

SB 377

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THE STATE SENATE
Monday, February 21, 2005

Senate Bill No. 377

As Amended

SENATE BILL NO. 377 - By: MONSON of the Senate and BLACKWELL of the House.

[retirement - Oklahoma Firefighters Pension and Retirement System - providing for alternative methods for purchase of transferred service credit - emergency]

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 49-106, as last amended by Section 2, Chapter 546, O.S.L. 2004 (11 O.S. Supp. 2004, Section 49-106), is amended to read as follows:

Section 49-106. A. Any firefighter who reaches the firefighter's normal retirement date shall be entitled, upon written request, to retire from such service and be paid from the System a monthly pension equal to the member's accrued retirement benefit; provided, that the pension shall cease during any period of time the member may thereafter serve for compensation in any municipal fire department in the state. If such a member is reemployed by a participating municipality in a position which is not covered by the System, retirement shall also include receipt by such member of in-service distributions from the System.

1 B. With respect to distributions under the System made for
2 calendar years beginning on or after January 1, ~~2001~~ 2005, the
3 System ~~will~~ shall apply the minimum distribution incidental benefit
4 requirements, incidental benefit requirements, and minimum
5 distribution requirements of Section 401(a) (9) of the Internal
6 Revenue Code of 1986, as amended, in accordance with the ~~regulations~~
7 ~~under Section 401(a) (9) of the Internal Revenue Code of 1986, as~~
8 ~~amended, that were proposed in January 2001, notwithstanding any~~
9 ~~provision of the System to the contrary. This amendment shall~~
10 ~~continue in effect until the end of the last calendar year beginning~~
11 ~~before the effective date of final regulations under Section~~
12 ~~401(a) (9) of the Internal Revenue Code of 1986, as amended, or such~~
13 ~~other date as may be specified in guidance published by the Internal~~
14 ~~Revenue Service. Furthermore, to the extent applicable,~~
15 ~~distributions shall be made in accordance with the Proposed Income~~
16 ~~Tax Regulations~~ which were issued in April 2002 and June 2004,
17 notwithstanding any provision of the System to the contrary. With
18 respect to distributions under the System made for calendar years
19 beginning on or after January 1, 2001 through December 31, 2004, the
20 System shall apply the minimum distribution requirements and
21 incidental benefit requirements of Section 401(a) (9) of the Internal
22 Revenue Code of 1986, as amended, ~~including the minimum distribution~~
23 ~~incidental benefit requirements of the Proposed Income Tax~~

1 ~~Regulations~~ in accordance with the regulations under Section
2 401(a)(9) of the Internal Revenue Code of 1986, as amended, which
3 were proposed in January 2001, notwithstanding any provision of the
4 System to the contrary. Effective July 1, 1989, notwithstanding any
5 other provision contained herein to the contrary, in no event shall
6 commencement of distribution of the accrued retirement benefit of a
7 member be delayed beyond April 1 of the calendar year following the
8 later of:

9 1. The calendar year in which the member reaches seventy and
10 one-half (70 1/2) years of age; or

11 2. The actual retirement date of the member.

12 C. Any member or beneficiary eligible to receive a monthly
13 benefit from the System may make an election to waive all or a
14 portion of monthly benefits.

15 SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-113, as
16 last amended by Section 5, Chapter 546, O.S.L. 2004 (11 O.S. Supp.
17 2004, Section 49-113), is amended to read as follows:

18 Section 49-113. A. 1. In the event of the death of a
19 firefighter who at the time of the firefighter's death was drawing a
20 pension, other than a disability pension, or who at the time of the
21 firefighter's death (whether death occurred while on duty, but not
22 in or in consequence of the performance of duty, or while on
23 vacation or off duty) was eligible, upon written request, to retire

1 and draw a pension, other than a disability pension, the beneficiary
2 of such person shall be paid an amount not to exceed one hundred
3 percent (100%) of said pension.

4 2. In the event of the death of a firefighter who at the time
5 of the firefighter's death was drawing, or eligible to draw, a
6 disability pension for a physical or mental disability that occurred
7 while in, or in consequence of, the performance of the firefighter's
8 duty, and which prevented the effective performance of the
9 firefighter's duties, and which caused the State Board to retire the
10 firefighter from active service, the beneficiary of such person
11 shall be paid an amount not to exceed one hundred percent (100%) of
12 the pension paid in accordance with subsection A of Section 49-109
13 of this title.

14 3. In the event of the death of a firefighter who at the time
15 of the firefighter's death was drawing, or eligible to draw, a
16 disability pension for a physical or mental disability from causes
17 not arising in the line of duty and which prevented the effective
18 performance of the firefighter's duties, the beneficiary of such
19 person shall be paid an amount not to exceed one hundred percent
20 (100%) of the pension paid in accordance with subsection B of
21 Section 49-109 of this title.

