

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2016 Legislative Session

Legislative Day No. 07

Resolution No. 47-2016

Introduced by: The President of the Council at the request of the County Executive

A RESOLUTION ADOPTING AMENDMENT 2016-2 TO THE RETIREMENT PLAN FOR EMPLOYEES OF WICOMICO COUNTY AND THE BOARD OF EDUCATION OF WICOMICO COUNTY.

WHEREAS, Wicomico County and the Board of Education of Wicomico County sponsor a Retirement Plan for Employees; and

WHEREAS, Wicomico County has negotiated a Collective Bargaining Agreement with the Wicomico County Fraternal Order of Police, Inc., Lodge #111 (hereinafter "FOP") for July 1, 2016 through June 30, 2021; and

WHEREAS, said Collective Bargaining Agreement does not provide a secondary employment accidental disability benefit of up to a maximum of Fifteen Thousand Dollars (\$15,000) for certain designated subclasses of County Employees employed by the Wicomico County Sheriff's Department; and

WHEREAS, to remove said benefit, an amendment to the Retirement Plan for Employees of Wicomico County and the Board of Education of Wicomico County is needed; and

WHEREAS, the proposed amendment will not affect employees of the Wicomico County Board of Education or any other employees of Wicomico County other than the qualifying FOP members; and

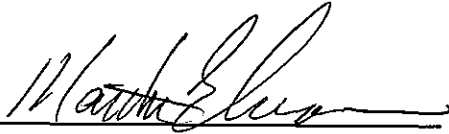
WHEREAS, in accordance with the power reserved to it in Section 7.1 of the plan, the Employer may amend the Plan at any time and from time to time, subject to certain conditions not now relevant.

NOW, THEREFORE, BE IT RESOLVED, by the County Council of Wicomico County, Maryland that Amendment 2016-2 to the Retirement Plan for the Employees of Wicomico County and the Board of Education of Wicomico County attached hereto as Exhibit A is hereby approved and adopted.

Done at Salisbury, Maryland, this 5th day of April, 2016.

ATTEST:

COUNTY COUNCIL OF
WICOMICO COUNTY, MARYLAND



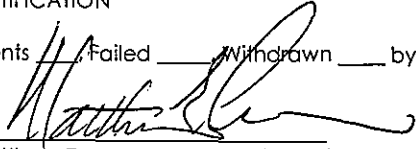
Matthew E. Creamer,
Council Administrator

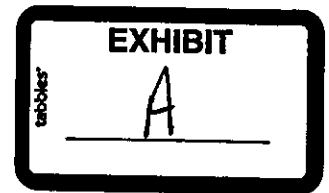


John T. Cannon,
Council President

CERTIFICATION

This Resolution was Adopted , Adopted with Amendments Failed Withdrawn by the County Council on
April 5, 2016.

Certified by 
Matthew E. Creamer, Council Administrator



AMENDMENT NO. 2016-2
TO THE
RETIREMENT PLAN FOR EMPLOYEES OF WICOMICO COUNTY AND THE BOARD OF
EDUCATION OF WICOMICO COUNTY

Wicomico County, Maryland (the "Plan Sponsor") desires to amend the Retirement Plan for Employees of Wicomico County and the Board of Education of Wicomico County (the "Plan") to make certain desired changes.

WHEREAS the Plan Sponsor desires to amend the Plan to remove the secondary employment accidental disability benefit, in an amount up to a maximum of fifteen thousand dollars (\$15,000) which was previously provided for certain designated subclasses of County Employees employed by the Wicomico County Sheriff's Department; and

WHEREAS, the Amendment shall not affect employees of the Wicomico Board of Education.

Accordingly, effective as the date set forth below, the Plan is hereby amended as follows:

1. Article I, Definitions. Section 1.21 of the Plan entitled, "Member" is hereby amended by adding new subparagraph (e) to the end thereof to read as follows:
 - (e) A County Sheriff Member is a County Employee Active Member or Late Retired Member employed by the Wicomico County Sheriff's Department and has been at work on any date occurring on or after July 1, 2014 in a designated job classification of:
 - (i) A sworn law enforcement officer of the rank of First Sergeant and below and whose terms and conditions of employment are governed by an applicable collective bargaining agreement (taking into account any exclusions from coverage therein); or
 - (ii) Sheriff, or sworn member of the Sheriff's command staff.
2. Article I, Definitions. Section 1.22 of the Plan entitled, "Member Accumulation" is hereby amended by adding the following new paragraph to the end thereof:

Notwithstanding any other provision of the Plan, in no event shall the Member Accumulation for any Member include any part of the Member Disability Contributions, if any, made to the Plan by such Member.
3. Article I, Definitions. Section 1.23 of the Plan entitled, "Member Contribution" is hereby amended by adding new subparagraph (e) to the end of such Section to read as follows:
 - (e) Notwithstanding any other provision of the Plan, in no event shall Member Contributions for any Member include or take into account his or her Member Disability Contributions, if any.

