

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

1995 Legislative Session

Bill No. _____ CB-4-1995

Chapter No.

Proposed and Presented by _____ Council Members Scott and Maloney

Introduced by

Co-Sponsors

Date of Introduction

BILL

AN ACT concerning

County Employee Pension System

For the purpose of providing a comprehensive employee pension system.

BY repealing:

SUBTITLE 16. PERSONNEL.

Sections 16-230,

16-231, and

16-232.02,

The Prince George's County Code

(1991 Edition, 1994 Supplement).

BY adding:

SUBTITLE 15B. PENSION SYSTEM.

Sections 15B-101, 15B-201, 15B-202, 15B-301, 15B-302,

15B-303, 15B-304, 15B-305, 15B-306, 15B-307,

15B-308, 15B-309, 15B-310, 15B-311, 15B-312,

15B-313, 15B-314, 15B-315, 15B-316, 15B-317,

15B-318, 15B-319, 15B-320, 15B-321, 15B-322,

15B-323, 15B-324, and 15B-325,

The Prince George's County Code

(1991 Edition, 1994 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 16-230, 16-231, and 16-232.02 of the Prince George's County Code be and the same are hereby repealed.

SECTION 2. BE IT FURTHER ENACTED that Sections 15B-101, 15B-201, 15B-202, and 15B-301 through 15B-325 are hereby added:

SUBTITLE 15B. PENSION SYSTEM.

DIVISION 1. GENERAL.

Sec. 15B-101. State Retirement and Pension System.

(a) The employees and officers of Prince George's County, Maryland, on behalf of whom contributions are paid, as provided in the State Personnel and Pension Article of the Annotated Code of Maryland, shall be entitled to all the benefits under the Employees Retirement System of the State or the Pension System for the Employees of the State, as may be applicable.

(b) Elected or appointed officials of Prince George's County, on behalf of whom contributions are paid as provided in the State Personnel and Pension Article, shall be entitled to the maximum benefits provided under the Employees Retirement System of the State or the Pension System for the Employees of the State, as may be applicable.

DIVISION 2. PUBLIC SAFETY PENSION PLANS.

Sec. 15B-201. Pension plans for public safety employees.

(a) The County Executive shall be authorized to establish, by agreement, police and fire pension plans applicable to all uniformed employees occupying classified service positions allocated to public safety classes of work within the Police and Fire Departments. Any such pension plan, upon establishment, may not be amended to lessen the benefits provided therein or to bind the County to finance or make contributions thereto, unless such amendments are approved by legislative act of the County Council.

(b) Subject to the provisions of the State Personnel and Pension Article of the Annotated Code of Maryland, the County Executive is hereby additionally authorized to establish a pension plan for all uniformed employees occupying classified service positions allocated to public safety classes of work within the Sheriff Department, which, upon

establishment, shall be similar in the nature of coverage and benefits to police and fire pension plans and shall be subject to the other conditions stipulated in Subsection (a) of this Section.

(c) The County Executive shall be authorized to establish or amend a pension plan for employees occupying public safety classes of work within the Department of Corrections, subject to approval by legislative act of the County Council.

Sec. 15B-202. Disability payments for public safety employees.

(a) Any payments made to uniformed employees occupying classified service positions allocated to public safety classes of work within the Police, Fire or Sheriff Departments for injuries received in the line of duty pursuant to the provisions of any retirement disability provisions of any pension plan established under this division shall be considered in the nature of workmen's compensation payments made pursuant to Article 101 of the Annotated Code of Maryland.

DIVISION 3. SUPPLEMENTAL PENSION PLAN SYSTEM.

Sec. 15B-301. Supplemental Pension Plan System.

(a) There is a Supplemental Pension Plan System.

(b) The Supplemental Pension Plan System shall provide benefits under this Division for the participants of the several plans.

Sec. 15B-302. Composition of Supplemental Pension Plan System.

(a) The Supplemental Pension Plan System includes one or more of the existing plans:

- (1) Correctional Officers' Supplemental Pension Plan
- (2) Deputy Sheriff's Supplemental Pension Plan
- (3) AFSCME Locals 2462 and 2735 Supplemental Pension Plan
- (4) AFSCME Local 241 Supplemental Pension Plan
- (5) IAFF 1619 Supplemental Pension Plan
- (6) PCEA Supplemental Pension Plan
- (7) General Schedule Supplemental Pension Plan

Sec. 15B-303. Board of Trustees.

