

*Clerk's Note: Correction on page 3, line 40 and on page 13, line 303: The words "Removal for cause" was changed to "termination for misconduct" as approved by Council at enactment.*

**CORRECTED COPY**

Bill No. 45-10  
Concerning: Personnel - Disability  
Retirement - Eligibility - Total and  
Partial Incapacity  
Revised: June 22, 2011 Draft No. 7  
Introduced: July 27, 2010  
Enacted: June 28, 2011  
Executive: July 11, 2011  
Effective: July 1, 2012 (Exception:  
Section 4 - October 10, 2011  
Sunset Date: None  
Ch. 13, Laws of Mont. Co. 2011

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Councilmembers Trachtenberg, Andrews, Berliner, and Council Vice President Ervin

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**AN ACT** to:

- (1) create a partial incapacity disability retirement benefit for certain employees;
- (2) create a total incapacity disability retirement benefit for certain employees;
- (3) prohibit an employee who commits certain offenses from receiving a service connected disability retirement benefit; and
- (4) generally amend County law regarding disability retirement.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-43, 33-128, 33-129, and 33-131

<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:*

2           **Sec. 1. Sections 33-43, 33-128, 33-129, and 33-131 are amended as**  
 3 **follows:**

4 **33-43. Disability retirement.**

5   \*   \*   \*

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

8   \*   \*   \*

9                 *Partial incapacity* means a member's inability to perform one or more  
 10 essential functions of the position the member holds because of  
 11 impairment that:

12                 (1) is unlikely to resolve in the next 12 months;

13                 (2) may be permanent; and

14                 (3) does not prevent the member from performing any other  
 15 substantial gainful activity.

16   \*   \*   \*

17                 *Total Incapacity* means the member's inability to perform substantial  
 18 gainful activity because of an impairment that:

19                 (1) is unlikely to resolve in the next 12 months; and

20                 (2) may be permanent.

21   \*   \*   \*

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

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

25                         (A) the member is totally or partially incapacitated [for duty  
 26 or partially and permanently incapacitated for duty] as  
 27 the natural and proximate result of an accident occurring,

- 28 or an occupational disease incurred or condition aggravated,  
29 while in the actual performance of duty;
- 30 (B) the incapacity is not due to the member's willful  
31 negligence;
- 32 (C) the incapacity is likely to be permanent; [and]
- 33 (D) the member is unable to perform the duties of either:
- 34 (i) the occupational classification to which the  
35 member was assigned [at the time] when the  
36 disability occurred; or
- 37 (ii) a position of comparable status [within] in the  
38 same department for which the member is  
39 qualified; and[.]
- 40 (E) the member has not committed an offense that would  
41 justify [[removal for cause]] termination for misconduct.
- 42 (F) For an accidental injury that does not cause mental  
43 impairment, the member must:
- 44 (i) [reports] report the claimed accidental injury as  
45 soon as practicable, but no later than one year after  
46 the applicant knew or should have known that the  
47 injury is likely to be disabling; or
- 48 (ii) [submits] submit a claim for Workers'  
49 Compensation benefits for the accidental injury  
50 that is not dismissed as untimely.
- 51 [(F)] (G) The time periods for reporting in subparagraphs (i)  
52 and (ii) do not begin while the member is unable to report  
53 because of incapacitating injuries.

54           [(G)] (H) For an accidental injury that occurs after July 1,  
 55                           2009, the member must apply for disability benefits:  
 56                           (i) within one year after separation from County  
 57   service or before July 1, 2010, whichever is later;  
 58   and  
 59                           (ii) if the applicant is a member of Group F, within 5  
 60   years after the date of the accident causing the  
 61   impairment or before July 1, 2014, whichever is  
 62   later, unless the member is in a chronic incapacity  
 63   duty assignment.

\*                   \*                   \*

- 64
- 65       (i) *Amount of pension at service-connected disability retirement.*
- 66           (1) *Total incapacity.* The County must pay a member [, other than  
 67                           a Group G member,] who retires on service-connected  
 68                           disability retirement with total incapacity an annual pension  
 69                           calculated under Section 33-42(b)(1), [subject to the following  
 70                           exceptions] except that:
- 71                           (A) the County must substitute final earnings for average  
 72   final earnings; and
- 73                           (B) the pension must be at least [66 2/3 percent] 70% of the  
 74   member's final earnings.
- 75           (2) [The County must pay a Group G member who retires on a  
 76                           service-connected disability retirement an annual pension  
 77                           calculated under Section 33-42(b)(1), except that the County  
 78                           must substitute final earnings for average final earnings.  
 79                           However, if this] If the benefit calculation under Section 33-  
 80                           42(b)(1) is greater than any other benefit under this subsection,

81 the County must pay a Group G member who retires on a  
82 service-connected disability retirement between June 26, 2002,  
83 and June 30, 2007, a pension based on the member's average  
84 final earnings if that member's average final earnings result in a  
85 greater benefit than final earnings.

