

ENGROSSED HOUSE
BILL NO. 1705

By: Roberts and Cox of the
House

and

Maddox of the Senate

An Act relating to public retirement systems; enacting the Oklahoma Public Employees Defined Contribution Plan Act of 2001; defining terms; providing for participation in Defined Contribution Plan; prescribing procedures for certain elections; providing for event of disqualification for continued participation; providing for participation by elected officials; imposing restriction on certain contributions; providing for participation by legislators; providing exception; specifying employer contribution rates for Defined Contribution Plan; imposing minimum and maximum contribution rates; providing procedures for selection of employee contribution rates; providing for certain adjustments; requiring rates sufficient to fund plan administration expenses; authorizing administration of member accounts and prescribing procedures related thereto; providing for investment choices similar to Deferred Compensation Plan; providing for vested rights in certain types of contributions to member accounts; specifying vesting schedule; providing for distribution of member account assets in event of termination or death; providing procedures for distribution of member account assets in accordance with requirements of Internal Revenue Code of 1986, as amended; providing for election to participate in Defined Contribution Plan by certain persons; providing procedures after election; providing for conversion of certain account value; providing certain duties not imposed upon Board of Trustees or plan administrator; prohibiting certain types of claims by plan participants; requiring certain types of information regarding member accounts; requiring periodic seminars; requiring review of Defined Contribution Plan performance; requiring written report; amending 74 O.S. 1991, Sections 916.1, as last amended by Section 6, Chapter 167, O.S.L. 1999 and 923, as last amended by Section 9, Chapter 198, O.S.L. 1998 (74 O.S. Supp. 2000, Sections 916.1 and 923), which relate to the Oklahoma Public Employees Retirement System; modifying amount payable without certain waiver in the event of death; modifying requirements for waiver; modifying provisions related to payment of benefits to payees pursuant to qualified domestic relation orders; amending 74 O.S. 1991, Section 1701, as amended by Section 12, Chapter 359, O.S.L. 1993 (74 O.S. Supp. 2000, Section 1701), which relates to tax-sheltered income deferment; modifying authorized securities for investment; modifying provisions related to qualified status of certain program; modifying provisions related to

duties of the Attorney General; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1720 of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 16 of this act shall be known and may be cited as the "Oklahoma Public Employees Defined Contribution Plan Act of 2001".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1721 of Title 74, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Board" or "Board of Trustees" means the Board of Trustees of the Oklahoma Public Employees Retirement System;

2. "Defined Contribution Plan" or "Oklahoma Public Employees Defined Contribution Plan" means the individual retirement savings program established pursuant to this act;

3. "Elected officials" means those persons who are eligible to participate in the Oklahoma Public Employees Retirement System pursuant to Section 913.4 of Title 74 of the Oklahoma Statutes;

4. "Legislator" means any person duly elected to either the Oklahoma House of Representatives or the Oklahoma State Senate;

5. "Member account" means an individual and separate account maintained by the Board on behalf of a participating member;

6. "Participating employer" means each and every employer defined by paragraph (13) of Section 902 of Title 74 of the Oklahoma Statutes;

7. "Participating member" means each and every employee of a participating employer except correctional officers or probation and parole officers;

8. "Plan" means the Defined Contribution Plan established pursuant to this act and qualified pursuant to the Internal Revenue Code of 1986, as amended, as a tax-qualified governmental pension or retirement plan;

9. "Salary" means wages paid to a participating member, but shall not include bonuses, longevity pay, overtime pay, travel reimbursement expense, or any other form of compensation or remuneration other than salary; and

10. "Termination" means action by a participating employer resulting in the dismissal of a participating employee or the resignation by a participating employee or in the absence of either direct action by a participating employer or resignation by a participating employee, the last period during a fiscal year for which a participating employer makes payment of salary to a participating employee.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1722 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Persons who become employed by a participating employer on or after January 1, 2003, may become participating members of the Oklahoma Public Employees Defined Contribution Plan upon filing an election with the Board of Trustees on a form prescribed for such purpose by the Board of Trustees.

