SHORT TITLE: Retirement; membership; county fire departments. Effective date. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 844 By: Littlefield

AS INTRODUCED

An Act relating to retirement; amending 11 O.S. 1991, Sections 49-100.1, as last amended by Section 1, Chapter 208, O.S.L. 1996 and 49-122, as amended by Section 1, Chapter 376, O.S.L. 1992 (11 O.S. Supp. 1997, Sections 49-100.1 and 49-122), which relate to definitions and contributions; amending 19 O.S. 1991, Section 351, as amended by Section 2, Chapter 65, O.S.L. 1996 (19 O.S. Supp. 1997, Section 351), which relates to firefighting services; modifying definitions; providing for contributions for certain persons; authorizing certain corporate fire departments to convert to county fire departments; prescribing procedures; providing for hearing; providing for modifications; providing for organization of department; imposing requirements for conversion; prescribing requirements for directors; prescribing terms of office; providing for selection of officers; providing for powers and duties of board of directors; providing for applications by county fire departments to the Oklahoma Firefighters Pension and Retirement System; prescribing requirements; providing for performance of administrative duties; providing for organization; specifying positions; imposing duties; requiring bylaws; specifying content; providing for management of funds; prescribing

accounting methods; prohibiting commingling of certain funds; prohibiting expenditures under certain circumstances; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 1991, Section 49-100.1, as last amended by Section 1, Chapter 208, O.S.L. 1996 (11 O.S. Supp. 1997, Section 49-100.1), is amended to read as follows:

Section 49-100.1 As used in this article:

1. "System" means the Oklahoma Firefighters Pension and Retirement System and all predecessor municipal firefighters pension and retirement systems;

2. "Article" means Article 49 of this title;

3. "State Board" means the Oklahoma Firefighters Pension and Retirement Board;

4. "Local board" means the local firefighters pension and retirement boards;

5. "Fund" means the Oklahoma Firefighters Pension and Retirement Fund;

6. "Member" means all eligible firefighters of a participating municipality or a fire protection district who perform the essential functions of fire suppression, prevention, and life safety duties in a fire department;

7. "Normal retirement date" means the date at which the member is eligible to receive the unreduced payments of the member's accrued retirement benefit. Such date shall be the first day following the date the member completes twenty (20) years of credited service. If the member's employment continues past the normal retirement date of the member, the actual retirement date of

the member shall be the first day following the date the member terminates employment with more than twenty (20) years of credited service;

8. "Credited service" means the period of service used to determine the eligibility for and the amount of benefits payable to a member. Credited service shall consist of the period during which the member participated in the System or the predecessor municipal systems as an active employee in an eligible membership classification, plus any service prior to the establishment of the predecessor municipal systems which was credited under the predecessor municipal systems; provided however, "credited service" for members from a fire protection district shall not begin accruing before July 1, 1982;

9. "Participating municipality" means a municipality, county fire department organized pursuant to subsection D of Section 351 of Title 19 of the Oklahoma Statutes, or fire protection district which is making contributions to the System on behalf of its firefighters;

10. "Disability" means the complete inability of the firefighter to perform any and every duty of his regular occupation; provided further, that once benefits have been paid for twenty-four (24) months the provisions of Section 49-110 of this title shall apply to the firefighter;

11. "Executive Director" means the managing officer of the System employed by the State Board;

12. "Eligible employer" means any municipality with a municipal fire department or a fire protection district with an organized fire department;

13. "Entry date" means the date as of which an eligible employer joins the System. The first entry date pursuant to this article shall be January 1, 1981;

14. "Final average salary" means the average paid gross salary of the firefighter for normally scheduled hours over the highest

salaried thirty (30) consecutive months of the last sixty (60) months of credited service. Gross salary shall not include payment for accumulated sick or annual leave upon termination of employment, any uniform allowances or any other compensation for reimbursement of out-of-pocket expenses. Only salary on which the required contributions have been made may be used in computing the final average salary. Gross salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986 and any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986. Only salary on which required contributions have been made may be used in computing final average salary;

15. "Accrued retirement benefit" means two and one-half percent (2 1/2%) of the firefighter's final average salary multiplied by the member's years of credited service not to exceed thirty (30) years;