22 4. Effective March 1, 1997, if a firefighter to whom a
23 retirement or disability benefit has been awarded, or who is

1 eligible therefor, dies prior to the date as of which the total
2 amount of retirement or disability benefit paid equals the total
3 amount of the employee contributions paid by or on behalf of the
4 member and the member does not have a surviving beneficiary, the
5 total benefits paid as of the date of the member's death shall be
6 subtracted from the accumulated employee contribution amount and the
7 balance, if greater than zero (0), shall be paid to the member's
8 estate.

9 5. Any person eligible to receive a payment pursuant to this
10 section may make an election to waive all or a portion of monthly
11 payments.

12 B. In the event of the death of the surviving spouse, the
13 pension shall cease, and should there then be but one living child
14 same shall receive an amount equal to one hundred percent (100%) of
15 said pension, but if there then be more than one living child, one
16 hundred percent (100%) of said pension shall be divided equally
17 between the children until each child reaches the age of eighteen
18 (18) years or until the age of twenty-two (22) years if the child is
19 enrolled full time and regularly attending a public or private
20 school or any institution of higher education. Provided, that in
21 the event the State Board finds that such a child who is not married
22 at the time of death of the member or the member's surviving spouse
23 and who at the time the child attains or attained the age of

1 eighteen (18) years is either physically or mentally disabled, the
2 pension thereof shall continue so long as such disability remains;
3 provided ~~further~~, that upon the death of the firefighter and
4 surviving spouse, if any, said physically or mentally disabled child
5 shall be entitled to have paid to the child's ~~legally appointed~~
6 ~~guardian or the~~ trustee of a trust, whether inter vivos or
7 testamentary, which trust provides for the receipt of the pension
8 benefits to be held and administered for the sole benefit of said
9 physically or mentally disabled child, or if there is no trust, to
10 the child's legally appointed guardian, an amount not to exceed one
11 hundred percent (100%) of said pension. The money so paid to the
12 guardian or trustee shall be used solely for the benefit of the
13 disabled child and it shall be reported annually to the State Board.
14 The payment so provided shall be calculated after payments have been
15 made to all eligible children as provided in this section; provided
16 further, that beneficiaries now receiving pensions under the
17 provisions of Sections 49-112 or 49-113 of this title shall, upon
18 application to the State Board, thereafter be entitled to a pension
19 equal to the amount which they would have received if this act were
20 in effect at the time the right to said pension accrued.

21 C. In the event a surviving spouse of a member remarried prior
22 to June 7, 1993, the surviving spouse shall be eligible to receive
23 the pension benefits provided for in this section. To receive the

1 pension benefits provided for in this section the surviving spouse
2 falling within this section shall submit a written request for such
3 benefits to the Oklahoma Firefighters Pension and Retirement System.
4 The Oklahoma Firefighters Pension and Retirement System shall
5 approve requests by surviving spouses meeting the requirements of
6 this section. Upon approval by the Oklahoma Firefighters Pension
7 and Retirement System, the surviving spouse shall be entitled to the
8 pension benefits provided for in this section beginning from the
9 date of approval forward. Pension benefits provided to surviving
10 spouses falling within this section shall not apply to alter any
11 amount of pension benefits paid or due prior to the Oklahoma
12 Firefighters Pension and Retirement System's approval of the
13 remarried surviving spouse's written request for benefits.

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

22 E. Upon the death of a retired member, the benefit payment for
23 the month in which the retired member died, if not previously paid,

1 shall be made to the beneficiary of the member or to the member's
2 estate if there is no beneficiary. Such benefit payment shall be
3 made in an amount equal to a full monthly benefit payment regardless
4 of the day of the month in which the retired member died.

5 F. Upon the death of an unmarried firefighter who has one or
6 more children, said child or children shall receive pension benefits
7 as provided in subsection B of this section as if the surviving
8 spouse had died; provided, that upon the death of the firefighter,
9 said child or children shall be entitled to have the System pay to
10 the child's or children's trustee of a trust, whether inter vivos or
11 testamentary, which trust provides for the receipt of the pension
12 benefits to be held and administered for the sole benefit of said
13 child, or if there is no trust, to the child's or children's legally
14 appointed guardian, the pension benefits as provided in subsection B
15 of this section in an amount not to exceed one hundred percent
16 (100%) of said pension. The money so paid to the guardian or
17 trustee shall be used solely for the benefit of the child and it
18 shall be reported annually to the State Board.

19 SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-117.3, as
20 last amended by Section 6, Chapter 546, O.S.L. 2004 (11 O.S. Supp.
21 2004, Section 49-117.3), is amended to read as follows:

22 Section 49-117.3 A. The State Board shall adopt rules for
23 computation of the purchase price for transferred credited service.

1 These rules shall base the purchase price for each year purchased on
2 the actuarial cost of the incremental projected benefits to be
3 purchased. The purchase price shall represent the present value of
4 the incremental projected benefits discounted according to the
5 member's age at the time of purchase. Incremental projected
6 benefits shall be the difference between the projected benefit said
7 member would receive without purchasing the transferred credited
8 service and the projected benefit after purchase of the transferred
9 credited service computed as of the earliest age at which the member
10 would be able to retire. Said computation shall assume an unreduced
11 benefit and be computed using interest and mortality assumptions
12 consistent with the actuarial assumptions adopted by the Board of
13 Trustees for purposes of preparing the annual actuarial evaluation.

