


MEMORANDUM

September 26, 2017

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Expedited Bill 29-17, Domestic Partner Survivor Benefits – LOSAP – Employees’ Retirement System - Eligibility

Expedited Bill 29-17, Domestic Partner Survivor Benefits – LOSAP – Employees’ Retirement System - Eligibility, sponsored by Lead Sponsor Councilmembers Navarro and Katz and Council Vice President Riemer, was introduced on September 12, 2017. A public hearing was held on September 26.

Bill 29-17 would:

- clarify the definition of a domestic partner for receiving County survivor benefits;
- limit County survivor benefits for a domestic partner of a local fire and rescue department volunteer to a domestic partner registered with the County on or before June 27, 2016; and
- limit County survivor benefits for a domestic partner of a County employee under the County retirement systems to a domestic partner registered with the County on or before June 27, 2016.

Background

Bill 16-16, enacted by the Council on June 28, 2016 and signed into law by the Executive on July 7, 2016, repealed the law providing domestic partner benefits for County employees. The law included a grandfather clause that permitted a County employee receiving domestic partner benefits on June 27, 2016 to retain those benefits. Although Bill 16-16 repealed the County law requiring the County to provide the same benefits to a domestic partner that it provides for a spouse, including widow or widower benefits, the Bill did not remove references to domestic partner survivor benefits for volunteer firefighters under the Length of Service Awards Program and County employee survivor benefits under the County retirement laws.

Expedited Bill 29-17 would limit domestic partner survivor benefits to a person who registered a domestic partnership with the County on or before June 27, 2016, making these survivor benefits consistent with the general repeal of domestic partner benefits in Bill 16-16.

OMB estimated that the Bill would have no fiscal or economic impact on the County. See ©9-13.

Public Hearing

There were no speakers at the September 26, 2017 public hearing.

Discussion

The general rule established in County Code §33-22(b) was:

Any benefit the County provides for the spouse (including “widow” or other equivalent term) of a County employee or the spouse’s dependents must be provided, in the same manner and to the same extent, for the domestic partner of a County employee and the partner’s dependents, respectively.

The original purpose of this law was to extend these “marriage benefits” to same sex couples who were unable to obtain them because same sex marriage was not recognized in Maryland. Since same sex marriage was recognized in Maryland in 2013 and the Supreme Court extended the right of a same sex couple to marry throughout the nation in 2015, the original purpose of the law has evaporated. The extension of domestic partner benefits to opposite sex couples was an attempt to re-create a level playing field for opposite sex couples who declined to get married. In 2017, the continuation of the domestic partner benefits is no longer necessary to ensure that same sex or opposite sex couples can extend benefits to their partner.

Bill 16-16 repealed §33-22 in its entirety as a response to the change in the law permitting same sex marriage, but provided a grandfather clause for any employee already receiving domestic partner benefits. While administering this change in law, the County Attorney’s Office found that the references in other Sections of County law to survivor benefits for a domestic partner of a County employee or a volunteer firefighter had not been similarly changed. Bill 29-17 would amend these references to domestic partner survivor benefits to be consistent with the grandfather clause provided in Bill 16-16.

This packet contains:

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Expedited Bill No. 29-17
Concerning: Domestic Partner Survivor
Benefits – LOSAP – Employees’
Retirement System – Eligibility
Revised: July 24, 2017 Draft No. 4
Introduced: September 20, 2017
Expires: March 12, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Navarro and Katz and Council Vice President Riemer

AN EXPEDITED ACT to:

- (1) clarify the definition of a domestic partner for the purpose of receiving County survivor benefits;
- (2) limit County survivor benefits for a domestic partner of a local fire and rescue department volunteer to a domestic partner registered on or before a certain date;
- (3) limit County survivor benefits for a domestic partner of a County employee under the County retirement systems to a domestic partner registered with the County on or before a certain date; and
- (4) generally amend the laws governing survivor benefits for a domestic partner.