16. "Beneficiary" means a member's surviving spouse or any surviving children, including biological and adopted children, at the time of the member's death. The surviving spouse must have been married to the firefighter for the thirty (30) continuous months preceding the firefighter's death provided a surviving spouse of a member who died while in, or as a consequence of, the performance of the member's duty for a participating municipality, shall not be subject to the marriage limitation for survivor benefits. A surviving child of a member shall be a beneficiary until reaching eighteen (18) years of age or twenty-two (22) years of age if the child is enrolled full time and regularly attending a public or private school or any institution of higher education. Any child adopted by a member after the member's retirement shall be a beneficiary only if the child is adopted by the member for the thirty (30) continuous months preceding the member's death. Any child who is adopted by a member after the member's retirement and such member dies accidentally or as a consequence of the performance

of the member's duty as a firefighter shall not be subject to the thirty-month adoption requirement. This definition of beneficiary shall be in addition to any other requirement set forth in this article;

17. "Accumulated contributions" means the sum of all contributions made by a member to the System and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the participating municipality of the member. Accumulated contributions shall not include any interest on the contributions of the member, interest on any amount contributed by the municipality or state and any amount contributed by the municipality or state; and

18. "Limitation year" means the year used in applying the limitations of Section 415 of the Internal Revenue Code of 1986, which year shall be the calendar year.

SECTION 2. AMENDATORY 11 O.S. 1991, Section 49-122, as amended by Section 1, Chapter 376, O.S.L. 1992 (11 O.S. Supp. 1997, Section 49-122), is amended to read as follows:

Section 49-122. A. Each municipality having a paid member of a fire department shall deduct monthly from the salary of each member of the fire department of such municipality an amount equal to eight percent (8%) of the actual paid gross salary of each member of the fire department. The deduction shall be considered the minimum deduction. At the option of the municipality, the municipality may pay all or any part of the member's required contribution. The members of a fire department, by a majority vote of its paid members, may vote to increase the amount of the deduction. The treasurer of each municipality shall deduct the authorized deductions from the salary of each paid member of the fire department. The treasurer of the municipality shall deposit within ten (10) days from each ending payroll date in the System the amount deducted from the salary of each member of the fire department.

Amounts deducted from the salary of a member and not paid to the System after thirty (30) days from each ending payroll date shall be subject to a monthly late charge of one and one-half percent (1 1/2%) of the unpaid balance to be paid by the municipality to the System.

Each municipality shall pick up under the provisions of Section 414(h)(2) of the Internal Revenue Code of 1986 and pay the contribution which the member is required by law to make to the System for all compensation earned after December 31, 1988. Although the contributions so picked up are designated as member contributions, such contributions shall be treated as contributions being paid by the municipality in lieu of contributions by the member in determining tax treatment under the Internal Revenue Code of 1986 and such picked up contributions shall not be includable in the gross income of the member until such amounts are distributed or made available to the member or the beneficiary of the member. The member, by the terms of this system, shall not have any option to choose to receive the contributions so picked up directly and the picked up contributions must be paid by the municipality to the System.

Member contributions which are picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date on which member contributions were picked up by the municipality. Member contributions so picked up shall be included in salary for purposes of the System.

The municipality shall pay the member contributions from the same source of funds used in paying salary to the member, by effecting an equal cash reduction in gross salary of the member, or by an offset against future salary increases, or by a combination of reduction in gross salary and offset against future salary increases.

The treasurer of each municipality shall deduct the picked up contributions from the salary of each paid member of the fire department. The treasurer of the municipality shall deposit monthly in the System the amount picked up from the salary of each member of the fire department.

B. Each municipality having a paid member of a fire department shall deposit monthly with the State Board an amount equal to the following:

1. Prior to July 1, 1991, ten percent (10%) of the total actual paid gross salaries of the members of the fire department;

2. Beginning July 1, 1991 through June 30, 1992, ten and one-half percent (10 1/2%) of the total actual paid gross salaries of the members of the fire department;

3. Beginning July 1, 1992 through June 30, 1993, eleven percent (11%) of the total actual paid gross salaries of the members of the fire department;

4. Beginning July 1, 1993 through June 30, 1994, eleven and one-half percent (11 1/2%) of the total actual paid gross salaries of the members of the fire department;

5. Beginning July 1, 1994 through June 30, 1995, twelve percent (12%) of the total actual paid gross salaries of the members of the fire department;

6. Beginning July 1, 1995 through June 30, 1996, twelve and one-half percent (12 1/2%) of the total actual paid gross salaries of the members of the fire department; and

7. Beginning July 1, 1996, thirteen percent (13%) of the total actual paid gross salaries of the members of the fire department.

C. Each <u>county or</u> municipality having a volunteer member of a fire department shall deposit yearly with the State Board Sixty Dollars ($60.00) for each volunteer member of the department.