86 (3) [The County must pay a Group G member who retires on a  
87 service-connected disability retirement an annual pension  
88 calculated under Section 33-42(b)(1), but the benefit must be at  
89 least 70 percent of final earnings if the Chief Administrative  
90 Officer finds, based on a recommendation from the Disability  
91 Review Panel, that] The Disability Review Panel must  
92 recommend a finding of total incapacity if the member's  
93 service-connected disability is severe enough to meet the Social  
94 Security Administration's requirements for disability, meaning  
95 that the member is unable to engage in any substantial gainful  
96 activity because of a medically determinable physical or mental  
97 impairment that can be expected to end in death or has lasted,  
98 or can be expected to last, for a continuous period of at least 12  
99 months. The member does not have to qualify for Social  
100 Security disability benefits to be eligible for benefits under this  
101 subsection.

102 (A) The Panel must base its determination of whether [or not]  
103 an individual is able to engage in any substantial gainful  
104 activity on an assessment from an independent vocational  
105 expert that considers the member's age, education, work  
106 experience, transferable skills, and residual functional  
107 capacity.

- 108 (B) The Panel must determine the member's residual  
109 functional capacity and provide this information to the  
110 independent vocational expert.
- 111 (C) A Panel determination that the member's service-  
112 connected disability is severe enough to be considered a  
113 disability by the Social Security Administration is not a  
114 recommendation that the member is entitled to, or should  
115 be granted, a disability benefit by the Social Security  
116 Administration.
- 117 (D) If a member has already been granted disability benefits  
118 by the [U.S.] Social Security Administration when the  
119 member applies for a service-connected disability  
120 pension, the County must pay the member a pension of at  
121 least 70% [percent] if the Disability Review Panel finds  
122 that the award of disability benefits from the Social  
123 Security Administration was based primarily on the same  
124 medically determinable physical or mental impairment  
125 on which the Disability Review Panel awards the  
126 member a service-connected disability benefit.
- 127 (4) The County must pay a [Group G] member who retires with  
128 partial incapacity on a service-connected disability retirement  
129 an annual pension calculated under Section 33-42(b)(1), but the  
130 benefit must be at least 52½ % [percent] of final earnings if the  
131 Chief Administrative Officer finds, based on a recommendation  
132 from the Disability Review Panel, that:
- 133 (A) the member meets the standards to receive a service-  
134 connected disability benefit under subsection (f); and

- 135 (B) the member is not eligible to receive a benefit for total  
136 incapacity under subsection (i)(3).
- 137 (5) (A) The County must increase the partial incapacity service-  
138 connected disability pension benefit of a [Group G]  
139 member calculated under Section 33-42(b)(1), from a  
140 benefit of at least 52 ½ % [percent] to a benefit of at least  
141 70 % [percent], if:
- 142 (i) the [U.S.] Social Security Administration awards  
143 disability benefits to the member;
- 144 (ii) the member submits all relevant information about  
145 the award of disability benefits from the Social  
146 Security Administration to the Disability Review  
147 Panel within 60 days after the member receives the  
148 award;
- 149 (iii) the Disability Review Panel finds that the award of  
150 disability benefits from the Social Security  
151 Administration was based primarily on the same  
152 medically determinable physical or mental  
153 impairment on which the Disability Review Panel  
154 originally awarded the member a service-  
155 connected disability benefit; and
- 156 [(a)] (iv) the member applies for disability benefits with  
157 the Social Security Administration within 90 days  
158 after the [date on which the] Chief Administrative  
159 Officer notified the member that the [amount of  
160 the] service-connected disability pension benefit  
161 would be calculated [under Section 33-42(b)(1),

162 but at least 52 ½ percent; or] as a partial  
 163 incapacity.

