

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1378

By: Morgan

AS INTRODUCED

An Act relating to retirement; amending 70 O.S. 2001, Section 17-103, which relates to Teachers' Retirement System of Oklahoma; providing an exception to participation; creating the Alternate Retirement Plan for Eligible Employees of Participating State Institutions of Higher Education Act; providing short title; defining terms; authorizing alternate retirement plans for participating institutions; providing for retirement and death benefits; stating types of products offered; allowing option; stating time period for certain Boards of Regents to establish an alternate retirement plan; providing for administration and authorizing performance of functions; requiring the Board of Regents to make certain company selections and approve contracts; authorizing delegation to participating institutions certain responsibilities; designating one or more companies to provide benefits; requiring Board of Regents to make certain considerations; requiring eligible employees to participate in the alternate retirement plan; providing that eligible employees are ineligible to participate in the Teachers' Retirement System plan; stating period of ineligibility; stating applicability of certain rules; prohibiting certain service credit; allowing electing employees to make irrevocable written election to participate in the alternate retirement plan; stating period to make election; providing notification to the Teachers' Retirement System; providing for cessation of retirement contributions; providing for transfer of certain employee contributions and interest; providing for cancellation of all service credit, rights, and benefits in the Teachers' Retirement System; prohibiting certain use of service in the alternate retirement plan; providing for promulgation of rules; requiring participating institutions to pay certain amounts to the Teachers' Retirement System; providing for treatment of payments; requiring that participants agree to treatment of liability; providing that no benefits shall be payable by the state or institution; stating how benefits are paid; providing for certain exemptions from certain process; providing that certain benefits are unassignable; providing exception; providing exception for qualified domestic relations orders (QDRO); providing for treatment of QDROs by participating institutions; defining terms; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 70 O.S. 2001, Section 17-103, is amended to read as follows:

Section 17-103. The Except as provided in the Alternate Retirement Plan for Eligible Employees of Participating State Institutions of Higher Education Act, the membership of the retirement system shall consist of the following:

(1) All classified personnel shall become members of the retirement system as a condition of their employment.

(2) All full-time nonclassified optional personnel regularly employed for more than one (1) year may join the Teachers' Retirement System subject to the rules and regulations adopted pursuant to ~~this act~~ Section 17-101 et seq. of this title. Subject to the outcome of a private letter ruling request which shall be submitted by the Board to the Internal Revenue Service, the System shall permit full-time nonclassified optional personnel who have ceased to make otherwise required employee contributions after having made an election to become a member of the retirement system to resume employee contributions. No service shall be credited to any such member for any period of time during which employee contributions were not made.

(3) All persons who shall become classified personnel or who are regularly employed in any school system as new classified personnel after July 1, 1943, hereof, shall become members of the retirement system as a condition of their employment.

(4) All other regular school employees may join the Teachers' Retirement System subject to the rules and regulations as may be adopted by the Board of Trustees of the Teachers' Retirement System.

(5) The Board of Trustees may, in its discretion, deny the right to become members to any class of members whose compensation is only partly paid by the state, or who is serving on a temporary or other than per annum basis, and it also may, in its discretion,

make optional with members in any such class their individual entrance into the retirement system.

(6) Should any member, with less than ten (10) years of teaching service in Oklahoma, in any period of six (6) consecutive years after becoming a member be absent from service more than five (5) years, withdraw his contributions, retire or die, he shall thereupon cease to be a member. The provisions of this paragraph shall not apply to any member of the Teachers' Retirement System who has been a member of such classes of military services as may be approved by the Board of Trustees, until a period of one and one-half (1 1/2) years from date of termination of such service shall have elapsed.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-201 of Title 70, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 9 of this act shall be known and may be cited as the "Alternate Retirement Plan for Eligible Employees of Participating State Institutions of Higher Education Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-202 of Title 70, unless there is created a duplication in numbering, reads as follows:

The following words and phrases as used in this act shall have the following meanings unless a different meaning is clearly required by the context:

1. "Teachers' Retirement System" means the Teachers' Retirement System of Oklahoma, as defined in Section 17-102 of Title 70 of the Oklahoma Statutes;

2. "Eligible employee" means any employee of a participating institution who was initially appointed or hired, who was not merely returning after a break in service or returning withdrawn contributions with the intent of re-entering the system, on or after July 1, 2002, or on or after the effective date of the alternate

retirement plan, whichever is later, and who works on a .50 full-time-equivalency basis or more; or is regularly employed on a basis of at least twenty (20) or more hours per week, as determined under the participating institution's standard personnel practices.

