

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2008, Legislative Day No. 41

Bill No. 92-08

Introduced by Ms. Vitale, Chairman
(by request of the County Executive)

By the County Council, December 1, 2008

Introduced and first read on December 1, 2008
Public Hearing set for January 5, 2008
Bill Expires March 6, 2009

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

1 AN EMERGENCY ORDINANCE concerning: Pensions

2

3 FOR the purpose of amending the pension law to meet the standards of the Internal
4 Revenue Service with regard to tax-qualified pension plans; making a technical
5 correction; making this Ordinance an emergency measure; and generally relating to
6 pensions.

7

8 BY repealing and reenacting, with amendments: §§ 5-1-101(6); 5-1-402; 5-1-403; 5-2-
9 103; and 5-2-501
10 Anne Arundel County Code (2005, as amended)

11

12 BY repealing: §§ 5-1-404(a), (b) and (c) and 5-1-405
13 Anne Arundel County Code (2005, as amended)

14

15 BY adding: §§ 5-1-404(a), (b) and (c) and 5-1-405
16 Anne Arundel County Code (2005, as amended)

17

18 SECTION 1. *Be it enacted by the County Council of Anne Arundel County,*
19 *Maryland,* That §§ 5-1-404(a), (b) and (c) and 5-1-405 of the Anne Arundel County Code
20 (2005, as amended) are hereby repealed.

EXPLANATION: CAPITALS indicate new matter added to existing law.
[Brackets] indicate matter stricken from existing law.

1
2 SECTION 2. *And be it further enacted*, That Section(s) of the Anne Arundel County
3 Code (2005, as amended) read as follows:

4
5 ARTICLE 5 PENSIONS

6
7 TITLE 1. GENERAL PROVISIONS

8
9 **5-1-101. Definitions.**

10
11 In this article, the following words have the meanings indicated.

12
13 (6) "Actuarially equivalent" means as to any amount, an equivalent amount,
14 determined in accordance with the actuarial assumptions specified in this article.
15 NOTWITHSTANDING ANY OTHER PROVISION IN THIS ARTICLE TO THE CONTRARY, THE
16 MORTALITY TABLE USED FOR PURPOSES OF ADJUSTING ANY BENEFIT OR LIMITATION
17 UNDER § 415 (B)(2)(B), (C), OR (D) OF THE INTERNAL REVENUE CODE, AS PROVIDED IN § 5-
18 1-403 OF THIS ARTICLE, SHALL BE THE MORTALITY TABLE PRESCRIBED IN § 415(B)(2)(E)(V)
19 OF THE INTERNAL REVENUE CODE.

20
21 **5-1-402. Limitation on calculation of annual basic pay.**

22
23 The amount of annual basic pay utilized to compute a pension benefit shall [be
24 limited as required by] NOT EXCEED THE DOLLAR LIMIT UNDER § 401(a)(17) of the
25 Internal Revenue Code [and treasury regulations issued in accordance with the Code] AS
26 ADJUSTED FOR COST-OF-LIVING INCREASES IN ACCORDANCE WITH § 401(A)(17) OF THE
27 INTERNAL REVENUE CODE .

28
29 **5-1-403. Limitation on benefits.**

30
31 (a) **Federal limits not to be exceeded.** Notwithstanding any other provision of this
32 article to the contrary, NO BENEFIT SHALL BE PAYABLE UNDER ANY OF THE PLANS IF
33 SUCH BENEFIT WOULD CAUSE THE PLAN, OR ANY OTHER PLAN MAINTAINED BY THE
34 EMPLOYER, TO VIOLATE the limitations [imposed under] OF § 415 of the Internal
35 Revenue Code and the regulations [adopted under that code may not be exceeded]
36 THEREUNDER. FOR PURPOSES OF APPLYING THE LIMITS UNDER § 415 OF THE INTERNAL
37 REVENUE CODE, THE ANNUAL INCREASE OF THE § 415 LIMITATIONS APPLIES TO A
38 PARTICIPANT FOR INCREASES THAT ARE EFFECTIVE AFTER THE PARTICIPANT'S
39 SEVERANCE FROM EMPLOYMENT.

