief
570 Administrative Officer] Disability Review Board that affects
571 the member's right to disability benefits to the [Police]
572 appropriate Disability [Arbitration Board] Arbitrator. [An
573 applicant who is not a member of the Police Bargaining Unit, or
574 the certified representative on behalf of the applicant, may
575 appeal the written decision of the Chief Administrative Officer
576 to one of 3 Disability Arbitration Boards.] An applicant must
577 file an appeal within 20 [calendar] days [of] after [the date on
578 which] the applicant receives the [Chief Administrative
579 Officer's] Board's decision.

580 (2) The [Police] Disability [Arbitration Board] Arbitrator must
581 consider [appeals] each appeal filed by [members of the Police
582 Bargaining Unit. The 3 Disability Arbitration Boards must
583 consider all other appeals on a rotating basis in the order in
584 which the County receives the appeals] an applicant within a
585 reasonable time.

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

617 bargaining units [except for the Police Bargaining Unit].
 618 To the extent possible, the 6 neutral arbitrators on the list
 619 should be experienced in law and occupational medicine.
 620 The County Council must confirm the appointment of
 621 [the Chairperson of each Disability Arbitration Board
 622 must be confirmed by the County Council] each
 623 Disability Arbitrator. The [County] Chief Administrative
 624 Officer must give each certified representative a copy of
 625 the Council resolution confirming the appointment or
 626 reappointment of each [Chairperson] Disability
 627 Arbitrator promptly after the Council's action.

628 [(B) The County Executive must appoint a neutral arbitrator
 629 to be Chairperson of the Police Disability Arbitration
 630 Board. The neutral arbitrator must be selected by the
 631 County and the certified representative of the Police
 632 Bargaining Unit either by agreement or through the
 633 processes of the American Arbitration Association. To
 634 the extent possible, the neutral arbitrator should be
 635 experienced in law and occupational medicine. The
 636 appointment of the Chairperson of the Police Disability
 637 Arbitration Board must be confirmed by the County
 638 Council.]

639 (2) Each neutral arbitrator [appointed by the County Executive
 640 under paragraph (1)] must serve for a term of 3 years. [At the
 641 expiration of the] When an arbitrator's term expires, the
 642 Executive may reappoint the arbitrator [is eligible for
 643 reappointment] to a new 3-year term unless, at any time within

644 30 to 60 days [prior to the expiration of] before the [3-year]
 645 term is scheduled to expire, either a certified representative
 646 [gives written notice to] notifies the [County] Chief
 647 Administrative Officer or the [County gives written notice to]
 648 Chief Administrative Officer notifies the certified
 649 representatives that [it] the party objects to the [neutral]
 650 arbitrator serving another term. If no objection is filed, the
 651 Executive may appoint the arbitrator [is eligible for
 652 appointment] to [an additional] another term.

653 (3) If the neutral arbitrator declines to be reappointed, dies, resigns,
 654 or for other cause is unable or ineligible to serve [on one of the]
 655 as a Disability [Arbitration Boards or the Police Disability
 656 Arbitration Board] Arbitrator, [a new arbitrator must be
 657 appointed by] the [County] Executive must appoint a new
 658 arbitrator under paragraph (1).

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

667 (A) causes a hearing to be canceled and the application
 668 remanded to the Disability Review [Panel] Board; or

669 (B) causes a hearing to be canceled and rescheduled on a
 670 later date.

671 (5) [The applicant, or the certified representative on behalf of the
 672 applicant, must designate an individual to serve as a member of
 673 the Disability Arbitration Board that will consider and decide
 674 the applicant's appeal. The applicant must designate an
 675 individual to serve as a member of the Police Disability
 676 Arbitration Board. The Chief Administrative Officer must
 677 designate an individual to serve on the Disability Arbitration
 678 Board or Police Disability Arbitration Board that will consider
 679 and decide the applicant's appeal. The applicant, or the
 680 certified representative on behalf of the applicant, and the
 681 County, respectively, may designate Board members on a case-
 682 by-case basis according to each party's chosen procedure.
 683 There must be no restriction on who may serve as the designee
 684 of the applicant or the County, except that no member of the
 685 Board that will consider and decide an appeal may be involved
 686 in, or be a witness to, any matter that is before that Board.]