Provided, the above-mentioned volunteer <u>county or</u> municipal contributions shall be reevaluated by the next scheduled actuarial

study and the amounts adjusted so that in a nine-year period of time, the amounts would reflect the actuarial recommendations at that time. Any county or municipality with an income of less than Twenty-five Thousand Dollars ($25,000.00) to its general fund during a fiscal year shall be exempt from the provisions of this subsection.

Any municipality that fails to comply with the provisions of this section shall not be entitled to its proportionate share of the Motor Fuel Excise Tax which is received through the Oklahoma Tax Commission. Any county or municipality may exceed the amount of contribution required by this section.

The provisions of this section shall supercede any city charter provision in direct conflict with this section.

SECTION 3. AMENDATORY 19 O.S. 1991, Section 351, as amended by Section 2, Chapter 65, O.S.L. 1996 (19 O.S. Supp. 1997, Section 351), is amended to read as follows:

Section 351. A. The board of county commissioners of each county of this state is hereby authorized to provide firefighting service in the county and for such purpose to use county funds to rent, lease or purchase firefighting equipment and to rent or construct and equip and operate fire stations and to employ necessary personnel to provide such service. The board of county commissioners shall also have the authority to determine and collect charges for firefighting services performed by the county from any person to whom such services are provided.

B. The board of county commissioners of each county of this state shall have the power to take by grant, purchase, gift, devise or lease, and to dispose of, any real property for the purpose of acquiring right-of-ways and easements necessary in providing firefighting services to the county, including the construction and maintenance of roads and the installation of dry hydrants. The board may use county funds and equipment to construct and maintain

such roads and to install such dry hydrants. Provided, nothing in this subsection shall be construed to prohibit the installation of dry hydrants on privately owned property by the owner thereof at the expense of the owner.

C. The board of county commissioners of each county of this state shall have the authority to use county personnel operating county equipment to fight fires in situations where an emergency is determined to exist, provided the firefighting service is requested by the county civil defense director or upon a request of a rural fire department.

D. 1. A corporate fire department organized pursuant to the provisions of Section 592 of Title 18 of the Oklahoma Statutes or a county fire department organized pursuant to the provisions of subsection A of this section may petition the board of county commissioners of the county in which the fire department provides protection to convert to a county fire department organized pursuant to the provisions of this subsection. The petition shall set forth and particularly describe the proposed boundaries of such county fire department and shall be accompanied by a map of such proposed fire department, drawn to a scale of not less than one (1) inch to a mile. The petition shall also set forth the administration, control and ownership of all the corporate fire department's assets in the event such petition is approved. Such petition shall be filed with the county clerk of such county who shall present it to the board of county commissioners at their next regular or special meeting. Upon presentation of such petition, the board of county commissioners shall set the same for hearing at a time not less than twenty (20) days nor more than forty (40) days from the date of presentation and shall direct the county clerk to give notice of such hearing by publication in a newspaper of general circulation in the county in which the proposed county fire department is located. Such notice shall describe the boundaries of the proposed county fire

department, shall state the time and place of the hearing, and shall state that any person may appear and protest the organization of the county fire department or the proposed boundaries thereof. The board of county commissioners shall hold the hearing described in said notice, and it shall have jurisdiction to hear and determine all protests to the creation of such county fire department and all matters pertaining to the same. It may amend the plan of such proposed county fire department by excluding from within its boundaries any lands which it may deem will not be benefited by the formation of such county fire department, or by including other lands as a part thereof upon application of the owners of such land; provided, however, it shall not exclude from such district any unincorporated lands which are completely surrounded by lands which are included in the proposed county fire department. If the board of county commissioners determines that the conversion of such corporate fire department to a county fire department will be conducive to the public safety of the affected area therein, then said board shall give such proposed county fire department a name and shall authorize and approve the organization of said county fire department.

2. To be eligible to convert to a county fire department formed pursuant to this subsection, a fire department shall have a Public Protection Classification of nine (9) or better from ISO Commercial Risk Services, Inc., limit the size of such volunteer county fire department to not less than six or more than twenty members per fire station, and shall be subject to the laws of the State of Oklahoma regarding the administration and operation of a fire department, including, but not limited to, the laws of the State Department of Labor and the State Fire Marshal Commission. For purposes of this subsection, a volunteer fire department is one which has in its employ not more than two full-time salaried firefighters.