164 [(b) the Chief Administrative Officer awards a service-  
 165 connected disability pension benefit calculated  
 166 under Section (b)(1), but at least 52 ½ percent to  
 167 the member between March 1, 2000, and  
 168 December 1, 2003, and the member applies for  
 169 disability benefits with the Social Security  
 170 Administration no later than February 29, 2004.]

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

176 \* \* \*

177 (7) The County must pay a Group F member who retires on a  
 178 service-connected disability retirement on or after June 26,  
 179 2002, an annual pension calculated under subsection (i) (1) or  
 180 subsection (i) (4). However, if [the] a greater benefit results  
 181 from the calculation under Section 33-42(b)(1), the County  
 182 must pay a Group F member a pension based on the member's  
 183 average final earnings if that member's average final earnings  
 184 result in a greater benefit than final earnings.

185 (j) *Adjustment or cessation of disability pension payments.*

186 (1) If a member receiving service-connected disability pension  
 187 payments reaches the first day of the month [following] after  
 188 the member's normal retirement date, the amount of pension



189 then payable must not be less than the amount that would have  
 190 been payable under [the provisions of] Section 33-45(c)[,] if the  
 191 member had terminated service [on] when the [date] disability  
 192 pension [commenced] began and had not elected a return of  
 193 member contributions with credited interest.

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

- 197 (i) has not reached the normal retirement date; and  
 198 (ii) is engaged in, or is able to engage in, an  
 199 occupation that pays more than the difference  
 200 between the disability pension payments and the  
 201 current maximum earnings of the occupational  
 202 classification from which the member was  
 203 disabled.

204 (B) If a member other than a Group F member meets the  
 205 criteria in subparagraph (A), the Chief Administrative  
 206 Officer may reduce the member's disability pension  
 207 payments until the disability pension payments plus the  
 208 amount that the employee earned or is able to earn equals  
 209 the maximum earnings of the occupational class from  
 210 which the member was disabled.

211 \* \* \*

212 (3) If the earnings capacity of a disability retiree with a total  
 213 incapacity changes, the Chief Administrative Officer may  
 214 change the amount of the disability retirement pension. [For  
 215 the purpose of] In this subsection, "disability pension" is the

216 amount of pension payable without election of a pension  
217 payment option.

218 (A) For a disability retiree other than a group F member, the  
219 Chief Administrative Officer must ensure that the amount  
220 of the revised pension does not exceed:

221 (i) the original disability retirement pension plus cost-  
222 of-living increases; or

223 (ii) an amount that, when added to the amount the  
224 member earns or is able to earn, equals the  
225 maximum earnings of the occupational  
226 classification from which the member was  
227 disabled.

228 (B) For a Group F member who receives a non-service  
229 connected disability pension, the Chief Administrative  
230 Officer must ensure that the amount of the revised  
231 pension must not exceed:

232 (i) the original disability retirement pension plus cost-  
233 of-living increases; or

234 (ii) an amount that, when added to the amount that the  
235 member earns or is able to earn, equals 120 percent  
236 of the maximum earnings of the occupational  
237 classification from which the member was  
238 disabled.

239 (4) A member who receives a disability retirement pension for a  
240 total incapacity must submit to the Chief Administrative Officer  
241 by May 30 of each year a copy of that portion of the member's  
242 federal income tax return which shows the member's income.

243 If a member [receiving] who receives disability pension  
 244 payments [fails or refuses to] does not supply the Chief  
 245 Administrative Officer [whatever] any information [is  
 246 determined necessary] the Chief Administrative Officer needs  
 247 to [make a decision on] decide the amount of retirement pay  
 248 legally due, the Chief Administrative Officer must suspend the  
 249 member's pension payments [must be discontinued] until the  
 250 member submits the [requested] needed information.

251 \* \* \*

252 **33-128. Definitions.**

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

255 \* \* \*

256 Partial incapacity means a member's inability to perform one or more  
 257 essential functions of the position the member holds because of  
 258 impairment that;

259 (1) is unlikely to resolve in the next 12 months;

260 (2) may be permanent; and

261 (3) does not prevent the member from performing any other  
 262 substantial gainful activity.

263 \* \* \*

264 Residual functional capacity means what the individual can still do,  
 265 despite the individual's impairment. The County must give the term  
 266 residual functional capacity the same meaning as the term is given by  
 267 the Social Security Administration.

