

ENROLLED SENATE
BILL NO. 286

By: Monson of the Senate

and

Erwin and Adkins of the
House

An Act relating to retirement; amending 11 O.S. 2001, Sections 49-100.8, 49-106.1, as amended by Section 1 of Enrolled House Bill No. 1464 of the 1st Session of the 49th Oklahoma Legislature, 49-113, as amended by Section 1, Chapter 330, O.S.L. 2002 and 49-126 (11 O.S. Supp. 2002, Section 49-113), which relate to the Oklahoma Firefighters Pension and Retirement System; amending amortization period; allowing certain in-service distributions; amending references; clarifying language; allowing certain in-service distributions; clarifying language; allowing payment of certain benefit to a guardian or trustee; restricting use of certain benefit payments; requiring certain annual reporting; clarifying definition; providing for cessation of benefits to alternate payee; reinstating certain benefit to member; repealing 11 O.S. 2001, Section 49-106.1, as amended by Section 3 of Enrolled Senate Bill No. 639 of the 1st Session of the 49th Oklahoma Legislature, which is a duplicate section and which relates to the Oklahoma Firefighters Deferred Option Plan; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 49-100.8, is amended to read as follows:

Section 49-100.8 The State Board shall certify to the Director of State Finance, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate, on or before July 15 of each year, an actuarially determined estimate of the rate of contribution which will be required, together with all accumulated contributions and other assets of the System to pay by level-dollar payments all liabilities which shall exist or accrue pursuant to the provisions of the System, including amortization of the unfunded accrued liability over a period of not to exceed thirty (30) years beginning July 1, ~~1988~~ 2003.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-106.1, as amended by Section 1 of Enrolled House Bill No. 1464 of the 1st

Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 49-106.1 A. In lieu of terminating employment and accepting a service retirement pension pursuant to Sections 49-101 and 49-106 of this title, any member of the Oklahoma Firefighters Pension and Retirement System who has not less than twenty (20) years of creditable service and who is eligible to receive a service retirement pension may elect to participate in the Oklahoma Firefighters Deferred Option Plan and defer the receipts of benefits in accordance with the provisions of this section.

B. For purposes of this section, creditable service shall include service credit reciprocally recognized pursuant to Sections 49-100.1 through 49-100.8 and Sections 49-101, 49-101.1 and 49-101.2 of this title but for eligibility purposes only.

C. The duration of participation in the Oklahoma Firefighters Deferred Option Plan for active fire fighters shall not exceed five (5) years. Participation in the Oklahoma Firefighters Deferred Option Plan must begin the first day of a month and end on the last day of a month. At the conclusion of a member's participation in the Oklahoma Firefighters Deferred Option Plan, the member shall terminate employment with all participating municipalities as a fire fighter, and shall start receiving the member's accrued monthly retirement benefit from the System. Such a member may be reemployed by a participating municipality but only in a position not covered under the System, and receive in-service distributions of such member's accrued monthly retirement benefit from the System.

D. When a member begins participation in the Oklahoma Firefighters Deferred Option Plan, the contribution of the member shall cease. The employer contributions shall continue to be paid in accordance with subsection B of Section 49-122 of this title. Employer contributions for members who elect the Oklahoma Firefighters Deferred Option Plan shall be credited equally to the Oklahoma Firefighters Pension and Retirement System and to the member's Oklahoma Firefighters Deferred Option Plan account. The monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the member's Oklahoma Firefighters Deferred Option Plan account.

E. 1. A member who participates in this plan shall be eligible to receive cost of living increases.

2. A member who participates in this plan shall earn interest at a rate of two percentage points below the rate of return of the investment portfolio of the System, but no less than the actuarial assumed interest rate as certified by the actuary in the yearly evaluation report of the actuary. The interest shall be credited to the individual account balance of the member on an annual basis.

F. A member in the plan shall receive at the option of the member, a lump sum payment from the account equal to the payments to the account, or an annuity based upon the account of the member or

may elect any other method of payment if approved by the Board of Trustees.

G. If a member dies while maintaining an account balance in the plan the System shall pay to the designated recipient or recipients of the member, or if there is no designated recipient or if the designated recipient predeceases the member, to the estate of the member a lump sum payment equal to the account balance of the member. If a designated recipient is the surviving spouse of the member, the surviving spouse shall receive his or her portion of the account balance of the member pursuant to subsection F of this section.