(a) There is a Board of Trustees for the Supplemental Pension Plan System.

(b) The Board of Trustees consists of the following 13 trustees:

- (1) Director of Personnel
- (2) Director of Finance
- (3) Director of Office of Management and Budget
- (4) One trustee selected by the participants of each of the several plans
- (5) Three trustees who:
 - (A) represent the interests of the public;
 - (B) are not members of any of the several plans; and
 - (C) are knowledgeable in the administration and operation of pension systems and trust funds.

(c) Ex officio trustees shall serve during the term of the underlying office. The trustees who are selected by the participants of the several plans shall be selected in a manner determined by the certified collective bargaining agent for the employees covered by the plans or, in the case of employees not represented by a collective bargaining agent, by direct election of the participants. All other trustees shall be appointed by the County Executive and confirmed by the County Council and shall serve a term that is coterminous with the County Executive.

(d) The Board of Trustees shall appoint an investment committee. No more than one half of the members of the investment committee shall be from among the members of the Board. At least three members of the investment committee shall be representatives of the public who:

- (1) are not members, retirees, or beneficiaries under any of the several plans, and
- (2) have had experience in the management and control of large investment portfolios.

(e) The investment committee shall advise the Board of Trustees and make recommendations on:

- (1) the investment programs; and
- (2) compliance of the investment program with the policies of the Board of Trustees.

(f) The Board of Trustees shall adopt investment operations procedures.

Sec. 15B-304. Board of Trustees - Quorum; meetings; expenses.

(a) Each Trustee is entitled to one vote on the Board of Trustees.

(b) A majority of the trustees of the Board of Trustees is a quorum for the transaction of any business, the exercise of any power, or the performance of any duty.

(c) The Board of Trustees shall set the times and place of its meetings. All meetings shall be open meetings unless closed in accordance with the Maryland Open Meetings Act. Notice of each meeting shall be made posting at least one notice in each County facility where plan participants are normally assigned to work.

(d) A trustee may not receive compensation from any of the several plans for service as a trustee, but shall be entitled to reimbursement for expenses in the same manner as provided for County employees.

Sec. 15B-305. Board of Trustees - Legal advisor.

(a) The County Attorney is the legal advisor to the Board of Trustees.

(b) The County Attorney is authorized to employ specialized legal counsel for the Board of Trustees as provided for in the adopted budget for the Office of Law.

Sec. 15B-306. Board of Trustees - Regulations.

(a) The Board of Trustees shall adopt regulations providing for:

- (1) the administration of the several plans;
- (2) the management of the assets of the several plans; and
- (3) the transaction of its business.

(b) The Board of Trustees shall promulgate all proposed regulations at least 14 calendar days prior to the date on which such regulations are to be considered for adoption. A copy of each proposed regulation shall also be filed with the Clerk of the Council.

Sec. 15B-307. Retirement Administrator.

(a) The Board of Trustees shall appoint the Retirement Administrator who shall be a classified service employee of the County.

(b) The Retirement Administrator shall employ a staff in accordance with the adopted County budget.

Sec. 15B-308. Annual report.

(a) On or before April 1 of each year, the Retirement Administrator shall submit a report to the Board of Trustees about the operation and performance of the several plans during the calendar year that ended on the preceding December 31.

(b) For each of the several plans, the report shall include the number of active employees, the number of retired employees receiving benefits, the number of former employees who have vested, the financial status of the plans, and such other information as may be required by the Board of Trustees.

(c) On or before May 1 of each year, the Board of Trustees shall submit a report to the County Executive and the County Council about the operation and performance of the several plans during the calendar year that ended on the preceding December 31.

Sec. 15B-309. Management of funds.

(a) The Retirement Administrator, under the supervision of the Board of Trustees, shall manage all assets of the several plans.

(b) The assets of the several plans shall not be commingled.

Sec. 15B-310. Actuary.

(a) The Board of Trustees shall designate an actuary who shall:

(1) give technical advise to the Board of Trustees on the operation of the funds of the several plans;

(2) on the basis of the actuarial assumptions that the Board of Trustees adopts, make a valuation of the assets and liabilities of the funds of the several plans; and

(3) prepare other detailed valuations and reports

Sec. 15B-311. County Auditor.

(a) The County Auditor shall conduct an annual fiscal and compliance audit of the accounts and transactions of the several plans.

Sec. 15B-312. Purposes of assets of plans.

