

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**

**2006 Legislative Session**

Bill No. CB-15-2006

Chapter No. \_\_\_\_\_

Proposed and Presented by Council Members Peters, Dernoga, Exum, Bland, Campos,

Dean, Harrington and Knotts

Introduced by \_\_\_\_\_

Co-Sponsors \_\_\_\_\_

Date of Introduction \_\_\_\_\_

**BILL**

1 AN ACT concerning

2 Firefighters' Bill of Rights

3 For the purpose of providing procedural and substantive rights to firefighters for the protection of  
4 firefighters' rights to privacy, free speech, and free association and to provide for sanctions for  
5 violations of such rights.

6 BY adding:

7 SUBTITLE 11. FIRE SAFETY.

8 Sections 11-801, 11-802, 11-803, 11-804, 11-805,

9 11-806, 11-807, 11-808, 11-809, 11-810, and 11-811,

10 The Prince George's County Code

11 (2003 Edition, 2005 Supplement)

12 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,  
13 Maryland, that Sections 11-801, 11-802, 11-803, 11-804, 11-805, 11-806, 11-807, 11-808, 11-  
14 809, 11-810, 11-811 of the Prince George's County Code be and the same are hereby added:

15 **SUBTITLE 11. FIRE SAFETY.**

16 **DIVISION 8. FIREFIGHTERS' BILL OF RIGHTS.**

17 **Sec. 11-801. Definitions.**

18 (a) The words defined in this Section shall have the meanings set forth below whenever  
19 they appear in this Division, unless the context in which they are used clearly requires a different  
20 meaning or a different definition is prescribed for a particular provision.

(1) **Chief** means the head of the Prince George's County Fire/EMS Department, a Volunteer Fire Chief qualified pursuant to Section 11-338, or a Volunteer EMS Chief qualified pursuant to Section 11-341 of this Code.

(2) **Department** means the Prince George's County Fire/EMS Department, or a Volunteer Fire Company organized pursuant to Subtitle 11, Division 6 of this Code.

(3) **Firefighter** means:

(A) a person who has completed the Firefighter I certification course conducted in accordance with NFPA Standard 1001 or equivalent course of study; or

(B) a person who has completed the Maryland Emergency Medical technician course the training standards or equivalent course of study.

**Sec. 11-802. Rights generally.**

(a) (1) Right to engage in political activity. Subject to paragraph (2) of this subsection,, a firefighter has the same rights to engage in political activity as a County employee.

(2) This right to engage in political activity does not apply when the firefighter is on duty or acting in an official capacity.

(b) Secondary employment. The Department may not prohibit secondary employment by firefighters, but may adopt reasonable regulations that relate to secondary employment by law enforcement officers.

(c) Financial Information. A firefighter may not be required or requested to disclose an item of the firefighters' property, income, assets, source of income, debts, or personal or domestic expenditure, including those to a member of the firefighter's family or household, unless:

(1) the information is necessary to investigate a possible conflict of interest with respect to the performance of the firefighter's official duties; or

(2) the disclosure is required by federal, State, or County law.

(d) Retaliation. A firefighter may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to the firefighter's employment or be threatened with that treatment because the firefighter:

(1) has exercised or demanded the rights granted by this Division; or

(2) has lawfully exercised constitutional rights.

(e) Right to bring suit. This ordinance may not abridge and a County agency may not

1 adopt a regulation that prohibits the right of a volunteer or career firefighter to bring suit that  
 2 arises out of the firefighter's duties as a firefighter.

3 (f) Waiver. A firefighter may waive in writing any or all rights granted by this Division.

4 **Sec. 11-803. Investigation or interrogation of firefighter.**

5 (a) The investigation or interrogation of a firefighter by a County agency for a reason that  
 6 may lead to disciplinary action, demotion, or dismissal shall be conducted in accordance with  
 7 this Section.

8 (b) For purposes of this Section, the investigation officer or interrogating officer shall be  
 9 the Prince George's Department Fire Prevention and Investigations or its designee.

10 (c) (1) The firefighter under investigation shall be informed of the name, rank, and  
 11 command of:

12 (A) the firefighter personnel officer in charge of the investigation;

13 (B) the interrogating officer; and

14 (C) each individual present during an interrogation.

15 (2) Before an interrogation, the firefighter under investigation shall be informed in  
 16 writing of the nature of the investigation.

17 (d) If the firefighter under interrogation is under arrest, or is likely to be placed under  
 18 arrest as a result of the interrogation, the firefighter shall be informed completely of all of the  
 19 firefighter's rights before the interrogation begins.

20 (e) Unless the seriousness of the investigation is of a degree that an immediate  
 21 interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably  
 22 when the firefighter is on duty.