687 [(6) Each party, including participating agencies, must be
 688 responsible for the fees and expenses of its respective
 689 members.] Each party, including participating agencies, must
 690 [also be responsible for] pay its own witness fees and expenses.

691 **33-128. Definitions.**

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

693 [(a)] *Administrator* means either the Chief Administrative Officer or the
 694 entity that contracts with the County to administer this disability plan.

695 [(b)] *Applicant* means an employee who has filed an application for
 696 benefits under Division 2 of Article VIII, or for whom the Chief
 697 Administrative Officer has filed an application.

698 [(c)] *Certified representative* means an employee organization certified
 699 under Sections 33-79, 33-106, or 33-151 to represent a bargaining unit.

700 [(d)] *Continued non-service-connected disability* means a condition of the
 701 employee that:

- 702 (1) continues after [the close of] the period of initial non-service-
 703 connected disability closes;
- 704 (2) makes the employee unable to engage in any available
 705 employment commensurate with the employee's training or
 706 retraining, education, and experience [of the employee]; and
- 707 (3) is likely to be permanent.

708 [(e)] *Continued service-connected disability for a non-public safety*
 709 *employee* means a condition of a non-public safety employee that:

- 710 (1) continues after [the close of] the period of initial service-
 711 connected disability closes;
- 712 (2) makes the employee unable to engage in available employment
 713 commensurate with the employee's training or retraining,
 714 education, and experience [of the employee]; and
- 715 (3) is likely to be permanent.

716 [(f)] *Continued service-connected disability for a public safety employee*
 717 means a condition of a public safety employee that:

- 718 (1) continues after [the close of] the period of initial service-
 719 connected disability closes;
- 720 (2) makes the employee unable to:
 - 721 (A) engage in available employment commensurate with the
 722 employee's training or retraining, education, and
 723 experience [of the employee]; and
 - 724 (B) earn substantially similar final earnings; and

725 (3) is likely to be permanent.

726 [(g)] *County* means Montgomery County Government and, when
727 applicable, any agency that adopts this plan under an adoption agreement
728 approved by the Chief Administrative Officer.

729 [(h)] *Disability* [*Arbitration Board or Board*] Arbitrator means 1 of the 3
730 persons designated under Section [33-43A(m)] 33-43(m) to review an appeal
731 of the final decision of the Administrator regarding an application for
732 disability benefits.

733 [(i)] *Disability Review* [*Panel or Panel*] Board or Board means the [3
734 medical doctors appointed as Panel members by the Chief Administrative
735 Officer under Section 33-43A(c)] administrative board established under
736 Section 33-43(c).

737 [(j)] *Employee* means [an] a County employee [of the County] who:

738 (1) participates in the retirement savings plan under this Article;
739 and

740 (2) is regularly scheduled to work 20 hours or more per week.

741 [(k)] *Final earnings* means the annual average of the regular salary of an
742 employee less any shift pay differential for the 18-month period immediately
743 before the disability or any period of 18 consecutive months, whichever is
744 greater.

745 [(l)] *Initial non-service-connected disability* means a condition of an
746 employee that:

747 (1) is the natural and proximate result of an accident, illness, or
748 injury;

749 (2) is not due to the employee's willful misconduct or willful
750 negligence [of the employee];

751 (3) makes the employee incapable of performing the job that the
 752 employee performed immediately before the accident, illness,
 753 or injury; and

754 (4) is not an initial service-connected disability.

755 [(m)] *Initial service-connected disability* means a condition of an employee
 756 that:

757 (1) is the natural and proximate result of an accident, illness, or
 758 injury occurring, an occupational disease incurred, or a
 759 condition aggravated while in the performance of duty as an
 760 employee;

761 (2) is not due to the employee's willful misconduct or willful
 762 negligence [of the employee]; and

763 (3) makes the employee incapable of performing the job that the
 764 employee performed immediately before the accident, illness,
 765 or injury.