(a) The Board of Trustees shall hold the assets of each of the several plans for the exclusive purposes of providing:

(1) benefits to participants; and

- (2) for reasonable expenses of administration.

Sec. 15B-313. Standards of care.

(a) A fiduciary shall discharge the fiduciary's duties with respect to the several plans solely in the interest of the participants and as follows:

- (1) for the exclusive purposes of providing benefits to the participants and for reasonable expenses of administering the several plans;
- (2) with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
- (3) by diversifying the investments of the several plans so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;
- (4) in accordance with the laws governing the several plans; and
- (5) in accordance with the documents and instruments governing the several plans to the extent that the documents and instruments are consistent with this Subtitle.

Sec. 15B-314. Duties and responsibilities of trustees.

(a) Except as otherwise provided in subsection (c) of this section, in exercising the standards set forth in this subtitle:

- (1) the trustees jointly shall manage and control the assets of the several plans; and
- (2) each trustee of the several systems, when acting as a fiduciary, shall use reasonable care to prevent another trustee from committing a breach.

(b) The Board of Trustees may:

- (1) allocate the responsibilities of the fiduciaries among the fiduciaries; and
- (2) designate any other person to carry out the responsibilities of a fiduciary.

(c) If the Board of Trustees makes an allocation or designation to a person under subsection (b) of this section, the Board of Trustees is not liable for an act or omission of that person in carrying out the responsibility, except to the extent that the Board of Trustees violates this subtitle with respect to:

- (1) the allocation or designation;
- (2) the establishment or implementation of a procedure to allocate or designate; or

- (3) the continuance or review of the allocation or designation.

Sec. 15B-315. Prohibited transactions involving plan assets.

(a) In exercising authority, control, or discretion with respect to the several plans, a fiduciary may not:

- (1) use the assets of the several plans for the fiduciary's own interest or account;
- (2) act in a transaction involving the several plans on behalf of a person, or represent a person, if the interests of the person are adverse to the interests of the several plans or the interests of participants;

(3) receive any consideration for the fiduciary's own account from a person dealing with the several plans in connection with a transaction involving the assets of the several plans; or

(4) become an endorser or surety or, in any manner, an obligor, for money lent to or borrowed from the Board of Trustees.

Sec. 15B-316. Liability of fiduciary for breach of duty.

(a) Subject to Section 15A-317, a fiduciary who breaches any of the responsibilities, obligations, or duties imposed on a fiduciary by this subtitle:

(1) is personally liable to the several plans for any losses to the several plans resulting from a breach;

(2) shall restore to the several plans any profits of the fiduciary made through use of assets of the several plans by the fiduciary; and

(3) is subject to any equitable or remedial relief, including removal of the fiduciary, that a court considers appropriate.

(b) A fiduciary is not liable with respect to a breach of fiduciary duty under this subtitle if the breach was committed:

- (1) before the fiduciary became a fiduciary; or
- (2) after the fiduciary ceased to be a fiduciary.

Sec. 15B-317. Indemnification of fiduciaries.

(a) Subject to the provisions of this section, the County shall indemnify a fiduciary who is, or is threatened to be made, a party to an action or proceeding, including an administrative

or investigative proceeding, by reason of the fiduciary's service as a fiduciary.

(b) In this section "expenses" include reasonable attorney's fees, judgments and other expenses that were actually and reasonably incurred by the fiduciary in connection with the action or proceeding.

(c) With respect to a civil, administrative, or investigative action or proceeding, the County shall indemnify a fiduciary for the expenses of the action or proceeding if the fiduciary acted:

(1) in good faith; and

(2) in a manner the fiduciary reasonably believed to be in or not opposed to the best interest of the several plans.

(d) With respect to a criminal action or proceeding, the County shall indemnify a fiduciary for the expenses of the action or proceeding if the fiduciary:

(1) acted in good faith;

(2) acted in a manner the fiduciary reasonably believed to be in or not opposed to the best interest of the several plans;

(3) did not have reasonable cause to believe that the fiduciary's conduct was unlawful; and

(4) the fiduciary was not convicted or did not enter a plea of nolo contendere in the criminal action.

(e) Any termination of an action or proceeding does not, of itself, create a presumption that the fiduciary did not meet the standards for indemnification described in this section.

(f) The County may not indemnify:

(1) a fiduciary with respect to an action or proceeding as to which the fiduciary was held liable for gross negligence or willful misconduct in the performance of the fiduciary's duty to the several plans; or

(2) an independent contractor furnishing services to the several plans.