By amending

Montgomery County Code
Chapter 21, Fire and Rescue Services
Section 21-21

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-6, 33-35, and 33-113

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 **Sections 21-21, 33-6, 33-35, and 33-113 are amended as follows:**

2 **21-21. Length of service award program for volunteers.**

3 There is a length of service award program for local fire and rescue department
4 volunteers.

5 (a) [*Definition*] Definitions. In this Section, the following words and phrases
6 have the following meanings:

7 [*active*] Active volunteer means a local fire and rescue department
8 volunteer who accumulates at least 50 points in a calendar year under the
9 point system in subsection (k).

10 Domestic partner means a person who was registered as a domestic
11 partner of an active volunteer with the Fire Chief on or before June 27,
12 2016 in a domestic partnership that did not end before the active
13 volunteer's death.

14 * * *

15 (e) *Survivor's benefit.*

16 (1) A local fire and rescue department volunteer's surviving spouse or
17 domestic partner qualifies for a survivor's benefit on the volunteer's
18 death if:

19 (A) the surviving spouse or partner submits an application for
20 the benefit; and

21 (B) the volunteer met the:

22 (i) years-of-service requirement for a length of service
23 benefit under subsection (c); or

24 (ii) requirements for a disability benefit under subsection
25 (d).

26 (2) The volunteer's surviving spouse or domestic partner must receive
27 a monthly award payment until the spouse's death or remarriage,

28 or partner's death [or establishment of another domestic
29 partnership], equal to 50 percent of the:

- 30 (A) length of service benefit for which the volunteer met the
- 31 years-of-service requirement; or
- 32 (B) volunteer's disability benefit.

33 * * *

34 [(l) *Definition.* In this Section, "domestic partner" or "partner" means a
35 person whose relationship with the volunteer would meet the
36 requirements for a domestic partner under Section 33-22 if the volunteer
37 were a County employee.]

38 **33-6. Definitions.**

39 In this article, the following words and phrases have the following meanings:

40 *Board:* The merit system protection board as described in section 403 of the
41 county charter.

42 *County employees:* All persons employed by the county regardless of merit
43 system status.

44 *Domestic partner.* A person who [meets the requirements of Section 33-22] was
45 registered as the domestic partner of a County employee with the Office of
46 Human Resources on or before June 27, 2016 in a domestic partnership that did
47 not end before the County employee's death. This definition applies throughout
48 this Chapter unless otherwise indicated.

49 * * *

50 **33-35. Definitions.**

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

52 * * *

53 *Domestic partner:* A person who [meets the requirements of Section 33-22] was
54 registered as the domestic partner of a member with the Office of Human

55 Resources on or before June 27, 2016 in a domestic partnership that did not end
 56 before the member's death.

57 * * *

58 **33-113. Definitions.**

59 In this Division the following words and phrases have the following meanings:

60 [(a)] *Account balances* means the balance credited to the retirement account of
 61 a participant under the retirement savings plan as of the valuation date preceding
 62 the date of distribution determined without regard to vesting, including:

63 (1) any participant contributions (including contributions picked up by
 64 the County);

65 (2) County contributions; and

66 (3) rollover contributions.

67 [(b)] *Board or Board of Investment Trustees* means the Board of Investment
 68 Trustees established under Article III.

69 [(c)] *County* means the Montgomery County Government and, when
 70 applicable, any participating agency.

71 [(d)] *County service* means any period of County employment during which a
 72 participant is:

73 (1) in pay status, or

74 (2) on an approved leave of absence without pay on or after January
 75 1, 2002.

76 *Domestic partner* means a person who was registered as the domestic partner of
 77 a participant with the Office of Human Resources on or before June 27, 2016 in
 78 a domestic partnership that did not end before the participant's death.

79 [(e)] *Employee* means any eligible elected or appointed County official and
 80 any full-time or career part-time County employee.

81 [(f)] *Employee organization* means any organization that:

- 82 (1) admits employees to membership;
- 83 (2) has as a primary purpose the representation of employees in
- 84 collective bargaining; and
- 85 (3) is certified as an employee organization under applicable law.

86 [(g)] *Former participant* means any individual with an account balance in the

87 retirement savings plan who has ceased to be a participant.