268 Substantial gainful activity means a level of productive work that  
 269 requires significant physical or mental duties, or a combination of

270 both, performed for pay or profit on a full- time or part-time basis. An  
 271 individual is able to perform a substantial level of work if the  
 272 individual is able to earn more than the Social Security  
 273 Administration’s current monthly earnings limit for a disabled person.  
 274 The County must give the term substantial gainful activity the same  
 275 meaning as the term is given by the Social Security Administration.

276 Total Incapacity means the member’s inability to perform substantial  
 277 gainful activity because of an impairment that;

- 278 (1) is unlikely to resolve in the next 12 months; and
- 279 (2) may be permanent.

280 **33-129. Disability benefits.**

281 \* \* \*

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

285 (A) the employee has incurred an initial service-connected  
 286 disability; and

287 (B) for an accidental injury that does not cause mental  
 288 impairment, the employee:

289 (i) reports the claimed accidental injury as soon as  
 290 practicable, but no later than one year after the  
 291 applicant knew or should have known that the  
 292 injury is likely to be disabling; or

293 (ii) submits a claim for Workers’ Compensation  
 294 benefits for the accidental injury that is not  
 295 dismissed as untimely.

296 (C) The time periods for reporting in subparagraphs (i) and

297 (ii) do not begin while the applicant is unable to report because  
298 of incapacitating injuries.

299 (D) For an accidental injury that occurs after July 1, 2009, the  
300 applicant must apply for disability benefits within one  
301 year after separation from County service or before July  
302 1, 2010, whichever is later.

303 (E) An employee who has committed an offense that would  
304 justify [[removal for cause]] termination for misconduct  
305 must not receive service-connected disability benefits.

306 \* \* \*

307 (f) The Disability Review Panel must recommend a finding of total  
308 incapacity if the member's service-connected disability is severe  
309 enough to meet the Social Security Administration's requirements for  
310 disability, meaning that the member is unable to engage in any  
311 substantial gainful activity because of a medically determinable  
312 physical or mental impairment that can be expected to end in death or  
313 has lasted, or can be expected to last, for a continuous period of at  
314 least 12 months. The member does not have to qualify for Social  
315 Security disability benefits to be eligible for benefits under this  
316 subsection.

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

- 322           (2) The Panel must determine the member's residual functional  
323           capacity and provide this information to the independent  
324           vocational expert.
- 325           (3) A Panel determination that the member's service-connected  
326           disability is severe enough to be considered a disability by the  
327           Social Security Administration is not a recommendation that  
328           the member is entitled to, or should be granted, a disability  
329           benefit by the Social Security Administration.
- 330           (4) If a member has already been granted disability benefits by the  
331           Social Security Administration when the member applies for a  
332           service-connected disability pension, the County must give the  
333           member a total incapacity benefit if the Disability Review Panel  
334           finds that the award of disability benefits from the Social  
335           Security Administration was based primarily on the same  
336           medically determinable physical or mental impairment on  
337           which the Disability Review Panel awards the member a  
338           service-connected disability benefit.
- 339           (g) The Disability Review Panel must recommend a finding of partial  
340           incapacity if:
- 341               (1) the member meets the standards to receive a service-connected  
342               disability benefit; and
- 343               (2) the member is not eligible to receive a benefit for total  
344               incapacity under subsection (f).
- 345           (h) The County must increase the partial incapacity service-connected  
346           disability pension benefit of a member to a total incapacity benefit if:
- 347               (1) the Social Security Administration awards disability benefits to  
348               the member;

- 349           (2) the member submits all relevant information about the award of  
 350           disability benefits from the Social Security Administration to  
 351           the Disability Review Panel within 60 days after the member  
 352           receives the award;
- 353           (3) the Disability Review Panel finds that the award of disability  
 354           benefits from the Social Security Administration was based  
 355           primarily on the same medically determinable physical or  
 356           mental impairment on which the Disability Review Panel  
 357           originally awarded the member a service-connected disability  
 358           benefit; and
- 359           (4) the member applies for disability benefits with the Social  
 360           Security Administration within 90 days after the Chief  
 361           Administrative Officer notified the member that the service-  
 362           connected disability pension benefit would be calculated as a  
 363           partial incapacity.
- 364           (5) If a member qualifies for an increased pension benefit under  
 365           subsection (h), the County must increase the member's service-  
 366           connected pension retroactively to the date when the pension  
 367           began.