23 (f) The interrogation shall take place:

24 (1) at the office of the command of the investigation officer;

25 (2) at the firehouse or office where the firefighter reports for duty; or

26 (3) at another reasonable and appropriate place.

27 (g) (1) All questions directed to the firefighter under interrogation shall be asked by and  
 28 through one interrogating officer during any one session of interrogation consistent with  
 29 paragraph (2) of this Subsection.

30 (2) Each session of interrogation shall:

31 (A) be for a reasonable period; and

1                   (B) allow for personal necessities and rest periods as reasonably necessary.

2                   (h) The firefighter under interrogation may not be threatened with transfer, dismissal, or  
3 disciplinary action.

4                   (i) (1) (A) On request, the firefighter under interrogation has the right to be represented  
5 by counsel or another responsible representative of the firefighter's choice who shall be present  
6 and available for consultation at all times during the interrogation.

7                   (B) The firefighter may waive the right to counsel.

8                   (2) the interrogation shall be suspended for a period not exceeding ten (10) calendar  
9 days until representation is obtained. Within that ten (10) calendar day period, the Chief or the  
10 Chief's designee may extend that period for obtaining representation for good cause shown.

11                   (3) During the interrogation, the firefighter's counsel may:

12                   (A) request a recess at any time to consult with the firefighter;

13                   (B) object to any question posed; and

14                   (C) state on the record outside the presence of the firefighter under interrogation  
15 the reason for the objection.

16                   (j) (1) A complete record shall be kept of the entire interrogation, including all recess  
17 periods, of the firefighter under interrogation.

18                   (2) The record may be written, taped, or transcribed.

19                   (3) On completion of the investigation, and on request of the firefighter's counsel or  
20 representative, a copy of the record of the interrogation shall be made available at least ten (10)  
21 calendar days before a hearing.

22                   (k) (1) The Department, through the Department of Fire Prevention and Investigations,  
23 may order the career or volunteer firefighter under investigation to submit to blood alcohol tests,  
24 blood, breath, or urine tests for controlled dangerous substances, or interrogations that  
25 specifically relate to the subject matter of the investigation.

26                   (2) If the Department, through the Department of Fire Prevention and Investigations,  
27 orders the firefighter to submit to a test, examination, or interrogation described in paragraph (1)  
28 of this Subsection, and the firefighter refuses to do so, the Department may commence an action  
29 that may lead to a punitive measure as a result of the refusal.

30                   (3) If the Department, through the Department of Fire Prevention and Investigations,  
31 orders the firefighter to submit to a test, examination, or interrogation described in paragraph (1)

1 of this Subsection, the results of the test, examination, or interrogation are not admissible or  
 2 discoverable in a criminal proceeding against the firefighter.

3 (l) (1) On completion of an investigation and at least ten (10) calendar days before a  
 4 hearing, the firefighter under investigation shall be:

5 (A) notified of the name of each witness and of each charge and specification  
 6 against the firefighter; and

7 (B) provided with a copy of the investigatory file and any exculpatory  
 8 information, if the firefighter and firefighter's counsel or representative agree to execute a  
 9 confidentiality agreement with the Department not to disclose any material contained in the  
 10 investigatory file and exculpatory information for any purpose other than to defend the  
 11 firefighter.

12 (2) The Department may exclude from the exculpatory information provided to a  
 13 firefighter under this Subsection:

14 (A) the identity of confidential sources;

15 (B) nonexculpatory information; and

16 (C) recommendations as to charges, disposition, or punishment.

17 (m) The Department may not insert adverse material into a file of the firefighter, except  
 18 that the file of the internal investigation or the intelligence division, unless the firefighter has an  
 19 opportunity to review, sign, receive a copy of and comment in writing on the adverse material.  
 20 The firefighter may waive the right described in this Subsection.

21 **Sec. 11-804. Application for show cause order.**

22 (a) A firefighter who is denied a right granted by this Subtitle may apply to the Circuit  
 23 Court for an order that directs the Department to show cause why the right should not be granted.

24 (b) The firefighter may apply for the show cause order:

25 (1) either individually or through the firefighter's certified or recognized employee  
 26 organization, and

27 (2) at any time prior to the beginning of a hearing by the hearing board.

28 **Sec. 11-805. Limitation of administrative charges.**

29 (a) Subject to subsection (b) of this Section, the Department may not bring administrative  
 30 charges against a firefighter unless the Department files the charges within one hundred eighty  
 31 (180) calendar days after the act that gives rise to the charges comes to the attention of the

1 Department.

2 (b) The one hundred eighty (180) day limitation provided in Subsection (a) of this Section  
 3 does not apply to charges that relate to criminal activity.