However, the term eligible employee does not include a person whose employment is incidental to his or her educational program or whose employment is not continuous. Eligible employees shall participate in the alternate retirement plan;

3. "Alternate retirement plan" means any defined contribution plan operated pursuant to the provisions of this act for the benefit of eligible employees of participating institutions;

4. "Participating institution" means the entities that comprise a comprehensive university pursuant to Section 17-101 of Title 70 of the Oklahoma Statutes and which:

- a. maintain an alternate retirement plan pursuant to the provisions of this act, and
- b. employ eligible employees;

5. "Board of Regents" means the board or body designated by the Oklahoma Constitution or by Title 70 of the Oklahoma Statutes as the board of regents or governing board of a comprehensive university;

6. "Electing employee" means an employee of a participating institution who is a member of the Teachers' Retirement System and who exercises an election pursuant to this act to participate in an alternate retirement plan established by such employee's participating institution pursuant to this act;

7. "Regular annual compensation" means salary plus fringe benefits. For purposes of this definition, regular annual compensation shall include all normal periodic payments as provided in subsection D of Section 17-116.2 of Title 70 of the Oklahoma Statutes including, but not limited to, employer-paid group health and disability insurance, group term life insurance, annuities and pension contributions and IRS Code Section 125 cafeteria benefits

provided on a periodic basis to all qualified members of the employer, which qualify as fringe benefits under the Internal Revenue Code; and

8. "Effective date" means the date on which the alternate retirement plan is established at the participating institution or July 1, 2002, whichever is later.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-203 of Title 70, unless there is created a duplication in numbering, reads as follows:

Alternate retirement plans for eligible employees and electing employees are hereby authorized at participating institutions in lieu of the plan offered by the Teachers' Retirement System. Alternate retirement plans shall, for eligible employees and electing employees, provide retirement and death benefits to such employees through the purchase of annuity contracts, qualified retirement trusts or custodial accounts, fixed or variable in nature, or a combination thereof, at the option of the eligible employee or electing employee.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-204 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. On or before June 30, 2003, each Board of Regents of a participating institution may establish an alternate retirement plan pursuant to the provisions of this act, for the entities under the jurisdiction of such Board of Regents, for eligible employees and electing employees in lieu of membership in the Teachers' Retirement System. The Board of Regents shall provide for the administration of such an alternate retirement plan and perform or authorize the performance of such functions as may be necessary for such purpose in accordance with this act.

B. The Board of Regents shall select the company or companies from which contracts are to be purchased under the alternate

retirement plan and shall approve the form and contents of such contracts.

C. The Board of Regents may delegate to the participating institutions certain responsibilities for administering the alternate retirement plan with respect to each institution's own employees.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-205 of Title 70, unless there is created a duplication in numbering, reads as follows:

Each Board of Regents which establishes an alternate retirement plan shall designate one or more companies to provide alternate retirement plan benefits through the purchase of annuity contracts, qualified retirement trusts or custodial accounts. In making this designation, the Board of Regents shall consider, among other things, the following:

1. The efficacy of the contracts in the recruitment and retention of academic and administrative employees of participating institutions;

2. The nature and extent of the rights and benefits to be provided by the contracts for eligible employees and electing employees and their beneficiaries;

3. The relation of the rights and benefits to the amount of contributions to be made to an alternate retirement plan pursuant to the provisions of this act;

4. The suitability of the rights and benefits to the needs and interests of eligible employees and electing employees at participating institutions;

5. The portability of the benefits offered with other states and institutions of higher education that provide similar benefits; and

6. The authority and ability of the company or companies to provide the rights and benefits under such contracts.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-206 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Eligible employees, as defined in this act, are ineligible for participation in the Teachers' Retirement System and are required to participate in the alternate retirement plan. Ineligibility to participate in the Teachers' Retirement System shall continue so long as the employee remains employed by a participating institution in an eligible position. If an eligible employee assumes a different position, which is governed by a state retirement system other than the alternate retirement plan authorized in this act, the employee shall be subject to the retirement system rules applicable to that new position. However, said employee shall not be eligible for service credit in the Teachers' Retirement System for service while participating in an alternate plan as provided in this act, even if the eligible employee later begins or returns to employment in a position governed by the Teachers' Retirement System.