(g) The County shall provide insurance for a fiduciary eligible for indemnification under this section. The County may provide self-insurance under terms and conditions satisfactory to the Director of Finance.

Sec. 15B-318. Agreement relieving fiduciary from liability.

(a) Except as provided in Section 15A-314, a provision in an agreement that purports to relieve a fiduciary from a responsibility, obligation, or duty, or liability for a responsibility, obligation, or duty under this subtitle is against public policy and void.

(b) Indemnification. This subtitle does not preclude indemnification of a fiduciary in accordance with Section 15A-317.

Sec. 15B-319. Disqualification of fiduciary; penalties.

(a) Notwithstanding any other law, a person may not serve as a fiduciary if the person has been convicted of:

- (1) a felony;
- (2) a misdemeanor involving moral turpitude;
- (3) a violation of this subtitle;
- (4) a conspiracy or attempt to commit a crime described under paragraph (1), (2), or (3) of this subsection; or
- (5) a crime in which a crime described under paragraph (1), (2), (3), or (4) of this paragraph is an element.

(b) For the purposes of this section, a person is deemed to be convicted on the later of:

- (1) the date of judgment of the trial court; or
- (2) the date of the final sustaining of judgment on appeal.

(c) A fiduciary shall be removed for a violation of subsection (a) of this section.

Sec. 15B-320. Funds of the several plans.

(a) In each plan, there is:

- (1) an accumulation fund
- (2) an annuity savings fund; and
- (3) an expense fund.

(b) The Board of Trustees shall credit the assets of each County plan to the appropriate fund of the County plan according to the purpose for which the assets are held.

Sec. 15B-321. County guaranty.

(a) Each fiscal year the County shall pay to the accumulation fund of each plan at least

an amount that when combined with the amount in the accumulation fund is sufficient to pay the allowances and other benefits payable out of the fund during the fiscal year.

Sec. 15B-322. Employer contributions.

(a) Each pay period the county shall pay to the appropriate accumulation fund an amount equal to or greater than the product of:

- (1) the aggregate compensation of plan members; and
- (2) the sum of the normal contribution rate and the accrued liability contribution rate.

(b) Each year, not later than March 1, the Board of Trustees shall certify to the County Executive the normal contribution rate and the accrued liability contribution rate.

Sec. 15B-323. Employee contributions.

(a) Each pay period, the County shall deduct from the pay of each plan member and apply to the appropriate accumulation fund an amount equal to the product of:

- (1) the compensation received by the employee for services rendered as an employee for the County, excluding any overtime or other premium pay, bonuses or other additional compensation, but including any amount of reduction under a deferred compensation plan under Section 457 of the Internal Revenue Code or any statutory fringe benefit program sponsored by the County and permitted by the Internal Revenue Code; and
- (2) the normal contribution rate.

Sec. 15B-324. Establishment of contribution rates.

(a) The County Executive shall submit to the County Council for its approval in accordance with Section 16-125 of the Code appropriate salary plan amendments to establish the employer contribution rate and the employee contribution rate for each plan.

(b) The County Executive shall include in the proposed operating budget for the County an amount sufficient to permit the County to pay the employer contributions to the plans.

Sec. 15B-325. Benefit restrictions.

(a) No Participant shall receive credit for years of service during which the Participant was an elected official of the County, nor shall the compensation received as an elected

official be considered in the computation of any benefit received under the several plans.

(b) No Participant shall receive credit for the same year of service in more than one plan. A participant may transfer all of the vested accrued benefit and all of the contributions allocable thereto to a single plan within one year of commencing covered employment under the plan to which the transfer is made.

(c) No Participant shall be eligible to receive payment of benefits prior to attaining the age of 55. Benefit payments to a Participant who has not attained the age of 60 shall be paid at the rate of 75% of the annual benefit prior to the Participant's 56th birthday, 80% of the annual benefit prior to the Participant's 57th birthday, 85% of the annual benefit prior to the Participant's 58th birthday, 90% of the annual benefit prior to the Participant's 59th birthday, 95% of the annual benefit prior to the Participant's 60th birthday, and 100% of the annual benefit thereafter.

SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since the same would have been enacted without the incorporation in this Act of any such invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law.

Adopted this ____ day of _____, 1995.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY:

Anne T. MacKinnon
Chairwoman

ATTEST:

Joyce T. Sweeney
Clerk of the Council

APPROVED:

DATE: _____

BY:

Wayne K. Curry
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.