4 **Sec. 11-806. Hearing by hearing board.**

5 (a) (1) Except as provided in paragraph (2) of this Subsection and Section 11-809 of this  
 6 Division, if the investigation or interrogation of a firefighter results in a recommendation of  
 7 demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered  
 8 punitive, the firefighter is entitled to hearing on this issues by a hearing board before the  
 9 Department takes that action.

10 (2) A firefighter who has been convicted of a felony is not entitled to a hearing under  
 11 this Section.

12 (b) (1) The Department shall give notice to the firefighter of the right to a hearing by a  
 13 hearing board under this Section.

14 (2) The notice required under this subsection shall state the time and place of the  
 15 hearing and the issues involved.

16 (3) Within thirty (30) calendar days after receiving a firefighter's request for a  
 17 hearing, the hearing shall be scheduled within sixty (60) days of the receipt of the request and  
 18 notify the parties of the hearing date.

19 (c) (1) Except as provided in paragraph (4) of this Subsection and in Section 11-808 of  
 20 this Division, the hearing board authorized under this section shall consist of at least three (3)  
 21 members who:

22 (A) are appointed by the Chief and chosen from firefighters within that  
 23 Department, or from firefighters of another Fire Department with the approval of the Fire Chief  
 24 of the other agency; and

25 (B) have had no part in the investigation or interrogation of the firefighter.

26 (2) At least one member of the hearing board shall be of the same rank as the  
 27 firefighter against whom the complaint if filed.

28 (3) If the Chief is the firefighter under investigation, the Department shall request the  
 29 Chief of another Fire Department to function as the firefighter of the same rank on the hearing  
 30 board.

31 (4) (A) The exclusive collective bargaining representative for employees of the

1 Department may negotiate with the County an alternative method of forming a hearing board if  
 2 the firefighter is included in the collective bargaining unit.

3 (B) The Department shall notify the firefighter in writing before a hearing board  
 4 is formed that the firefighter may elect an alternative method of forming a hearing board if one  
 5 has been negotiated under this Subsection.

6 (C) If the firefighter elects the alternative method, that method shall be used to  
 7 form the hearing board.

8 (D) An agency or exclusive collective bargaining representative may not require  
 9 a firefighter to elect an alternative method of forming a hearing board.

10 (E) This paragraph is not subject to binding arbitration.

11 (d) (1) The hearing shall be conducted by a hearing board.

12 (2) The hearing board shall give the Department and firefighter ample opportunity to  
 13 present evidence and argument about the issues involved.

14 (3) The Department and firefighter may be represented by counsel.

15 (4) Each party has the right to cross-examine witnesses who testify and each party  
 16 may submit rebuttal evidence.

17 (e) Pursuant to Section 1012 of the County Charter, the County Council hereby delegates  
 18 subpoena power to the hearing board to administer oaths, to compel the attendance of witnesses,  
 19 and to require the production of record and other materials in connection with an investigation,  
 20 inquiry or hearing board hearing commenced pursuant to this Division.

21 (f) (1) Evidence with probative value that is commonly accepted by reasonable and  
 22 prudent individuals in the conduct of their affairs is admissible and shall be given probative  
 23 effect.

24 (2) The hearing board shall give effect to the rules of privilege recognized by law and  
 25 shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

26 (3) Each record or document that a party desires to use shall be offered and made a  
 27 part of the record.

28 (4) Documentary evidence may be received in the form of copies or excerpts, or by  
 29 incorporation by reference.

30 (g) (1) The hearing board may take notice of judicially cognizable facts and general,  
 31 technical, or scientific facts within its specialized knowledge.

1           (2) The hearing board shall:

2                   (A) notify each party of the facts so noticed either before or during the hearing,  
 3 or by reference in preliminary reports or otherwise; and

4                   (B) give each party an opportunity and reasonable time to contest the facts so  
 5 noticed.

6           (3) The hearing board may utilize its experience, technical competence, and  
 7 specialized knowledge in the evaluation of the evidence presented.

8           (h) (1) With respect to the subject of a hearing conducted under this Division, the hearing  
 9 board shall administer oaths or affirmations and examine individuals under oath.

10           (2) In connection with a disciplinary hearing, the chief or a hearing board may  
 11 administer oaths.

12           (i) An official record, including testimony and exhibits, shall be kept of the hearing.

13 **Sec. 11-807. Disposition of administrative action.**

14           (a) (1) A decision, order or action taken as a result of a hearing under Section 11-806 of  
 15 this Division shall be in writing and accompanied by findings of fact within forty-five (45)  
 16 calendar days after the close of the hearing record.

17                   (2) The findings of fact shall consist of a concise statement on each issue in the case.

18                   (3) A finding of not guilty terminates the action.