B. A person who makes an election to become a participating member of the Defined Contribution Plan shall continue participation in the Plan until the member terminates services with all participating employers of the Plan for a period of at least one (1) year.

C. Absence from covered employment by a participating member for a period not to exceed one (1) year shall not disqualify the participating member from membership in the Defined Contribution Plan unless the absence results in a termination.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1723 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Elected officials may participate in the Defined Contribution Plan in the same manner as any other participating member. No elected official shall be permitted to make a contribution to a member account if the matching employer contribution required by Section 8 of this act would be in violation of the provisions of Section 10 of Article XXIII of the Oklahoma Constitution or any other provision of the Oklahoma Constitution or any other provision of law which would otherwise prohibit it.

B. No employer contribution on behalf of a legislator who is a participating member of the plan shall be made if the contribution would be in violation of the provisions of Section 21 of Article V of the Oklahoma Constitution.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1724 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The employer contribution rate for the Defined Contribution Plan shall be at least three percent (3%) of a participating member's salary, but shall not be in excess of seven and one-half percent (7 1/2%) of a participating member's salary.

B. The employer contribution rate shall equal the employee contribution rate selected by the employee pursuant to Section 5 of this act, but not to exceed seven and one half percent (7 1/2%) of the participating member's salary and not to be less than three percent (3%) of the participating member's salary.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1725 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Within thirty (30) days after initial employment and not later than thirty (30) days prior to the beginning of any fiscal year, a participating member of the Defined Contribution Plan shall select an employee contribution rate for purposes of determining employee contributions to the member account which shall be binding upon the employee for a period ending with the fiscal year for which the employee contribution election is applicable.

B. Subject to the requirements of subsection C of this section, prior to the beginning of each fiscal year, participating members shall select an employee contribution rate to establish employee contributions to be made by the member to the member account for such fiscal year. The Board shall establish such forms as may be required in order for participating members to make the election required by this section on an annual basis.

C. The employee contribution rate for the Defined Contribution Plan shall be at least three percent (3%) of the participating member's salary, but shall not be in excess of seven and one half percent (7 1/2%) of the participating member's salary.

D. All participating employers shall be required to make monthly contributions to the member account at a rate equal to the rate selected by the participating member subject to the minimum and maximum employer contribution rates prescribed by Section 5 of this act.

E. The Board of Trustees shall have the right to make adjustments to the employer and employee contribution rates provided by this act to account for plan administration expenses.

F. No employer contribution rate or employee contribution rate or combination of such rates shall be in force and effect for any plan year if the contribution rates selected by the employee and

imposed upon the employer are not sufficient to fully fund the expenses associated with the administration of the defined contribution plan.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1726 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Board of Trustees may administer the member accounts or the Board may contract for the services of a plan administrator.

B. If the Board contracts with a plan administrator, the contract shall be subject to the provisions of the Central Purchasing Act and shall be subject to all competitive bidding requirements for such contracts.

C. Plan participants shall have member account investment choices similar to the account choices available pursuant to the Deferred Compensation Plan prescribed by Section 1701 of Title 74 of the Oklahoma Statutes.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1727 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Plan participants shall have a vested right to withdraw their employee contributions from the plan participant's member account at any time after termination of covered employment with a participating employer. All employee contributions to the Defined Contribution Plan shall be considered immediately vested after deposit of such employee contributions into the member account.

B. No plan participant shall have any vested rights with respect to investment gains or interest income associated with employee contributions or assets acquired with employee contributions.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1728 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Plan participants shall have a vested right to withdraw employer contributions from the plan participant's member account according to the following schedule:

1. Twenty percent (20%) of the accumulated employer contributions after one (1) year of participating service;
2. Forty percent (40%) of the accumulated employer contributions after two (2) years of participating service;
3. Sixty percent (60%) of the accumulated employer contributions after three (3) years of participating service;
4. Eighty percent (80%) of accumulated employer contributions after four (4) years of service; and
5. One hundred percent (100%) of accumulated employer contributions after five (5) or more years of participating service.