766 [(n)] *Medical doctor* means a doctor of medicine or osteopathy who [has]
 767 graduated from a medical school accredited by the American Medical
 768 Association and [who] is licensed to practice medicine in [the State of]
 769 Maryland.

770 Medical Review Panel or Panel means the 4 medical doctors appointed by
 771 the Disability Review Board under Section 33-43(d).

772 [(o)] *Non-public safety employee* means any employee who is not a public
 773 safety employee.

774 [(p)] *Plan* means the disability benefits plan established under this
 775 Division.

776 [(q)] *Public safety employee* means any employee who is a:

- 777 (1) sworn, ranking officer of the [Montgomery County] Police
 778 Department;
- 779 (2) paid firefighter, paid fire officer, or paid rescue service
 780 employee of the [Montgomery County Department of] Fire and
 781 Rescue [Services] Service;
- 782 (3) sworn deputy sheriff;
- 783 (4) [Montgomery County] correctional officer; or
- 784 (5) correctional staff member, if designated as a public safety
 785 employee by the Chief Administrative Officer.

786 **33-129. Disability benefits.**

- 787 (a) *Initial non-service-connected disability benefits.*
- 788 (1) An employee is entitled to receive disability benefits if the
 789 [administrator determines] Disability Review Board finds that
 790 the employee has:
- 791 (A) incurred an initial non-service-connected disability; and
- 792 (B) worked for the County for the 6 months immediately
 793 [preceding] before the disability.
- 794 (2) The employee [is entitled to] may receive disability benefits
 795 subject to this plan for [a period of]:
- 796 (A) 12 consecutive months for a public safety employee; and
- 797 (B) 36 consecutive months for a non-public safety employee.
- 798 (b) *Continued non-service-connected disability benefits.* Before the end
 799 of the distribution period for initial non-service-connected disability
 800 benefits, the [administrator] Disability Retirement Board must re-
 801 evaluate the employee to determine if the employee satisfies the
 802 requirements for a continued non-service-connected disability. If the
 803 employee does not meet the requirements for a continued non-service

804 connected disability, the payment of disability benefits must stop. If
 805 [a participant] the employee meets the requirements for a continued
 806 non-service connected disability, the payment of disability benefits
 807 must continue, subject to this plan.

808 (c) *Temporary disability.* In extenuating circumstances, the
 809 [administrator] Disability Retirement Board may:

810 (1) waive the requirement that an employee's disability is likely to
 811 be permanent for continued service-connected or non-service-
 812 connected disability benefits; and

813 (2) approve temporary disability benefits for one or more one-year
 814 periods until the [administrator determines] Board finds that the
 815 disability:

816 (A) has ended; or

817 (B) qualifies as a continued disability.

818 (d) *Initial service-connected disability benefits.* [If the administrator
 819 determines that an employee has incurred an initial service-connected
 820 disability, the] An employee [is entitled to] may receive disability
 821 benefits for a period of 36 consecutive months, subject to this plan, if
 822 the Disability Review Board finds that:

823 (A) the employee has incurred an initial service-connected
 824 disability;

825 (B) the employee has not committed an offense that would
 826 justify removal for cause;

827 (C) for an accidental injury, the employee:

828 (i) reports the claimed accidental injury at the time of
 829 the event;

- 830 (ii) applies for disability retirement within 1 year after
 831 separation from County service; and
 832 (iii) applies for disability retirement within 5 years
 833 after the date of the claimed accident, unless the
 834 Board waives this requirement for good cause.