19                   (4) If the hearing board makes a finding of guilt, the hearing board shall:

20                           (A) reconvene the hearing;

21                           (B) receive evidence; and

22                           (C) consider the firefighter's past job performance and other relevant  
 23 information as factors before making recommendations to the chief.

24                   (5) A copy of the decision or order, findings of fact, conclusions, and written  
 25 recommendations for action shall be delivered or mailed promptly to the firefighter or  
 26 firefighter's counsel or representative of record and the chief.

27           (b) After a disciplinary hearing and a finding of guilt, the hearing board may recommend  
 28 the penalty it considers appropriate under the circumstances, including demotion, dismissal,  
 29 transfer, loss of pay, reassignment, or other similar action that is considered punitive. The  
 30 recommendation of a penalty shall be in writing.

31           (c) (1) Notwithstanding any other provision of this Code, the decision of the hearing



board as to findings of fact and any penalty is final if:

(A) a chief is an eyewitness to the incident under investigation; or

(B) the Department or the County has agreed with an exclusive collective bargaining representative recognized or certified under applicable law that the decision is final.

(2) The decision of the hearing board may then be appealed in accordance with Section 11-807 of this Division.

(3) Subsection (1)(A) of this Section is not subject to binding arbitration.

(d) (1) Within thirty (30) calendar days after receipt of the recommendations of the hearing board, the chief shall review the findings of the hearing board and issue a final order.

(2) The final order and decision of the chief is binding and then may be appealed in accordance with Section 11-808 of this Division.

(3) The recommendation of a penalty by the hearing board is binding on the Chief.

#### **Sec. 11-808. Judicial review.**

An appeal from a decision made under Section 11-807 of this Division may be taken to the Circuit Court in accordance with the Maryland Rules.

#### **Sec. 11-809. Summary punishment.**

(a) This Division does not prohibit summary punishment by higher ranking firefighters as designated by the chief.

(b) (1) Summary punishment may be imposed for minor violations of Department rules and regulations if:

(A) the facts that constitute the minor violation are not in dispute;

(B) the firefighter waives the hearing provided under this Division; and

(C) the firefighter accepts the punishment imposed by the highest ranking firefighter, or individual acting in that capacity, of the company to which the firefighter is assigned.

(2) Summary punishment imposed under this subsection may not exceed suspension of three (3) days without pay or a fine of \$150.

(c) (1) If a firefighter is offered summary punishment in accordance with this Subsection (b) of this Section and refuses, the chief may convene a hearing board of one or more members, and the hearing board has only the authority to recommend the sanctions provided in this Section for summary punishment.

1           (2) If a single member hearing board is convened, the member need not be of the  
 2 same rank as the firefighter, but all other provisions of this Division apply.

3 **Sec. 11-810. Emergency suspension.**

4           (a) This Division does not prohibit emergency suspension by a higher ranking firefighter  
 5 as designated by the Chief.

6           (b) (1) The Chief may impose emergency suspension with pay if it appears that the  
 7 action is in the best interest of the public and the Department.

8           (2) If the firefighter is suspended with pay, the Chief may suspend the powers of the  
 9 firefighter and reassign the firefighter to restricted duties pending:

10                   (A) a determination by a court with respect to a criminal violation; or

11                   (B) a final determination by hearing board with respect to a firefighter agency  
 12 violation.

13           (3) A firefighter who is suspended under this Subsection is entitled to a prompt  
 14 hearing.

15           (c) (1) If a firefighter is charged with a felony, the chief may impose an emergency  
 16 suspension without pay.

17           (2) A firefighter who is suspended without pay is entitled to a prompt hearing, within  
 18 thirty (30) calendar days after having received a copy of the investigatory file compiled pursuant  
 19 to Section 11-803(n) of this Division.

20 **Sec. 11-811. Sanctions.**

21           Any firefighter that alleges that any of the rights provided by this Division have been  
 22 violated by the Chief or anyone acting on behalf of the Chief may initiate a grievance pursuant to  
 23 the County Personnel law and shall be considered an “employee” for purposes of the grievance  
 24 procedure. If the firefighter’s grievance is sustained by the Personnel Board, the person who  
 25 violated the firefighter’s rights shall be subject to discipline for the violation and shall, in  
 26 addition to whatever discipline may be imposed, pay to the firefighter \$500.00 for each violation  
 27 sustained by the Personnel Board.

1       SECTION 2. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)  
2 calendar days after it becomes law.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY: \_\_\_\_\_  
Thomas E. Dernoga  
Chairman

ATTEST:

\_\_\_\_\_  
Redis C. Floyd  
Clerk of the Council

APPROVED:

DATE: \_\_\_\_\_ BY: \_\_\_\_\_  
Jack B. Johnson  
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.