B. No plan participant shall have any vested rights with respect to investment gains or interest income associated with employer contributions or assets acquired with employer contributions.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1729 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Upon termination from covered employment, a plan participant may:

1. Receive a lump-sum distribution equal to all of the participant's accumulated employee contributions plus the portion of the employer contributions authorized by Section 8 of this act; or
2. Cease making employee contributions to the member account, but maintain the ability to manage the investment options with respect to the member account for a period of not to exceed one (1) year from the date of termination of employment.

B. After a period of one (1) year following termination of employment, if the plan participant has not been reemployed by a participating employer, the member shall receive a lump-sum

distribution of the member account in accordance with the requirements of paragraph 1 of subsection A of this section.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1730 of Title 74, unless there is created a duplication in numbering, reads as follows:

Upon the death of a participating member, all employee contributions and the portion of employer contributions vested pursuant to the provisions of Section 8 of this act shall be paid to:

1. The designated beneficiary or beneficiary of the participating member; or
2. The estate of the member if there is no surviving beneficiary or beneficiaries upon the date of the member's death.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1731 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. After reaching a normal retirement date as may be prescribed by administrative rule of the Board of Trustees after participation within the Defined Contribution Plan, upon termination from covered employment, the plan participant may either withdraw the accumulated employee contributions together with any portion of the vested employer contributions to which the plan participant may be entitled or the plan participant may purchase an annuity offered through either the Board of Trustees or the plan administrator.

B. Distribution of assets from member accounts shall be governed by the provisions of Section 401(a)(14) of the Internal Revenue Code of 1986, as amended, and any rules or regulations adopted pursuant to such provision.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1732 of Title 74, unless there is created a duplication in numbering, reads as follows:

Persons who are members of the Oklahoma Public Employees Retirement System as of January 1, 2003, may elect to:

1. Continue participation in the Oklahoma Public Employees Retirement System without the ability to become participating members in the Defined Contribution Plan; or

2. Elect to convert the actuarial value of their accumulated employee contributions within the Oklahoma Public Employees Retirement System which amount shall be transferred to a member account established for such person and begin participation in the Defined Contribution Plan in the manner prescribed by Section 6 of this act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1733 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Neither the Board of Trustees nor any participating employer shall have any obligation to a plan participant regarding investment performance of assets contained in any member account.

B. No employee may maintain any action, legal or equitable, against the Board or against any participating employer for the recovery of damages based upon the diminution in value of any asset or sum deposited to the credit of the member account.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1734 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Board of Trustees or the plan administrator selected by the Board of Trustees shall provide such information regarding investment options for member accounts as may be required by the Internal Revenue Code or other provisions of federal law governing the obligations of the Board or of the plan administrator with respect to plan participants.

B. The Board of Trustees or the plan administrator shall conduct periodic seminars for the benefit of plan participants which

shall be designed to provide basic information regarding the management and investment of defined contribution plan accounts.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1735 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Board of Trustees shall conduct a review of the Defined Contribution Plan Option at least once each five (5) years.

B. The Board shall make a written report of its findings regarding participation in the Defined Contribution Plan, together with a summary of investment performance in a manner which protects the identity of individual plan participants, and shall submit the report to the Speaker of the Oklahoma House of Representatives, the President Pro Tempore of the Senate and to the Governor not later than the 15th day of January each year.

SECTION 17. AMENDATORY 74 O.S. 1991, Section 916.1, as last amended by Section 6, Chapter 167, O.S.L. 1999 (74 O.S. Supp. 2000, Section 916.1), is amended to read as follows:

Section 916.1 A. Upon the death of a retired member, the Oklahoma Public Employees Retirement System shall pay to the beneficiary of the member or if there is no beneficiary or if the beneficiary predeceases the member, to the estate of the member, the sum of Four Thousand Dollars (\$4,000.00) as a death benefit for those retired members who died prior to July 1, 1999. For those retired members who died on or after July 1, 1999, the sum shall be Five Thousand Dollars (\$5,000.00).