835 (e) *Continued service-connected disability benefits.*

836 (1) Before the end of the distribution period for initial service-
 837 connected disability benefits, the [administrator] Disability
 838 Review Board must re-evaluate the employee to determine if
 839 the employee satisfies the requirements for a continued service-
 840 connected disability. If the employee does not meet the
 841 requirement for a continued service-connected disability, the
 842 payment of disability benefits must stop. If the employee meets
 843 the requirements for a continued service-connected disability,
 844 the payment of disability benefits must continue, subject to this
 845 plan.

846 (2) The Chief Administrative Officer may offer a 5-percent salary
 847 increase to an employee who:

848 (A) is eligible to receive continued service-connected
 849 disability benefits; and

850 (B) accepts an alternative position [within the] in County
 851 government for which the employee is qualified.

852 (3) The employee's salary in the alternative position must not
 853 exceed the maximum salary of the pay grade assigned to the
 854 position.

855 (4) A member of the Office, Professional and Technical Bargaining
 856 Unit or the Service, Labor and Trades Bargaining Unit who

857 accepts an alternative placement [incentive is not eligible to]
 858 must not receive continued service connected disability benefits
 859 based on the disability for which the alternative placement was
 860 made.

861 (5) If a member applies for continued service-connected disability
 862 benefits instead of accepting an alternative placement
 863 [incentive], the member's [failure] decision not to accept the
 864 [incentive] placement must not:

865 (A) be included in the information [considered by] given to
 866 the [Disability] Medical Review Panel, Disability Review
 867 Board, [Chief Administrative Officer,] or Disability
 868 [Arbitration Board] Arbitrator;

869 (B) be considered at any time by the [Disability] Medical
 870 Review Panel, Disability Review Board, [Chief
 871 Administrative Officer,] or Disability [Arbitration Board]
 872 Arbitrator; or

873 (C) affect the member's eligibility for continued service-
 874 connected disability benefits or the amount of [the
 875 continued service-connected disability] those benefits.

876 (f) *Role of the [Disability] Medical Review Panel and the Disability*
 877 *Review Board.*

878 (1) The [Disability] Medical Review Panel must [consider an
 879 application for disability benefits] decide the medical issues
 880 necessary to determine if the applicant is eligible for disability
 881 benefits under subsection (a), (b), (c), (d), or (e). The Panel
 882 may consider any information or material submitted by the
 883 applicant, the certified representative, or the County. Within 60

884 days after the application is filed, the Panel must meet [as a
 885 body] in person to [consider] review all evidence submitted to
 886 the Panel. An action by the Panel under this Section requires [2
 887 votes] a majority vote of 3 members. A dissenting member
 888 may issue a minority recommendation.

889 (2) Before the Panel meets to review [the] an application, the Panel
 890 must advise each party of the deadline [date for submitting] to
 891 submit information to the Panel. The Panel must allow a
 892 reasonable amount of time for the parties to submit additional
 893 information, and may extend the deadline at the request of the
 894 applicant for good cause [shown].

895 (3) The Panel must not accept or consider information from a
 896 certified representative representing an applicant if the
 897 information is received after the [established] deadline, [date]
 898 unless the information is related to:

899 (A) [the applicant's] a reinjury to the applicant that occurred
 900 or was diagnosed after the deadline [date]; or

901 (B) a change in the applicant's medical condition that
 902 occurred or was diagnosed after the deadline [date].

903 (4) Within 30 days after the Panel's last meeting to consider the
 904 application, the Panel must issue a written recommendation to
 905 the [Administrator on whether the applicant qualifies for
 906 disability benefits] Disability Review Board on the following
 907 medical issues:

908 (A) Is the applicant mentally or physically incapable of
 909 performing one or more essential duties of the applicant's
 910 job as described in the current job description?