3. Directors of a county fire department organized pursuant to this subsection shall be owners of real property in and residents of said district. At the time of making its order organizing such county fire department, the board of county commissioners shall appoint five (5) directors, one of which shall hold his or her respective office for a term of five (5) years, one of which shall hold his or her respective office for a term of four (4) years, one of which shall hold his or her respective office for a term of three (3) years, one of which shall hold his or her respective office for a term of two (2) years, and one of which shall hold his or her respective office for a term of one (1) year. Each year thereafter, there shall be appointed by the board of county commissioners for a term of five (5) years one member of said board of directors for such county fire department.

4. The board of directors of a county fire department organized pursuant to this subsection shall select one of its members to serve as chairman and shall appoint a clerk and a treasurer. The board of directors shall fix the term and duties of the chairman, clerk and treasurer. The chairman and members of the board of directors shall serve without compensation. The treasurer shall give an official bond, in an amount fixed and with sureties approved by the board of county commissioners, conditioned upon the faithful accounting for all money pertaining to the county fire department and coming into his or her hands.

5. The board of directors of a county fire department organized pursuant to this subsection shall have the following powers and duties:

a. to manage and conduct the business affairs of such county fire department,

b. to make and execute all necessary contracts,

c. to purchase or lease-purchase and maintain all necessary and convenient engines, hoses, hose carts or

other appliances and supplies for the full equipment of a fire company or department from available funds,

d. to appoint the fire chief, fire company officers and employees (whether paid or volunteer), sufficient to maintain and operate the equipment owned by the county fire department,

e. to take by grant, purchase, gift, devise or lease, and to dispose of real or personal property of every kind necessary for the operation of the county fire department,

f. to construct or otherwise acquire from available funds suitable firehouses and other buildings or structures suitable for the housing of equipment and supplies of the county fire department, or for carrying on its own business and affairs,

g. to employ such officers and employees as may be required from available funds, fix their compensation and prescribe their duties,

h. to establish rules and regulations for such county fire department and for the prevention of fires and conflagrations within the department's boundaries and for the protection of property at and during any fire,

i. to do any and all other things necessary and proper in the management and operation of the county fire department for the purpose of protecting property within its boundaries from fire, and

j. to prepare an annual budget and follow existing laws pertaining to the budget process such as public notice, public hearings, protest periods and filing requirements in the same manner as they apply to other forms of government in Oklahoma.

6. The board of directors of a county fire department organized pursuant to this subsection may submit an application to include the firefighters of such county fire department in the Oklahoma Firefighters Pension and Retirement System. The application for participation in the Oklahoma Firefighters Pension and Retirement System shall be submitted in accordance with subsection A of Section 49-105.2 of Title 11 of the Oklahoma Statutes. For purposes of complying with Sections 49-103 and 49-104 of Title 11 of the Oklahoma Statutes, the chairman, clerk and treasurer of the board of directors of the county fire department shall serve on the local firefighters pension and retirement board along with three firefighters of such county fire department elected by the members of the county fire department. The chairman of the board of directors of the county fire department shall be the chairman of the local board of the county fire department and the clerk of the board of directors of the county fire department shall be the secretary of the local board of the county fire department. The chairman of the local board of the county fire department shall have a casting vote with the members of the local board of the county fire department only when necessary to avoid a tie vote. The local board of the county fire department shall promulgate such rules as may be necessary to ensure the orderly conduct of a local board meeting. While participating in the Oklahoma Firefighters Pension and Retirement System, the board of directors, local board and fire chief of the county fire department shall perform all administrative requirements of the pension system.

7. Any board of directors of a county fire department organized pursuant to this subsection having volunteers enrolled as members of such county fire department shall adopt a code of minimum rules and regulations in substantial compliance with the following:

a. Fire chief.

(1) The fire chief shall be at the head of the department, subject to the laws of the State of Oklahoma, rules of the board of directors, and the rules and regulations herein adopted.

(2) The fire chief shall be held responsible for the general condition and efficient operation of the department, the training of members, and the performance of all other duties imposed upon him or her by law or the board of directors.

(3) The fire chief may inspect or cause to be inspected by members of the department, the fire hydrants, cisterns and other sources of water supply at least twice a year.

(4) The fire chief shall maintain a library or file of publications on fire prevention and fire protection and shall make use of the library or file to the best advantage of all members.

(5) The fire chief shall make every effort to attend all fires and direct the officers and members of the fire department in the performance of their duties.

(6) The fire chief shall see that the citizens are kept informed on fire hazards within the boundaries of the department and on the activities of the department.