4. Article I, Definitions. New Section 1.23A is added to the Plan to read as follows:

1.23A MEMBER DISABILITY CONTRIBUTION FOR CERTAIN COUNTY EMPLOYEE MEMBERS.

- (a) Each month on or after July 1, 2014, each County Sheriff Member shall make while employed in such classification Member Disability Contributions, which shall be "picked-up" by the Employer, in lieu of contributions by the Member, as permitted by Code section 414(h)(2). The amount of the Member Disability Contribution will equal one and four-tenths percent (1.4%) of the County Sheriff Member's Earnings during the month while employed in such classification and in the Eligible Class. Such contributions shall commence in accordance with the terms of the applicable collective bargaining agreement.
- (b) Notwithstanding any other provision of the Plan, a County Sheriff Member:
 - (i) shall not be required to make any Member Disability Contributions for any period after attainment of Social Security Retirement Age, provided however that this termination of the Member Disability Contribution shall be in effect from July 1, 2014 through June 30, 2018. Thereafter, this termination shall not apply. A Member who reaches age 67 during the period from July 1, 2014 through June 30, 2018 and is still employed in the classification and in the Eligible Class described in subsection (a) shall not cease Member Disability Contributions;
 - (ii) shall not be entitled to a return of his or her Member Disability Contributions, with or without interest, as a death benefit under Article 4; and
 - (iii) shall not be entitled to a return of his or her Member Disability Contributions, with or without interest, upon termination of employment under Article 5.

5. Article I, Definitions. New Section 1.30A is added to the Plan to read as follows:

1.30A SOCIAL SECURITY RETIREMENT AGE means, with respect to a County Sheriff Member born prior to 1938, the date on which he attains age sixty-five (65), with respect to a County Sheriff Member born after 1937 and prior to 1955, the date on which he or she attains age sixty-six (66), and with respect to a County Sheriff Member born after 1954, the date on which he or she attains age sixty-seven (67).

6. Article 3. Section 3.4 of the Plan entitled, "Disability Benefits" is hereby renumbered as Section 3.4A, and the following new Section 3.4 is added to the Plan to read as follows:

3.4 DISABILITY BENEFITS GENERALLY.

All Active Members may qualify for a monthly disability benefit designated as an “Ordinary Disability Benefit” determined in accordance with Section 3.4A below, and a County Sheriff Member (while either an Active Member or Late Retired Member) may qualify for a monthly disability benefit designated as an “Accidental Disability Benefit” determined in accordance with Section 3.4B below.

If a County Sheriff Member makes an application for an Ordinary Disability Benefit, the Employer may in its sole discretion, with notice to the Member, treat such application as additionally an application for Accidental Disability Benefits and the provisions of both Sections 3.4A and 3.4B shall apply.

7. Article 3. Section 3.4A entitled “Disability Benefit” as renumbered by Paragraph 5 above is further revised as follows:

a. The title of Section 3.4A is changed to “ORDINARY DISABILITY BENEFIT”.

b. New subsections 3.4A(h) and 3.4A(i) are added to the Plan to read as follows:

(h) A Member who is receiving Ordinary Disability payments will be considered an Active Member for all purposes of this Plan except that no Member Contributions or Member Disability Contributions will be made and no retirement benefit will accrue for any period of a Plan Year for which Ordinary Disability payments are payable to him or her.

(i) In the event that the Employer determines that a Member qualifies for an Ordinary Disability Benefit under this Section, and denies the Member’s claim for an Accidental Disability Benefit, such Member may commence payment of an Ordinary Disability Benefit without prejudice to the rights of such Member to appeal a denied claim for an Accidental Disability Benefit.

8. Article 3. New Section 3.4B is added to the Plan to read as follows:

3.4B ACCIDENTAL DISABILITY BENEFIT FOR CERTAIN COUNTY EMPLOYEE MEMBERS

(a) A County Sheriff Member shall qualify for a monthly Accidental Disability Benefit (Hereinafter: “AD Benefit”) in accordance with this Section if:

- (i) such Member is certified in accordance with subsection (d) below to be totally and permanently incapacitated, either mentally or physically, for duty arising out of or in the course of the actual performance of duty without willful negligence by such Member;
 - (ii) the events, conditions, causation, and all other applicable relevant factors contributing to, arising out of or related to the disabling condition occurred solely on or after July 1, 2014.
- (b) The amount of each monthly AD Benefit payment will equal the amount determined in subsection (i) reduced by any amount received by the Member in subsections (ii) and (iii) below:
- (i) Sixty six and two thirds percent (66.67%) of the Member's Final Average Earnings.
 - (ii) Any related workers' compensation benefits, and any other income replacement benefits funded in whole or in part by the Employer, such as sickness and accident payment benefits, short term disability, long term disability, sick pay or salary continuation benefits paid or payable after the effective date of a the certified Accidental Disability Benefit determination by the Medical Advisory Board and Trustees' Sub-committee, provided that such benefits:
 - (A) are paid or payable while an AD Benefit is paid or payable; and
 - (B) are for personal injury or illness arising out of and in the course of the Member's employment with the Employer.
 - ~~(iii) An amount equivalent to net earnings received from secondary employment (after taking into account deductions for applicable taxes) up to a maximum of fifteen thousand (\$15,000) dollars during any calendar year. The Member shall account to the County Department of Human Resources for all sources of secondary employment income.~~
- (c) The Employer shall establish an independent Medical Advisory Board (hereinafter: "MAB") and the Trustees shall establish a subcommittee of the Trustees (hereinafter: the "Trustees' Sub-committee") for the purpose of making determinations of eligibility and continued eligibility for Accidental Disability Benefits in accordance with procedures and guidelines established by the Plan Administrator

- (d) The AD Benefit will be payable for the period beginning on the effective date of the certification by both the Medical Advisory Board and Trustees' Sub-Committee of the Member's accidental disability under subsection (d), and ending immediately before the earliest of:
 - (i) the date such Member ceases to be permanently and totally disabled by death or recovery;
 - (ii) the date the Member fails upon request to submit either proof of the continuance of accidental disability or proof of secondary employment;
 - (iii) the date the Member attains his or her Social Security Retirement Age, provided however that this payment period limitation shall be in effect from July 1, 2014 through June 30, 2018. Provided further that a Member who reaches the age of 67 on or before June 30, 2018 who commences receiving accidental disability payments shall not be subject to the payment limitation in the preceding sentence. A Member who commences receiving AD Benefit payments during the period in this subsection who does not attain his or her Social Security Retirement Age on or before June 30, 2018 shall continue to receive such payments after June 30, 2018, subject to the other criteria in this Plan;
 - (iv) the date the Member duly elects an Early Retirement, Normal Retirement, or Late Retirement Date in accordance with subsection 3.4B(h) below; or
 - (v) subject to the requirements of the collective bargaining agreement in effect at the time of such valuation, the date on which the valuation of the ADB Subtrust as maintained by the Trustees within the Plan's Trust in accordance with Section 9.13 is reduced to zero.
- (e) To be eligible to receive an AD Benefit, all of the following conditions must be met:
 - (i) The Member applies to the Plan Administrator for an AD Benefit, on a form to be furnished by the Plan Administrator no later than three(3) years after the date of the injury, date of onset of the condition or other incident from which the Member's claim for an Accidental Disability Benefit arises;
 - (ii) The Member is determined by the MAB to be permanently and totally disabled in accordance with subsection 3.4B(a) above and

such determination is reviewed and approved by the Trustees' Sub-committee;

- (iii) The MAB and Trustees' Sub-committee, in making such determinations and approvals, shall have the right to have physical examinations, including diagnostic tests, of the Member made by a physician or physicians selected and paid for by the Plan or the Employer; and to make such other investigations as the MAB Trustees' Sub-committee deem necessary. If a Member refuses to permit any such physical examination or test, unless the examination or test is shown to be dangerous to the Member's life or health, the MAB and Trustees' Sub-committee shall have the right to determine without regard to any other evidence that the Member is not permanently and totally disabled or fit to return to duty;
 - (iv) The MAB or the Trustees' Sub-committee may require Member who is receiving A D Benefits to submit to periodic medical examination, but not more often than once in any year to determine whether the Member has become fit to resume duties in the classification eligible for this benefit in which he or she was last performing duties. The medical examination shall be as directed by the MAB which shall make the determination as to whether the Member is fit for return to duty subject to approval by the Trustees' Sub-committee and the other provisions of this section 3.4B.
 - (v) The Member shall not be entitled to any presumptions as to the source of his illness or injury;
 - (vi) The MAB's decisions under this subsection (d) is approved Trustees' Sub-committee; and
 - (vii) All review, approvals and determinations of by the Trustees' Sub-committee shall be conclusive and binding upon all persons.
- (e) A Member entitled to an Accidental Disability Benefit under this Section 3.4B shall not be entitled to an Ordinary Disability Benefit while Accidental Disability Benefits are paid or payable.
 - (f) A Member who is receiving Accidental Disability payments will be considered an Active Member or Late Retired Member for all purposes of this Plan except that no Member Contributions or Member Disability Contributions (and no pick-up of such contributions by salary reduction) will be made or occur, and no additional retirement benefit will accrue under the Plan (whether due to secondary employment or otherwise) for

any period of a Plan Year for which Accidental Disability payments are payable to him or her.