- 911 (B) Is the applicant's medical condition likely to be
 912 permanent?
- 913 (C) Did the applicant sustain the injury, or undergo the
 914 hazard, while performing his or her job duties?
- 915 (D) Does the applicant have the residual functional capacity
 916 to perform substantial gainful activity?
- 917 (5) [If] Before making its recommendation, the Panel [cannot
 918 determine the applicant's eligibility for disability benefits based
 919 on the evidence presented, the Panel may] must require the
 920 applicant to complete a medical examination, including relevant
 921 medical tests, by a medical doctor who is not a member of the
 922 [Disability] Medical Review Panel. The County must pay the
 923 cost of the examination. The Panel must issue its written
 924 recommendation within 30 days after the medical doctor reports
 925 to the Panel.
- 926 (6) Within [20] 45 days after [the Administrator receives] receiving
 927 the Panel's recommendation, the [Administrator] Disability
 928 Review Board must issue a final decision [on] whether the
 929 applicant is eligible for disability benefits under this Section.
 930 The Board may:
- 931 (A) consider any evidence presented by the applicant or the
 932 County;
- 933 (B) review the applicant's personal file;
- 934 (C) review the applicant's worker's compensation file;
- 935 (D) review any accidental injury reports; and
- 936 (E) remand the case to the Medical Review Panel for further
 937 consideration.

938 **33-133. Termination of benefits.**

939 (a) *Non-public safety employee.* The Administrator must terminate initial
940 or continued disability benefits to a non-public safety employee if the
941 employee:

942 (1) recovers from the disability, as determined by the
943 [administrator] Disability Retirement Board;

944 (2) does not provide the Administrator with information that the
945 Administrator requires; or

946 (3) attains age 65, or a later age if required under Federal law.

947 (b) *Public safety employee.* The Administrator must terminate initial or
948 continued disability benefits to a public safety employee if the
949 employee:

950 (1) recovers from the disability, as determined by the
951 [administrator] Disability Review Board;

952 (2) does not provide the Administrator with information that the
953 Administrator requires; or

954 (3) attains age 65, or a later age if required under Federal law, if the
955 benefit is for a non-service connected disability.

956 **33-135. Medical examination.**

957 (a) The Administrator may require any employee receiving continued
958 disability payments to undergo annual or less frequent medical
959 examinations. The Administrator must submit the findings of [the]
960 any medical examination to the [Disability] Medical Review Panel.

961 (b) The Panel must consider the findings of the physical examination and
962 any other information submitted by the employee or the County and
963 recommend in writing to the [Administrator] Disability Review Board
964 whether the employee still qualifies for disability benefits.

965 (c) The [Administrator] Board must issue a final decision within 20 days
 966 after receiving the Panel's recommendation. An employee may
 967 appeal the [Administrator's] Board's decision under Section 33-138.

968 **33-138. Appeals of decisions.**

969 (a) The applicant, or the certified representative on behalf of the
 970 applicant, may appeal [the] a written decision of the [Administrator]
 971 Disability Review Board on eligibility for disability benefits within 20
 972 days after the applicant receives the [Administrator's] Board's
 973 decision.

974 (b) The Disability [Arbitration Board] Arbitrator must [convene to
 975 consider] consider an appeal within a reasonable time [after the appeal
 976 is filed]. The appeal and judicial review proceedings [are] must be
 977 governed by Sections 3-201 through 3-234 of the Maryland
 978 Arbitration Act.

979 (c) The Disability [Arbitration Board] Arbitrator [must issue the decision
 980 quickly. The Board] should issue the decision within 30 days after the
 981 hearing or receiving any post-hearing brief, whichever is later.

982 (d) The County must pay all reasonable fees and expenses of the
 983 Arbitrator, as determined by the Chief Administrative Officer, except
 984 that a certified representative must pay any fee resulting from the
 985 cancellation of a scheduled hearing if the certified representative:

986 (1) causes a hearing to be canceled and the application remanded to
 987 the [Disability] Medical Review Panel; or

988 (2) causes a hearing to be canceled and rescheduled on a later date.

989 **Sec. 2. Implementation.** Notwithstanding any other provision of law,
 990 including §33-80(a)(7), the implementation of any amendment to County Code
 991 Chapter 33 in Section 1 of this Act concerning disability retirement is not subject

1014 *This is a correct copy of Council action.*

1015

1016

Linda M. Lauer, Clerk of the Council

Date