B. Upon the death of a member who dies leaving no living beneficiary or having designated his estate as beneficiary, the System may pay any applicable death benefit, unpaid contributions, or unpaid benefit which may be subject to probate, in an amount of ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) or less, without the intervention of the probate court or probate

procedure pursuant to Section 1 et seq. of Title 58 of the Oklahoma Statutes.

1. Before any applicable probate procedure may be waived, the System must be in receipt of the member's proof of death and the following documents from those persons claiming to be the legal heirs of the deceased member:

a. the member's valid last will and testament, trust documents or affidavit that a will does not exist,

b. an affidavit or affidavits of heirship which must state:

- (1) the names and signatures of all claiming heirs to the deceased member's estate including the claiming heirs' names, relationship to the deceased, current addresses and current telephone numbers,
- (2) a statement or statements by the claiming heirs that no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction,
- (3) a statement that the value of the deceased member's entire estate is subject to probate, and that the estate wherever located, less liens and encumbrances, does not exceed ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00), including the payment of benefits or unpaid contributions from the System as authorized by this subsection,
- (4) a description of the personal property claimed (i.e., death benefit or unpaid contributions or both), together with a statement that such personal property is subject to probate, and

- (5) a statement by each individual claiming heir identifying the amount of personal property that the heir is claiming from the System, and that the heir has been notified of, is aware of and consents to the identified claims of all the other claiming heirs of the deceased member pending with the System,
- c. a written agreement or agreements signed by all claiming heirs of the deceased member which provides that the claiming heirs release, discharge and hold harmless the System from any and all liability, obligations and costs which it may incur as a result of making a payment to any of the deceased member's heirs,
- d. a corroborating affidavit from an individual other than a claiming heir, who was familiar with the affairs of the deceased member, and
- e. proof that all debts of the deceased member, including payment of last sickness, hospital, medical, death, funeral and burial expenses have been paid or provided for.

2. The Executive Director of the System shall retain complete discretion in determining which requests for probate waiver may be granted or denied, for any reason. Should the System have any question as to the validity of any document presented by the claiming heirs, or as to any statement or assertion contained therein, the probate requirement provided for in Section 1 et seq. of Title 58 of the Oklahoma Statutes shall not be waived.

3. After paying any death benefits or unpaid contributions to any claiming heirs as provided pursuant to this subsection, the System is discharged and released from any and all liability, obligation and costs to the same extent as if the System had dealt with a personal representative of the deceased member. The System

is not required to inquire into the truth of any matter specified in this subsection or into the payment of any estate tax liability.

SECTION 18. AMENDATORY 74 O.S. 1991, Section 923, as last amended by Section 9, Chapter 198, O.S.L. 1998 (74 O.S. Supp. 2000, Section 923), is amended to read as follows:

Section 923. A. Except as otherwise provided by this section, no alteration, amendment, or repeal of this act shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal. Any annuity, benefits, fund, property, or rights created by or accruing to any person under the provisions of this act shall not be subject to execution, garnishment or attachment, or any other process or claim whatsoever, and shall be unassignable, except as specifically provided by this act.

B. 1. The provisions of subsection A of this section shall not apply to a qualified domestic order as provided pursuant to this subsection.

2. The term "qualified domestic order" means an order issued by a district court of this state pursuant to the domestic relation laws of the State of Oklahoma which relates to the provision of marital property rights to a spouse or former spouse of a member or provision of support for a minor child or children and which creates or recognizes the existence of the right of an alternate payee, or assigns to an alternate payee the right, to receive a portion of the benefits payable with respect to a member of the System ~~and amounts payable to a plan participant of the Oklahoma State Employees Deferred Compensation Plan as provided pursuant to Section 1701 et seq. of this title.~~

3. For purposes of the payment of marital property, to qualify as an alternate payee, a spouse or former spouse must have been

married to the related member for a period of not less than thirty (30) continuous months immediately preceding the commencement of the proceedings from which the qualified domestic order issues.