B. Electing employees who desire to participate in the alternate retirement plan shall make an irrevocable written election to participate. Such election shall be made within one year of the effective date and shall be made to the employee's participating institution. The Teachers' Retirement System shall be notified of the election by the participating institution within ten (10) days of receipt of the election. Employer and employee contributions to the Teachers' Retirement System shall cease immediately upon receipt of the election by the participating institution. The Teachers' Retirement System shall transfer all of the electing employee's employee contributions and applicable interest to the alternate retirement plan in an amount equal to what the employee would have received had the employee withdrawn his or her contributions at the date of the election. Upon transfer of such contributions and

interest, the electing employee shall have all service credit, rights, and benefits in the Teachers' Retirement System canceled. Electing employees shall not be eligible for service credit in the Teachers' Retirement System for service while participating in an alternate plan as provided in this act, even if the employee later returns to employment in a position governed by the Teachers' Retirement System. The Boards of Regents of the participating institutions and the Teachers' Retirement System shall promulgate any rules necessary to implement the provisions of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-207 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Participating institutions establishing an alternate retirement plan pursuant to this act shall pay to the Teachers' Retirement System ____ percent (___%) of the regular annual compensation level of eligible employees and electing employees.

B. Any payments made to the Teachers' Retirement System pursuant to this section shall not be considered as salary, fringe benefit, or total compensation due to the eligible employee or electing employee for the purpose of meeting any legislative or contractual obligation of the employer.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-208 of Title 70, unless there is created a duplication in numbering, reads as follows:

All employees participating in the alternate retirement plan shall acknowledge in writing that benefits payable to participants are not the obligations of the State of Oklahoma or the Teachers' Retirement System, and that such benefits and other rights of the alternate retirement plan are the liability and responsibility solely of the designated company or companies to whom distributions have been made. No retirement, death or other benefits shall be payable by the state, or by any state institution of higher

education, under such alternate retirement plan. Such benefits shall be paid to the participants or their beneficiaries by the designated company or companies in accordance with the terms of their contracts.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-209 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this section, annuity contracts, qualified trusts, custodial accounts, and the benefits provided therefrom issued under an alternate retirement plan and all rights thereto of a participant in the alternate retirement plan shall be exempt from any assessment for the insolvency of any life insurance company, any levy or sale, garnishment, attachment, pledge, or encumbrance or any other process whatsoever, and shall be unassignable except as otherwise specifically provided in the annuity contract or custodial account.

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

2. The participating institutions shall follow the terms of any "qualified domestic relations order (QDRO)" as defined in paragraph 3 of this subsection issued with respect to a participant where such QDRO grants to an "alternate payee" rights in the benefit of the participant. An alternate payee includes any spouse, former spouse, child, or other dependent of a participant who is recognized by a QDRO as having a right to receive all, or a portion of the benefits payable under the plan with respect to the participant. The institution shall only follow QDROs which meet all of the requirements of this section.

3. A QDRO defined under Section 414(p) of the Internal Revenue Code of 1986, as amended from time to time, is any judgment, decree or order, including the approval of a property settlement agreement,

provided that the QDRO must create or recognize the existence of the alternate payee's right to receive all or a portion of the benefits payable to a participant under the plan. Further, since the plan is a governmental plan, as defined in Section 414(d) of the Internal Revenue Code of 1986, as amended from time to time, a distribution or payment from the plan will be treated as made pursuant to a QDRO if it is made pursuant to a domestic relations order which meets the requirements of Section 414(p)(1)(A)(i) of the Internal Revenue Code of 1986, as amended from time to time, which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under the plan.

4. In the event that the participating institution is in receipt of a QDRO which requires that the institution make such distribution, and such QDRO otherwise satisfies the provisions of this section and Section 414(p)(1)(A)(i) of the Internal Revenue Code of 1986, as amended from time to time, then the institution shall make the distribution to the alternate payee within a reasonable time following the date on which the institution has (1) received the QDRO and (2) determined that the QDRO satisfies the requirements of this section and Section 414(p)(1)(A)(i) of the Internal Revenue Code of 1986, as amended from time to time, unless the alternate payee elects otherwise. Distributions will be made in the manner as provided in the plan and such distributions will be subject to any restrictions on distributions contained in any funding vehicle under the plan. The failure of an alternate payee to submit an application for a distribution shall be deemed an election to defer commencement of benefits under this plan. Provided, for purposes of determining the value of the participant's benefit which is to be distributed pursuant to such QDRO, the institution shall determine the participant's benefit as of the valuation date specified in the QDRO or, if no date is so specified,

then as of the valuation date coinciding with or first preceding the payment date specified in the QDRO. Provided further, any distribution made pursuant to this section shall be deemed to have been made pursuant to this section and shall be deemed to be made pursuant to the occurrence of a "stated event". The institution shall not treat any judgment, order or decree as a QDRO unless it meets all of the requirements set forth in paragraph 3 of this subsection and this paragraph and is sufficiently precise and unambiguous so as to preclude any interpretative disputes. If the QDRO meets these requirements, the institution shall follow the terms of the QDRO whether or not this plan has been joined as a party to the litigation out of which the QDRO arises.

SECTION 11. This act shall become effective July 1, 2002.

SECTION 12. 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.

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