- (g) At all times and for all purposes of the Plan, Accidental Disability Benefits shall not be a part of or treated as an Accrued Benefit of any Member, such disability benefit shall be considered solely as an ancillary benefit under the Plan notwithstanding that the value of such disability benefit may exceed the Member's Accrued Benefit.
- (h) During the period from July 1, 2014 through June 30, 2018, a Member receiving Accidental Disability Benefits may elect at any time prior to his or her Social Security Retirement Age to irrevocably waive any and all rights to future Accidental Disability Benefits and Ordinary Disability Benefits and, if eligible under Sections 3.1, 3.2, or 3.3, to become a Retired Member for all purposes of the Plan and commence immediate payment of the Member's Accrued Benefit in accordance with Section 3.5 on such Member's duly elected Early Retirement, Normal Retirement, or Late Retirement Date, whichever is applicable. After June 30, 2018, a Member receiving Accidental Disability Benefits may make the election described in this subsection at any time.

9. Article 6. The Plan is amended by revising Section 6.1 entitled, "Employer Contributions" by adding the following new paragraph to read as follows:

At such times as the Employer makes a contribution to the Plan as required by the applicable collective bargaining agreement, the Employer shall designate to the Plan Administrator and the Trustees the amount of such contribution that shall be held for the principal purpose of funding Accidental Disability Benefits provided under Section 3.6B of the Plan. Any contributions designated for such purpose by the Employer shall be credited by the Trustee to the Accidental Disability Benefit Subtrust established under the Plan and Trust.

10. Article 6. The Plan is amended by revising Section 6.3, entitled "Employee Contributions" in its entirety to read as follows:

6.3 EMPLOYEE CONTRIBUTIONS. On and after the Effective Date, all Active and Late Retired Members shall make Member Contributions to the Plan. For the Period on and after July 1, 2014 all County Sheriff Members (whether an Active or Late Retired Member) shall make Member Disability Contributions. All Member Disability Contributions shall be credited to the Plan's Accidental Disability Benefit Subtrust established under the Plan and Trust.

11. Section 9.13 of the Plan is hereby amended by adding the following new paragraphs to the end thereof to read as follows:

9.13 INSTRUCTIONS TO TRUSTEES

The Plan Administrator hereby directs effective July 1, 2014, that the Trustees shall establish on its books two separate subtrusts to be known as the Accidental Disability Benefit Subtrust and the Pension Subtrust. The Accidental Disability Benefit Subtrust shall reflect that portion of the assets of the Trust related to both Member Disability Contributions, and Employer contributions designated for the principal purpose of funding Accidental Disability Benefits provided under Section 3.4B of the Plan and contributed to the Plan after July 1, 2014. The Pension Subtrust shall reflect the entire remaining portion of the assets of the Trust Fund that are not recorded as a part of the Accidental Disability Benefit Subtrust.

Prior to the complete termination of the Plan, the corpus and the income of the Accidental Disability Subtrust shall be held and managed in accordance with such written rules and procedures as the Trustees shall establish and incorporate into the Trustees' By-Laws.

Prior to the complete termination of the Plan, the corpus and the income of the Pension Benefit Subtrust shall be held and managed in accordance with such written rules and procedures as the Trustees shall establish and incorporate into the Trustees' By-Laws.

All transfers to, withdrawals from, and other transactions regarding the Trust Fund shall be conducted in such a way that the proportionate interest in the Trust Fund represented by any separate Subtrust maintained and the fair market value of that interest may be determined at any time. Whenever the assets of more than one Subtrust are commingled in the Trust Fund or in any investment fund, the undivided interest therein of that Subtrust shall be debited or credited (as the case may be) (i) for the entire amount of every contribution received on behalf of that Subtrust, every benefit payment, or other expense attributable solely to that Subtrust, and every other transaction relating only to that Subtrust; and (ii) for its proportionate share of every item of collected or accrued income, gain or loss, and general expense; and other transactions attributable to the Trust Fund or that investment fund as a whole. As of each date when the fair market value of the investments held in the Trust Fund or an investment fund are determined, the Trustee shall adjust the value of each Subtrust's interest therein to reflect the net increase or decrease in such values since the last such date. For all of the foregoing purposes, fractions of a cent may be disregarded.

12. This Amendment shall be effective July 1, 2016, except as may be specifically set forth above.

IN WITNESS WHEREOF, the Plan Sponsor has caused this Amendment to be duly executed under seal on its behalf as of the effective date of the Amendment.

ATTEST/WITNESS:

WICOMICO COUNTY MARYLAND

_____ By: _____ (SEAL)

Print Name: _____ Print Name: _____
Title: County Executive
Date: _____

In Concurrence:

Wicomico County
Fraternal Order of Police
Incorporated, Lodge # 111

By: _____
Marty Fisher
FOP President

By: _____
Herbert R. Weiner
FOP Counsel

By: _____
Michael A. Lewis,
Sheriff