H. In lieu of participating in the Oklahoma Firefighters Deferred Option Plan pursuant to subsections A, B, C, D, E and ~~D~~ F of this section, a member may elect to participate in the Oklahoma Firefighters Deferred Option Plan pursuant to this subsection as follows:

1. For purposes of this subsection, the following definitions shall apply:

- a. "back drop date" means the member's normal retirement date or the date five (5) years before the member elects to participate in the Oklahoma Firefighters Deferred Option Plan, whichever date is later,
- b. "termination date" means the date the member elects to participate in the Oklahoma Firefighters Deferred Option Plan pursuant to this subsection, and the date the member terminates employment with all participating municipalities as an active firefighter,
- c. "earlier attained credited service" means the credited service earned by a member as of the back drop date, and
- d. "deferred benefit balance" means all monthly retirement benefits that would have been payable had the member elected to cease employment on the back drop date and receive a service retirement from the back drop date to the termination date, all the member's contributions and one-half (1/2) of the employer contributions from the back drop date to the termination date, with interest based on how the benefit would have accumulated on a compound annual basis as if the member had participated in the Oklahoma Firefighters Deferred Option Plan pursuant to subsections A, B, C, D, E and ~~D~~ F of this section from the back drop date to the termination date; ~~and.~~

2. At the termination date, the monthly pension benefit shall be determined based on earlier attained credited service and on the final average salary as of the back drop date. The member's individual deferred option account shall be credited with an amount equal to the deferred benefit balance, the member shall terminate employment with all participating municipalities as a firefighter,

and shall start receiving the member's accrued monthly retirement benefit from the System. Such a member may be reemployed by a participating municipality but only in a position not covered under the System, and receive in-service distributions of such member's accrued monthly retirement benefit from the System. The provisions of subsections B, C, E, F and G of this section shall apply to this subsection. A member shall not participate in the Oklahoma Firefighters Deferred Option Plan pursuant to this subsection if the member has elected to participate in the Oklahoma Firefighters Deferred Option Plan pursuant to subsections A, B, C, D, E and F of this section.

SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-113, as amended by Section 1, Chapter 330, O.S.L. 2002 (11 O.S. Supp. 2002, Section 49-113), is amended to read as follows:

Section 49-113. A. In the event of the death for any cause of a fire fighter who at the time of the fire fighter's death was drawing a pension, or who at the time of the fire fighter's death (whether death occurred while on duty but not in or in consequence of the performance of duty or while on vacation or off duty) was eligible, upon written request to retire and draw a pension, the beneficiary of such person shall be paid an amount not to exceed one hundred percent (100%) of said pension. Effective March 1, 1997, if a fire fighter to whom a retirement benefit has been awarded or who is eligible therefor dies prior to the date as of which the total amount of retirement benefit paid equals the total amount of the employee contributions paid by or on behalf of the member and the member does not have a surviving beneficiary, the total benefits paid as of the date of the member's death shall be subtracted from the accumulated employee contribution amount and the balance, if greater than zero (0), shall be paid to the member's estate.

B. In the event of the death of the surviving spouse, the pension shall cease, and should there then be but one living child same shall receive an amount equal to one hundred percent (100%) of said pension, but if there then be more than one living child, one hundred percent (100%) of said pension shall be divided equally between the children until each child reaches the age of eighteen (18) years or until the age of twenty-two (22) years if the child is enrolled full time and regularly attending a public or private school or any institution of higher education. Provided, that in the event the State Board finds that such a child who is not married at the time of death of the member or the member's surviving spouse and who at the time the child attains or attained the age of eighteen (18) years is either physically or mentally disabled, the pension thereof shall continue so long as such disability remains; provided, further, that upon the death of the fire fighter and surviving spouse, if any, said physically or mentally disabled child shall be entitled to have paid to the child's legally appointed guardian or the trustee of a trust, whether inter vivos or testamentary, which trust provides for the receipt of the pension benefits to be held and administered for the sole benefit of said physically or mentally disabled child, an amount not to exceed one hundred percent (100%) of said pension. The money so paid to the guardian or trustee shall be used solely for the benefit of the disabled child and it shall be reported annually to the State Board.

The payment so provided shall be calculated after payments have been made to all eligible children as provided in this section; provided further, that beneficiaries now receiving pensions under the provisions of Sections 49-112 or 49-113 of this title shall, upon application to the State Board, thereafter be entitled to a pension equal to the amount which they would have received if this act were in effect at the time the right to said pension accrued.