40
41 (b) **Reduction of benefits.** [The Personnel Officer shall reduce a participant's benefit
42 payments under this article to the extent necessary to prevent the limitations under § 415
43 of the Internal Revenue Code from being exceeded and increase a participant's benefit
44 payments that were previously frozen or reduced to the extent permitted by cost-of-living
45 increases or other in the limitations under § 415 of the Internal Revenue Code.] IF THE
46 ANNUAL ADDITIONS, WITHIN THE MEANING OF § 415 OF THE INTERNAL REVENUE CODE,
47 ARE EXCEEDED FOR ANY PARTICIPANT, THEN THE PLAN MAY ONLY CORRECT SUCH
48 EXCESS IN ACCORDANCE WITH THE EMPLOYEE PLANS COMPLIANCE RESOLUTION

1 SYSTEM (EPCRS) AS SET FORTH IN REVENUE PROCEDURE 2006-27 OR ANY SUPERSEDING
2 GUIDANCE, INCLUDING, BUT NOT LIMITED TO, THE PREAMBLE OF THE FINAL § 415
3 TREASURY REGULATIONS.

4
5 (c) **Recovery of benefits paid in excess of limitations.** In the event that the
6 limitations of § 415 of the Internal Revenue Code are exceeded, the Personnel Officer
7 may take any action necessary WHICH IS ALLOWED UNDER § 415 OF THE INTERNAL
8 REVENUE CODE AND THE REGULATIONS THEREUNDER to seek recovery of benefits paid
9 in excess of the limitations.

10
11 **5-1-404. Form of payment – Compliance with federal law.**

12
13 [(a) **Generally.** Benefit payments shall be made in compliance with the provisions of
14 § 401(a)(9) of the Internal Revenue Code, including the required beginning date
15 requirement of § 401(a)(9)(c), the incidental death benefit requirement of § 401(a)(9)(g),
16 and in accordance with proposed treasury regulations §§ 1.401(a)(9)-1 through
17 1.401(A)(9)-8 and any successor regulations.

18
19 (b) **Change in form of payment.** If a participant elects a form of benefit that is not in
20 compliance with § 401(a)(9)(a) and (b) of the Internal Revenue Code, the Personnel
21 Officer shall change the form of payment to bring it into compliance with those
22 provisions.

23
24 (c) **Election of benefits.** If a participant elects a form of benefit available under a plan
25 that does not have to comply with § 401(a)(9)(a) and(b) of the Internal Revenue Code,
26 the Personnel Officer shall follow the election unless revoked by the participant before
27 commencement of payment of benefits.]

28
29 (A) **Generally.** TO THE EXTENT THAT THERE IS A CONFLICT BETWEEN THE
30 PROVISIONS OF § 401(A)(9) OF THE INTERNAL REVENUE CODE, AND THE REGULATIONS
31 THEREUNDER, AND ANY PROVISION IN THE PLANS, THE PROVISIONS OF § 401(A)(9) OF THE
32 INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER WILL CONTROL. THE
33 PLANS WILL APPLY THE MINIMUM DISTRIBUTION REQUIREMENTS OF § 401(A)(9) OF THE
34 INTERNAL REVENUE CODE IN ACCORDANCE WITH THE TEMPORARY AND FINAL
35 REGULATIONS UNDER § 401(A)(9) THAT WERE RELEASED IN APRIL 2002,
36 NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY.