88 [(h)] *Investment manager* means a person or entity who exercises discretion to

89 manage all or part of the assets of an institutional investor. The investment

90 manager is a fiduciary as defined in Section 33-35.

91 [(i)] *Merit System Protection Board* means the Merit System Protection Board

92 established in the Charter.

93 [(j)] *Non-public safety employee* means any employee who is not a public

94 safety employee.

95 [(k)] *Normal retirement date* means the first day of the month after the month

96 in which the participant reaches age 62.

97 [(l)] *Participant* means an employee who is participating in the retirement

98 savings plan.

99 [(m)] *Participant's contribution account* means the portion of a participant's

100 account balances in the retirement savings plan that is attributable to participant

101 contributions, including contributions picked up by the County, and any gains

102 or losses attributable to those contributions.

103 [(n)] *Plan year* means the 12-month period beginning January 1 and ending on

104 December 31 each year.

105 [(o)] *Public safety employee* means any employee who is a:

- 106 (1) sworn officer of the Police Department;
- 107 (2) paid firefighter, paid fire officer, or paid rescue service worker of
- 108 the Montgomery County Fire and Rescue Service;

- 109 (3) sworn deputy sheriff;
 110 (4) correctional officer; or
 111 (5) County employee who provides services to a correctional facility
 112 and designated as a public safety employee by the Chief Administrative
 113 Officer.

114 [(p)] *Regular earnings* means gross pay for actual hours worked, including
 115 paid leave, but not including overtime, without reduction for participant
 116 contributions that are picked up under Section 33-116(a), or contributions to any
 117 County deferred compensation plan or statutory fringe benefit program. If a
 118 participant is required to take any furlough, as defined in personnel regulations
 119 under Section 33-7(b) or a collective bargaining agreement, regular earnings
 120 must include any amount the participant would have received if the participant
 121 had not been required to take any furlough.

122 [(q)] *Retirement accounts* means the required participant contributions
 123 account, a County contributions account, and any rollover contributions
 124 account.

125 [(r)] *Rollover contributions* means that portion of a participant's account
 126 balances in the retirement savings plan that is attributable to any assets
 127 transferred or rolled over to the retirement savings plan from another eligible
 128 retirement plan as defined in the Internal Revenue Code Section 402(c). No
 129 after-tax contributions may be transferred or rolled over into the retirement
 130 savings plan.

131 [(s)] *Valuation date* means the last business day of March, June, September,
 132 and December of each plan year, and any other date the Board establishes in a
 133 uniform and nondiscriminatory manner for determining the fair market value of
 134 the assets of the retirement savings plan.

135 **Effective Date.**

136 The Council declares that this legislation is necessary for the immediate
137 protection of the public interest. This Act takes effect on the date it becomes law.
138

139 *Approved:*

140

Roger Berliner, President, County Council

Date

141 *Approved:*

142

Isiah Leggett, County Executive

Date

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

144

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 29-17

Domestic Partner Survivor Benefits – LOSAP – Employees Retirement System - Eligibility

DESCRIPTION: Expedited Bill 29-17 would limit domestic partner survivor benefits to a person who registered a domestic partnership with the County on or before June 27, 2016, making these survivor benefits consistent with the general repeal of domestic partner benefits in Bill 16-16.

PROBLEM: Bill 16-16, enacted by the Council on June 28, 2016 and signed into law by the Executive on July 7, 2016, repealed the law providing domestic partner benefits for County employees. The law included a grandfather clause that permitted a County employee receiving domestic partner benefits on June 27, 2016 to retain those benefits. Although Bill 16-16 generally repealed the County law authorizing domestic partner benefits, the Bill did not remove references to domestic partner survivor benefits for volunteer firefighters under the Length of Service Awards Program and County employee survivor benefits under the County retirement laws.

GOALS AND OBJECTIVES: To ensure that survivor benefits for domestic partners is consistent with the law governing other County benefits.

COORDINATION: Office of Human Resources

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: None.



