

A BILL

20-890

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Omnibus Public Safety Reform Amendment Act of 2004 to reclassify the procedure for a member of Fire and Emergency Medical Services who retires from the Department when facing disciplinary charges.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Firefighter Retirement While Under Disciplinary Investigation Amendment Act of 2014.”

Sec. 2. The Omnibus Public Safety Reform Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-1031 *et seq.*), is amended as follows:

(a) Sections 502 and 503 (D.C. Official Code §§5-1031 and 5-1032) are designated as Subtitle A.

(b) A new Subtitle B is added to read as follows:

“Subtitle B. Firefighter Retirement While Under Disciplinary Investigation.

“Sec. 511. Definitions.

“For the purposes of this subtitle, the term:

“(1) “Chief” means the Chief of the Department.

25 “(2) Conditional Retirement” means that a member has retired or resigned from
26 the Department while under disciplinary investigation for serious misconduct.

27 “(3) “Department” means the Fire and Emergency Medical Services Department

28 “(4) “Disciplinary Investigation” means any official investigation by the
29 Department, including the Office of Internal Affairs, of allegations of serious misconduct by a
30 member of the Department.

31 “(5) “Resign” means the voluntary separation of a member from the Department
32 before the member’s pension rights have accrued and vested.

33 “(6) “Retire” means the voluntary separation of a member from the Department
34 after the member’s pension rights, retirement pay, or other benefits have accrued and vested as
35 provided by federal or District of Columbia law or regulation.

36 “(7) “Serious misconduct” means any felony violation of federal, local, or District
37 of Columbia law, making a false statement under oath, falsifying official records or reports,
38 using unnecessary force, gross dereliction of duty, perpetrating a felony or assisting a person to
39 escape investigation or prosecution, using illegal controlled substances, or other violations as
40 determined by the Chief by general order.

41 “Sec. 512. Completion of disciplinary investigations.

42 “The Department shall complete a disciplinary investigation, including issuing findings
43 pursuant to the general orders, of a member regardless of whether that member resigns or retires
44 while under investigation.

45 “Sec. 513. Conditional retirement.

46 “(a) If a member of the Department retires or resigns while under disciplinary
47 investigation, that member shall be deemed to be in conditional retirement until the disciplinary
48 investigation is completed and factual findings are made.

49 “(b) A member who is in conditional retirement shall not be paid a pension or receive
50 other accrued benefits of any kind, including salary, compensatory time, or accrued leave, during
51 the pendency of the disciplinary investigation.

52 “(c) The Department shall complete the disciplinary investigation of a member in
53 conditional retirement within 25 days from the date that the member retired or resigned. If the
54 Department has not completed the investigation 25 days from the date the member retired or
55 resigned, the matter shall be deemed to be closed and the allegations of serious misconduct not
56 sustained.

57 “(d) If, at any time within the 25 days from the date the member retired or resigned the
58 Department finds that the allegations of serious misconduct are not sustained or are unfounded,
59 the matter shall be deemed to be closed and the member's pension rights and accrued benefits
60 shall be paid retroactive to the date on which the member initially retired or resigned.

61 “(e) If the Department sustains the allegations of serious misconduct, the disciplinary
62 process shall proceed as if the member in conditional retirement continued to be a member of the
63 Department. The member shall be accorded all rights to which he or she is entitled under federal
64 and District of Columbia law and regulations, Department regulations, and any applicable labor
65 agreement.

66 “(f) If the Department ultimately determines that a member in conditional retirement
67 should be subjected to discipline as provided by law and regulation, the member shall be subject
68 to penalties in lieu of discipline, pursuant to section 514 of the Omnibus Public Safety Reform
69 Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code §
70 5-1031 *et seq.*) .

71 “(g) A member who retires or resigns from the Department without knowing that he or
72 she was under disciplinary investigation for serious misconduct shall not be deemed to be in
73 conditional retirement, but shall instead be provided the opportunity to continue employment
74 with the Department during the pendency of the disciplinary investigation. Should the member
75 decide to retire or resign after he or she has been informed of the disciplinary investigation, he or
76 she shall be deemed to be in conditional retirement as provided in this section.

77 “Sec. 514. Penalties in lieu of discipline for members in conditional retirement.

78 “(a) The Department shall set the level of discipline for a member in conditional
79 retirement as if he or she continued to be a member of the Department.

80 “(b) A member in conditional retirement who would have received suspension as
81 discipline had he or she remained a member of the Department, shall be assessed a penalty of not
82 less than \$100 and not greater than \$5,000, depending on the length of suspension.

83 “(c) If a member in conditional retirement would have been terminated from the
84 Department as discipline for serious misconduct the member shall be assessed a penalty of not
85 less than \$1,000 and not greater than \$5,000 in the discretion of the Chief, pursuant to written
86 standards developed by the Chief.

87 “Sec. 515. Payments of penalties and collection of debts.

88 “Penalties assessed against a member in conditional retirement as provided in section 514
89 shall be treated as a debt owed to the District of Columbia government, pursuant to section 2903
90 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, approved
91 March 3, 1979 (D.C. Law 2-139; D.C. Official Code §1-629.03) , and may be collected by the
92 District of Columbia government, pursuant to section 2904 of the District of Columbia
93 Government Comprehensive Merit Personnel Act of 1978, approved March 3, 1979 (D.C. Law
94 2-139; D.C. Official Code §1-629.04) or by any other means authorized by law.

95 “Sec. 516. Administrative review.

96 “A member in conditional retirement may challenge the imposition of penalties imposed
97 by sections 514 and 515 in an administrative proceeding before the District of Columbia Office
98 of Employee Appeals, pursuant to the District of Columbia Administrative Procedure Act,
99 approved October 21, 1968 (82 Stat. 1203; D.C. Official Code §1-1501 *et seq.*)

100 “Sec. 517. Applicability.

101 “This title shall apply upon adoption of regulations by the Chief to implement this title.
102 The Department shall adopt such regulations within 60 days of the effective date of the
103 Firefighter Retirement While Under Disciplinary Investigation Amendment Act of 2014,
104 approved by the Committee on Judiciary and Public Safety on November 7, 2014 (Committee
105 print of Bill 20-890).”.

106 Sec. 3. Sec. 506 of the Omnibus Police Reform Amendment Act of 2000, effective
107 October 4, 2000 (D.C. Law 13-160; D.C. Official Code § 5-805), is amended to read as follows:

ENGROSSED ORIGINAL

“Sec. 506. Penalties assessed against a member in conditional retirement as provided in section 505, shall be treated as a debt owed to the District of Columbia government, pursuant to section 2903 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, approved March 3, 1979 (D.C. Law 2-139; D.C. Official Code §1-629.03) , and may be collected by the District of Columbia government, pursuant to section 2904 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, approved March 3, 1979 (D.C. Law 2-139; D.C. Official Code §1-629.04), or by any other means authorized by law.”.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.