368           (i) *Role of the Disability Review Panel.*

- 369           (1) The Disability Review Panel must consider an application for  
 370           disability benefits to determine if the applicant is eligible for  
 371           disability benefits under subsection (a), (b), (c), (d), [or] (e), (f),  
 372           (g), or (h). The Panel may consider any information or material  
 373           submitted by the applicant, the certified representative, or the  
 374           County. Within 60 days after the application is filed, the Panel  
 375           must meet in person, by telephone conference, or by video

376 conference, to review all evidence submitted to the Panel. [An  
 377 action by the Panel under this Section requires a majority vote of  
 378 3] A Panel must include either 2 or 3 members. At least 2  
 379 members must vote in favor of a decision to take any action  
 380 under this Section.

381 \* \* \*

382 **33-131. Amount of benefits.**

383 (a) *Service-connected disability.* The annual amount of service-connected  
 384 disability payments payable for total incapacity equals [66 2/3  
 385 percent] 70% of the employee's final earnings, less any reductions  
 386 provided in section 33-134. The annual amount of service-connected  
 387 disability payments payable for partial incapacity equals 52½ % of the  
 388 employee's final earnings.

389 \* \* \*

390 **Sec. 2. Implementation.** Notwithstanding any other provision of law,  
 391 including §33-80(a)(7) and §33-107(a)(7), the implementation of any amendment  
 392 to County Code Chapter 33 in Section 1 of this Act concerning disability  
 393 retirement is not subject to collective bargaining with a certified representative of  
 394 employees in any bargaining unit.

395 **Sec. 3. Effective Date.** This Act, other than Section 4, takes effect on  
 396 July 1, 2012. Section 4 takes effect 91 days after the Act becomes law. The  
 397 amendments to County Code Chapter 33 made in Section 1 of this Act apply to any  
 398 [[application for]] disability [[retirement filed]] occurring on or after the date this  
 399 Act takes effect.

400 **Sec. 4. Collective bargaining.**



- 401           (a) It is the policy of Montgomery County that all County employees  
402           should have a multi-tier service-connected disability retirement  
403           system which includes a:
- 404           (1) partial incapacity service-connected disability retirement  
405           benefit for any injury or illness that prevents an employee from  
406           continuing in the employee's current position but does not  
407           prevent the employee from engaging in other substantial gainful  
408           employment; and
- 409           (2) total incapacity service-connected disability retirement benefit  
410           for any injury or illness that prevents an employee from  
411           engaging in any other substantial gainful employment.
- 412           (b) It is also the policy of the County that disability benefits are a  
413           mandatory subject of collective bargaining with each appropriate  
414           certified employee representative.
- 415           (c) Notwithstanding any County law to the contrary, the County  
416           Executive may separately negotiate the terms of an appropriate multi-  
417           tier service-connected disability retirement system with the certified  
418           employee representative for the police bargaining unit and the  
419           certified representative for the OPT and SLT bargaining units, in each  
420           case not later than March 1, 2012. If in either case the parties are  
421           unable to reach agreement on an appropriate multi-tier system, the  
422           parties may submit this issue for resolution through the applicable  
423           impasse procedures under the County's police labor relations law and  
424           the County collective bargaining law as a separate matter, not part of  
425           or linked to any other collective bargaining procedure. The impasse  
426           neutral for the police bargaining unit and the mediator/arbitrator for

427 the OPT and SLT bargaining units must choose the final offer of  
428 either party after considering equally the following factors:

429 (1) service-connected disability retirement systems for similar  
430 employees of other public employers in the Washington  
431 Metropolitan Area and in Maryland;


432 (2) best practices for service-connected disability retirement  
433 systems for similar employees in the United States;

434 (3) the interest and welfare of the public; and


435 (4) the long-term ability of the employer to finance a disability  
436 retirement system, and the effect of the cost of the system on  
437 the normal standard of public services provided by the  
438 employer.

439 (d) The Executive must submit the results of any collective bargaining  
440 process regarding this issue to the Council for legislative action not  
441 later than April 1, 2012.

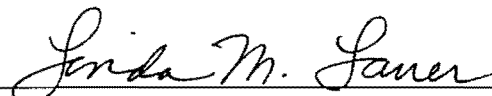
442  
443 *Approved:*

444  
445  6/30/2011  
Valerie Ervin, President, County Council Date

446 *Approved:*

447  
448  July 15, 2011  
Isiah Leggett, County Executive Date

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

450  
451  July 12, 2011  
Linda M. Lauer, Clerk of the Council Date