ROCKVILLE, MARYLAND

MEMORANDUM

September 25, 2017

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Expedited Bill 29-17, Domestic Partner Survivor Benefits - LOSAP - Employees' Retirement System - Eligibility

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, 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
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Corey Orlosky, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

Fiscal Impact Statement
Council Expedited Bill 29-17, Domestic Partner Survivor Benefits – LOSAP – Employees’
Retirement System - Eligibility

1. Legislative Summary.

This bill would clarify the definition of a domestic partner for receiving County survivor benefits, and limit the County survivor benefits for domestic partners of County employees and local fire and rescue department volunteers to a domestic partner registered with the County on or before June 27, 2016.

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.

This bill has no impact to revenues or expenditures. This bill clarifies the definition of a domestic partner, but does not adjust County practice. It does not alter the availability of survivor benefits nor does it adjust the amount of the benefit available to a joint annuitant.

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

See response #2.

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

Not applicable.

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.

Not applicable.

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.

Not applicable.

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

Not applicable.

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

Not applicable.

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

The bill would serve to clarify the definition of a domestic partner for receiving certain survivor benefits, but it does not adjust the benefits themselves.

12. Other fiscal impacts or comments.

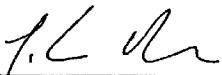
Not applicable.

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

Corey Orlosky, Office of Management and Budget

Linda Herman, Executive Director, Montgomery County Employee Retirement Plans

Alan Hinde, Volunteer Services Division Chief, Fire and Rescue Services

 Deputy Director
for JAH

Jennifer A. Hughes, Director
Office of Management and Budget

9/21/17

Date

Economic Impact Statement
Expedited Bill 29-17, Domestic Partner Survivor Benefits – LOSAP –
Employees' Retirement System – Eligibility

Background:

This legislation would:

- Clarify the definition of a domestic partner for receiving County survivor benefits;
- Limit County survivor benefits for a domestic partner of a local fire and rescue department volunteer to a domestic partner registered with the County on or before June 27, 2016; and
- Limit County survivor benefits for a domestic partner of a County employee under the County retirement systems to a domestic partner registered with the County on or before June 27, 2016.

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

Source of information is the Montgomery County Employee Retirement Plans (MCERP). According to MCERP, there are 82 domestic partners who registered before June 27, 2016, based on the certification process performed by the County's Office of Human Resources, and therefore could be eligible for joint and survivor benefits as provided by the Employees' Retirement System, a defined benefit pension plan. The total amount of the monthly benefit is determined by a formula defined in the County Code which includes: the years of County service, retirement group in which the employee participates, the final average salary, and the benefit option selected at retirement. The employee receives a reduction in their monthly pension if he/she selects to provide a benefit for the domestic partner or spouse based on their age. However, regardless of the adjustment to whom is considered as the joint annuitant, the total amount of the monthly benefit does not change. There is no reasonable assumption that the number of joint annuitants will change. There are no methodologies used in the preparation of the economic impact statement. The length of service award program (LOSAP) for a retired local fire and rescue volunteer provides that a surviving spouse or domestic partner receive 50% of the benefit provided to the volunteer at the time of the volunteer's death. There is also no reasonable assumption that the dollar amount of survivor benefits will change.

2. A description of any variable that could affect the economic impact estimates.

There are no economic variables that could affect the economic impact estimates.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

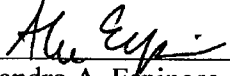
Since Bill 29-17 allows a domestic partner of a participant in the County's Employees' Retirement System or a retired local fire and rescue volunteer a share of the monthly benefit selected, it will have no economic impact on employment, spending, savings, investment, incomes, and property values in the County.

Economic Impact Statement
Expedited Bill 29-17, Domestic Partner Survivor Benefits – LOSAP –
Employees' Retirement System – Eligibility

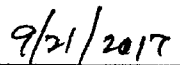
4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph #3

5. The following contributed to or concurred with this analysis: David Platt, and Robert Hagedoorn, Finance; Linda Herman and Robert Goff, MCERP.



Alexandre A. Espinosa, Director
Department of Finance



Date