37
38 (B) **Commencement of benefits.** THE DISTRIBUTION OF BENEFITS TO A PARTICIPANT
39 WHO CONTINUES EMPLOYMENT WITH THE EMPLOYER BEYOND THE PARTICIPANT'S
40 NORMAL RETIREMENT DATE SHALL BEGIN BY THE FIRST DAY OF APRIL FOLLOWING THE
41 LATER OF: (1) THE CALENDAR YEAR IN WHICH THE PARTICIPANT ATTAINS AGE SEVENTY
42 AND ONE-HALF (70-1/2) OR (2) THE CALENDAR YEAR IN WHICH THE PARTICIPANT'S
43 EMPLOYMENT IS TERMINATED.

44
45 IN THE CASE OF A PARTICIPANT WHOSE DISTRIBUTIONS COMMENCE OR
46 RECOMMENCE LATER THAN THE FIRST DAY OF APRIL OF THE CALENDAR YEAR
47 FOLLOWING THE CALENDAR YEAR IN WHICH SUCH PARTICIPANT ATTAINS AGE SEVENTY
48 AND ONE-HALF (70-1/2), SUCH PARTICIPANT'S ACCRUED BENEFIT SHALL BE ADJUSTED
49 ACTUARIALLY, IN ACCORDANCE WITH § 5-1-101(6), TO TAKE INTO ACCOUNT THE PERIOD
50 AFTER AGE SEVENTY AND ONE-HALF (70-1/2) DURING WHICH SUCH PARTICIPANT DID

1 NOT RECEIVE ANY DISTRIBUTIONS HEREUNDER.

2
3 **(C) Death distribution provisions.**

4
5 (1) **Death after distribution.** IF THE PARTICIPANT DIES AFTER DISTRIBUTION OF
6 HIS OR HER INTEREST HAS BEGUN, THE REMAINING PORTION OF THE PARTICIPANT'S
7 INTEREST, IF ANY, WILL BE DISTRIBUTED IN THE SAME FORM AS THE PARTICIPANT'S
8 INTEREST WAS BEING PAID PRIOR TO THE PARTICIPANT'S DEATH.

9
10 (2) **Death before distribution.** IF THE PARTICIPANT DIES BEFORE DISTRIBUTION
11 OF HIS OR HER INTEREST HAS BEGUN, ANY BENEFITS PAYABLE BECAUSE OF THE
12 PARTICIPANT'S DEATH WILL BE DISTRIBUTED PURSUANT TO THE DEATH BENEFIT
13 PROVISIONS OF THE APPLICABLE PLAN. IF THE PARTICIPANT'S SPOUSE IS NOT THE
14 BENEFICIARY, THE METHOD OF DISTRIBUTION SHALL SATISFY THE INCIDENTAL DEATH
15 BENEFIT REQUIREMENTS SPECIFIED IN § 401(A)(9)(G) OF THE INTERNAL REVENUE CODE
16 AND THE REGULATIONS THEREUNDER.

17
18 **[5-1-405. Rollover distribution.**

19
20 (a) **Definitions.** In this section, the following words have the meanings indicated.

21
22 (1) "Eligible rollover distribution" and "eligible retirement plan" have the
23 meaning stated in § 401(a)(31) of the Internal Revenue Code.

24
25 (2) "Vested participant" includes an active vested participant or terminated vested
26 participant.

27
28 (b) **Applicability.** This section applies to distributions made on or after January 1,
29 1993.

30
31 (c) **Election to rollover to an eligible retirement plan.** Notwithstanding any
32 provision of a plan to the contrary that would otherwise limit a vested participant's
33 election under this section, a vested participant may elect, at the time and manner
34 prescribed by the Personnel Officer, to have any portion of an eligible rollover
35 distribution paid directly to an eligible retirement plan specified by the vested participant.

36
37 (d) **Spouse or former spouse.** A vested participant's surviving spouse or former
38 spouse who is an alternate payee under a qualified domestic relations order is a recipient
39 with regard to the interest of the surviving spouse or former spouse.]