(7) The fire chief shall see that each fire is carefully investigated to determine its cause, and in the case of suspicion of incendiarism shall notify proper authorities. The fire chief shall secure and preserve all possible evidence for future use in the case of a suspicious incendiarism.

(8) The fire chief shall file the appropriate activity report forms with the Office of the State Fire Marshal in Oklahoma City on an annual basis. The activity report forms shall be designed by the State Fire Marshal and shall include, but not be limited to, the amount of property and vehicle fire loss, types of fires, inspections and investigations. The report shall include notification of all fire-related civilian deaths and injuries in the respective jurisdiction and of firefighter deaths in the line of duty and of firefighter injuries in the line of duty requiring the services of a hospital or physician or both.

b. Assistant fire chief.

In the absence of the fire chief, the assistant fire chief on duty shall command the department and be held responsible therefore in all respects with the full powers and responsibilities of the fire chief.

c. Company officers.

The company officers shall be selected upon their ability to meet the following requirements:

(1) their knowledge of firefighting,

(2) their leadership ability, and

(3) their knowledge of firefighting equipment.

d. Secretary-treasurer.

One member elected by the fire department shall be secretary-treasurer. His or her duties shall consist of the following:

(1) calling the roll at the opening of each meeting,

(2) keeping the minutes of each meeting, and

(3) collecting any money due the department by the members.

e. New members.

(1) An applicant of a participating county fire department of the Oklahoma Firefighters Pension and Retirement System shall meet the membership requirements of the Oklahoma Firefighters Pension and Retirement System before he or she may be appointed as a new member of the county fire department.

(2) A new member shall be on probation for one (1) year after his or her appointment.

(3) A new member of a participating county fire department of the Oklahoma Firefighters Pension and Retirement System shall be immediately enrolled as a member of the Oklahoma Firefighters Pension and Retirement System regardless of whether such member has completed his or her probation period.

(4) The majority of the fire department members must approve new volunteer members upon completion of their probation period.

f. Bylaws.

The bylaws of the department shall include:

(1) All volunteer firefighters are required, when notified, to respond to fire alarms and other emergencies.

(2) A volunteer firefighter is required to be present at all regular meetings, call meetings and schools presented for the benefit of the firefighters.

(3) There shall be at least one regular business meeting each month.

(4) Any volunteer firefighter having two unexcused absences in succession or three unexcused absences in a period of three (3) months will be dropped from the fire department rolls.

(5) Volunteer firefighters leaving the boundaries of the department for an extended period of time will be required to notify the fire chief.

(6) Any volunteer firefighter refusing to attend training classes provided for him or her will be dropped from the fire department rolls.

(7) Any volunteer member of the fire department shall be dropped from the fire department rolls for the following offenses:

(a) conduct unbecoming a firefighter,

(b) any act of insubordination,

(c) neglect of duty,

(d) any violation of rules and regulations governing the fire department, or

(e) conviction of a felony.

8. a. A county fire department organized pursuant to the provisions of this subsection shall maintain, according to its own accounting needs, some or all of the funds and account groups in its system of accounts that are consistent with legal and operating requirements and as prescribed by the State Auditor and Inspector. The required funds may include, but not be limited to:

(1) a general fund, to account for all monies received and disbursed for general department purposes, including all assets, liabilities,

reserves, fund balances, revenues and expenditures which are not accounted for in any other fund or special ledger account,

(2) special revenue funds, as required, to account for the proceeds of specific revenue sources that are restricted by law to expenditures for specific purposes,

(3) a capital improvement fund, to account for financial resources segregated for acquisition, construction or other improvement related to capital facilities, and

(4) a ledger or group of accounts in which to record the details relating to the general fixed assets of the county or department.

b. Funds raised by a nonprofit organization for the purpose of supporting the fire protection services of a county fire department organized pursuant to the provisions of this subsection, whether such funds were raised before or after a corporate fire department converts to a county fire department, shall not be commingled with public funds and shall be used only for designated benevolent or charitable purposes, including, but not limited to, fire protection purposes.

c. No expenditure may be authorized or made by any employee or member of the board of directors of a county fire department organized pursuant to the provisions of this subsection which exceeds any fund balance of any fund of the budget as adopted or amended or which exceeds the appropriation for any fund of the budget as adopted or amended. Any balance remaining in a fund at the end of the budget year

shall be carried forward to the credit of the fund for the next budget year. It shall be unlawful for any employee or member of the board of directors of a county fire department organized pursuant to the provisions of this subsection in any budget year to create or authorize creation of a deficit in any fund.

SECTION 4. This act shall become effective July 1, 1998.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-2452 SJ