4. A qualified domestic order is valid and binding on the State Board and the related member only if it meets the requirements of this subsection.

5. A qualified domestic order shall clearly specify:

- a. the name and last-known mailing address (if any) of the member and the name and mailing address of the alternate payee covered by the order,
- b. the amount or percentage of the member's benefits to be paid by the System to the alternate payee,
- c. the number of payments or period to which such order applies,
- d. the characterization of the benefit as to marital property rights or child support, and
- e. each plan to which such order applies.

6. A qualified domestic order meets the requirements of this subsection only if such order:

- a. does not require the System to provide any type or form of benefit, or any option not otherwise provided under state law as relates to the System,
- b. does not require the System to provide increased benefits, and
- c. does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic order or an order recognized by the System as a valid order prior to the effective date of this act.

7. A qualified domestic order shall not require payment of benefits to an alternate payee prior to the actual retirement date

or withdrawal of the related member and shall not attach to or require the payment of any amount of benefits related to a deferred compensation plan or program authorized by Section 1701 et seq. of this title.

8. The obligation of the System to pay an alternate payee pursuant to a qualified domestic order shall cease upon the death of the related member.

9. This subsection shall not be subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. Section 1001 et seq., as amended from time to time, or rules and regulations promulgated thereunder, and court cases interpreting said act.

10. The Oklahoma Public Employees Retirement System Board of Trustees shall promulgate such rules as are necessary to implement the provisions of this subsection.

11. An alternate payee who has acquired beneficiary rights pursuant to a valid qualified domestic order must fully comply with all provisions of the rules promulgated by the Board pursuant to this subsection in order to continue receiving his or her benefit.

SECTION 19. AMENDATORY 74 O.S. 1991, Section 1701, as amended by Section 12, Chapter 359, O.S.L. 1993 (74 O.S. Supp. 2000, Section 1701), is amended to read as follows:

Section 1701. A. The State of Oklahoma, its agencies and the political subdivisions thereof and the employees of a duly constituted authority or instrumentality of the State of Oklahoma, its agencies and the political subdivisions thereof, municipalities and any local governmental entity may enter into a written agreement to defer a portion of any employee's compensation which is derived from a state or local government. The compensation to be deferred shall be subject to any federal limitations imposed by the Internal Revenue Code, Sections 1 et seq. of Title 26 of the United States Code. The state or local governments may, under a written

agreement, invest the deferred compensation in life insurance, annuities, United States Agency or Treasury Bills, Notes or Bonds, savings accounts and/or mutual funds with a company licensed or eligible to do business in the state or in a contract or commingled trust or program ~~maintained by a nonprofit organization classified as tax exempt by the Internal Revenue Service of the United States government~~. Deferred compensation programs shall exist and be in addition to, and not be a part of, any existing retirement, pension or Social Security system provided for the benefit of state and local government employees.

B. The Oklahoma Public Employees Retirement System Board shall offer a deferred compensation program and shall be responsible for establishing rules and regulations and participation agreement forms for said program. The Employee Benefits Council shall communicate this program with eligible participants.

C. The Office of the Attorney General of this state shall be responsible for interpreting all applicable laws and fiduciary responsibilities for the deferred compensation programs of state and local governments if the programs do not maintain in-house counsel.

D. Prior to January 1, 1991, the Board of Trustees of the Oklahoma Public Employees Retirement System, the Plan Administrator, and the Office of State Finance shall jointly develop a system that provides for state employee participation amounts in the deferred compensation plan be posted and transferred to the investment option selected by the state employee within ten (10) business days of the payday, the end of the payroll period, or the process date for supplemental payrolls, whichever is later.

SECTION 20. This act shall become effective July 1, 2001.

SECTION 21. 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.

Passed the House of Representatives the 1st day of March, 2001.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2001.

Presiding Officer of the Senate