40
41 **5-1-405. Rollover distribution.**

42
43 (A) **Definitions.** IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS
44 INDICATED:

45
46 (1) "ELIGIBLE ROLLOVER DISTRIBUTION" HAS THE MEANING STATED IN §
47 401(A)(31)(C) OF THE INTERNAL REVENUE CODE AND INCLUDES ONLY THAT PORTION OF
48 A DISTRIBUTION THAT WOULD BE INCLUDIBLE IN GROSS INCOME IF NOT ROLLED OVER.

49

1 (2) "ELIGIBLE RETIREMENT PLAN" HAS THE MEANING STATED IN § 401(A)(31)(D) OF
2 THE INTERNAL REVENUE CODE AND MEANS (I) AN INDIVIDUAL RETIREMENT ACCOUNT
3 DESCRIBED IN § 408(A) OF THE INTERNAL REVENUE CODE, (II) AN INDIVIDUAL
4 RETIREMENT ANNUITY DESCRIBED IN § 408(B) OF THE INTERNAL REVENUE CODE OTHER
5 THAN AN ENDOWMENT CONTRACT, (III) AN ANNUITY PLAN DESCRIBED IN § 403(A) OF THE
6 INTERNAL REVENUE CODE, (IV) AN ANNUITY CONTRACT DESCRIBED IN § 403(B) OF THE
7 INTERNAL REVENUE CODE, (V) AN ELIGIBLE PLAN UNDER § 457(B) OF THE INTERNAL
8 REVENUE CODE WHICH IS MAINTAINED BY A STATE, POLITICAL SUBDIVISION OF A
9 STATE, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR POLITICAL SUBDIVISION
10 OF A STATE AND WHICH AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS
11 TRANSFERRED INTO SUCH PLAN FROM THIS PLAN, OR (VI) A QUALIFIED TRUST THAT IS A
12 DEFINED CONTRIBUTION PLAN DESCRIBED IN § 401(A) OF THE INTERNAL REVENUE CODE,
13 THE TERMS OF WHICH PERMIT THE ACCEPTANCE OF DIRECT ROLLOVERS.
14

15 (B) **Generally.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS ARTICLE TO THE
16 CONTRARY, A DISTRIBUTEE WHO IS TO RECEIVE AN ELIGIBLE ROLLOVER DISTRIBUTION
17 MAY ELECT A DIRECT TRUSTEE-TO-TRUSTEE ROLLOVER OF THE DISTRIBUTION TO AN
18 ELIGIBLE RETIREMENT PLAN. A DIRECT ROLLOVER ELECTION SHALL BE MADE
19 PURSUANT TO THE PROCEDURES ESTABLISHED BY THE PERSONNEL OFFICER AND SHALL
20 SPECIFY THE ELIGIBLE RETIREMENT PLAN TO WHICH THE DIRECT ROLLOVER IS TO BE
21 MADE. IF THE PARTICIPANT OR BENEFICIARY ELECTS A DIRECT ROLLOVER IN
22 ACCORDANCE WITH THE PROCEDURES ESTABLISHED BY THE PERSONNEL OFFICER, THE
23 PERSONNEL OFFICER SHALL MAKE THE ROLLOVER AS ELECTED.
24

25 TITLE 2. COUNTY RETIREMENT AND PENSION SYSTEM

26 5-2-103. Composition of system.

27 The System consists of the Employees' Retirement Plan; [the Retirement Plan for
28 Appointed and Elected Officials;] the Fire Service Retirement Plan; the Police Service
29 Retirement Plan; and the Detention Officers' and Deputy Sheriffs' Retirement Plan.
30
31
32

33 5-2-501. In general.

34 In each plan [except the Retirement Plan for Appointed and Elected Officials] there is
35 a separate pension fund. The Board shall credit the assets of the System to the appropriate
36 pension fund.
37
38

39 SECTION 3. *And be it further enacted,* That this Ordinance is hereby declared to be
40 an emergency ordinance and necessary for the immediate preservation of the public
41 peace, health, safety, welfare, and property, and being passed by the affirmative vote of
42 five members of the County Council, the same shall take effect from the date it becomes
43 law.