C. In the event a surviving spouse of a member remarried prior to June 7, 1993, the surviving spouse shall be eligible to receive the pension benefits provided for in this section. To receive the pension benefits provided for in this section the surviving spouse falling within this section shall submit a written request for such benefits to the Oklahoma Firefighters Pension and Retirement System. The Oklahoma Firefighters Pension and Retirement System shall approve requests by surviving spouses meeting the requirements of this section. Upon approval by the Oklahoma Firefighters Pension and Retirement System, the surviving spouse shall be entitled to the pension benefits provided for in this section beginning from the date of approval forward. Pension benefits provided to surviving spouses falling within this section shall not apply to alter any amount of pension benefits paid or due prior to the Oklahoma Firefighters Pension and Retirement System's approval of the remarried surviving spouse's written request for benefits.

D. No surviving spouse shall receive benefits from this section, Section 50-117 of this title, or Section 2-306 of Title 47 of the Oklahoma Statutes as the surviving spouse of more than one member of the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, or the Oklahoma Law Enforcement Retirement System. The surviving spouse of more than one member shall elect which member's benefits he or she will receive.

E. Upon the death of a retired member, the benefit payment for the month in which the retired member died, if not previously paid, shall be made to the beneficiary of the member or to the member's estate if there is no beneficiary. Such benefit payment shall be made in an amount equal to a full monthly benefit payment regardless of the day of the month in which the retired member died.

F. Upon the death of an unmarried firefighter who has one or more children, said child or children shall receive pension benefits as provided in subsection B of this section as if the surviving spouse had died. ~~If the unmarried firefighter has executed a trust; provided, further, that upon the death of the firefighter, said child or children shall be entitled to have the System pay to the child's or children's legally appointed guardian or the trustee of a trust, whether inter vivos or testamentary, which trust provides for the receipt of the pension benefits to be held and administered for the sole benefit of said physically or mentally disabled child, the System shall pay the trustee of the trust the pension benefits as provided in subsection B of this section in an amount not to exceed one hundred percent (100%) of said pension. The money so paid to the guardian or trustee shall be used solely for the benefit of the child and it shall be reported annually to the State Board.~~

SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-126, is amended to read as follows:

Section 49-126. A. Except as otherwise provided by this section, no portion of said pension shall, either before or after its order of distribution by the State Board to such disabled members of said fire department, or the surviving spouse or guardian of such minor child or children, to the deceased or retired member of such department, be held, seized, taken, subjected to or detained or levied on by virtue of any attachment, execution, injunction, writ interlocutory or other order or decree, or any process or proceeding, whatever, issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damages, claim, demand or judgment against such member, or his or her surviving spouse, or the guardian of said minor child or children of any deceased member, nor shall said fund or any claim thereto be directly or indirectly assigned and any attempt to assign or transfer the same shall be void; but the funds shall be held, kept, secured and distributed for the purpose of pensioning the persons named in this article, and for no other purpose whatever. Notwithstanding the foregoing, effective August 5, 1997, the State Board may approve any offset of a member's benefit to pay a judgment or settlement against a member for a crime involving the System, for a breach of the member's fiduciary duty to the System, or for funds or monies incorrectly paid to a member or beneficiary by mistake, provided such offset is in accordance with the requirements of Section 401(a)(13) of the Internal Revenue Code of 1986, as amended.

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 or disabled child or children and which creates or recognizes the existence of the right of an alternate payee, ~~or~~ and assigns to an alternate payee the right, to receive a portion of the benefits payable with respect to a member of the System.

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 of the related member.

8. The obligation of the System to pay an alternate payee pursuant to a qualified domestic order shall cease upon the earlier of the death of the related member or the death of the alternate payee. Upon the death of the alternate payee, the assignment to the alternate payee of the right to receive a portion of the benefits payable with respect to the member shall cease and the payments of benefits to the member shall be reinstated.

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 Firefighters Pension and Retirement Board 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 State Board pursuant to this subsection in order to continue receiving his or her benefit.

SECTION 5. REPEALER 11 O.S. 2001, Section 49-106.1, as amended by Section 3 of Enrolled Senate Bill No. 639 of the 1st Session of the 49th Oklahoma Legislature, is hereby repealed.

SECTION 6. 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 Senate the 20th day of May, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of May, 2003.

Presiding Officer of the House
of Representatives