14 B. In the event that the member is unable to pay the purchase
15 price provided for in this section by the due date, the State Board
16 shall permit the members to amortize the purchase price over a
17 period not to exceed sixty (60) months. Said payments shall be made
18 by payroll deductions unless the State Board permits an alternate
19 payment source. The amortization shall include interest in an
20 amount not to exceed the actuarially assumed interest rate adopted
21 by the State Board for investment earnings each year. Any member
22 who ceases to make payment, terminates, retires or dies before
23 completing the payments provided for in this section shall receive

1 prorated service credit for only those payments made, unless the
2 unpaid balance is paid by said member, his or her estate or
3 successor in interest within six (6) months after said member's
4 death, termination of employment or retirement, provided no
5 retirement benefits shall be payable until the unpaid balance is
6 paid, unless said member or beneficiary affirmatively waives the
7 additional six-month period in which to pay the unpaid balance. The
8 State Board shall promulgate such rules as are necessary to
9 implement the provisions of this subsection.

10 C. ~~Effective January 1, 2002, payment of the purchase price may~~
11 ~~be made by a trustee-to-trustee transfer from a Code Section 403(b)~~
12 ~~annuity, a governmental Code Section 457 plan, and/or a Code Section~~
13 ~~401(a) qualified plan~~ Members who pay the purchase price by the due
14 date may make payment by:

15 1. A trustee-to-trustee transfer from a Code Section 403(b)
16 annuity or custodial account, an eligible deferred compensation plan
17 described in Code Section 457(b) which is maintained by an eligible
18 employer described in Code Section 457(e) (1) (A), and/or a Code
19 Section 401(a) qualified plan; or

20 2. A direct rollover of tax-deferred funds from a Code Section
21 403(b) annuity or custodial account, an eligible deferred
22 compensation plan described in Code Section 457(b) which is
23 maintained by an eligible employer described in Code Section

1 457(e)(1)(A), a Code Section 401(a) qualified plan, and/or a Code
2 Section 408(a) or 408(b) traditional or conduit Individual
3 Retirement Account or Annuity (IRA). Roth IRAs and Coverdell
4 Education Savings Accounts shall not be used to purchase transferred
5 credited service.

6 The State Board shall promulgate such rules as are necessary to
7 implement the provisions of this subsection.

8 D. Members amortizing the purchase price and making payments by
9 payroll deduction ~~on or after January 1, 2002,~~ shall have the option
10 of making a cash lump-sum payment for the balance of the actuarial
11 purchase price with interest due through the date of payment by a
12 ~~trustee-to-trustee transfer from a Code Section 403(b) annuity, a~~
13 ~~governmental Code Section 457 plan, and/or a Code Section 401(a)~~
14 ~~qualified plan:~~

15 1. A trustee-to-trustee transfer from a Code Section 403(b)
16 annuity or custodial account, an eligible deferred compensation plan
17 described in Code Section 457(b) which is maintained by an eligible
18 employer described in Code Section 457(e)(1)(A), and/or a Code
19 Section 401(a) qualified plan; or

20 2. A direct rollover of tax-deferred funds from a Code Section
21 403(b) annuity or custodial account, an eligible deferred
22 compensation plan described in Code Section 457(b) which is
23 maintained by an eligible employer described in Code Section

1 457(e)(1)(A), a Code Section 401(a) qualified plan, and/or a Code
2 Section 408(a) or 408(b) traditional or conduit Individual
3 Retirement Account or Annuity (IRA). Roth IRAs and Coverdell
4 Education Savings Accounts shall not be used to purchase transferred
5 credited service.

6 The State Board shall promulgate such rules as are necessary to
7 implement the provisions of this subsection.

8 SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-138, as
9 last amended by Section 1, Chapter 302, O.S.L. 2004 (11 O.S. Supp.
10 2004, Section 49-138), is amended to read as follows:

11 Section 49-138. A. Any member of a regularly constituted fire
12 department of any municipality who is now serving or may hereafter
13 serve in the Armed Forces of the United States whether such service
14 is voluntary or involuntary, who shall have been a member of such
15 fire department at the time of entering such service, shall be
16 entitled to have the whole of the time of such service applied under
17 the provisions of Section 49-106 of this title, so far as the same
18 applies to a service pension; provided further, that the
19 municipality shall continue its payment into said pension fund, to
20 the same force and effect as though the member were in the actual
21 service of such fire department; provided, that any person who is
22 eligible for such service but who shall have volunteered for
23 military or naval service for a period not to exceed five (5) years

1 shall likewise be entitled to all of the benefits of Sections 49-138
2 through 49-142 of this title for the full period of such service or
3 enlistment; provided further, that only one such period of voluntary
4 service shall be considered hereunder. If such person shall
5 reenlist, unless he is required to do so by law, he shall not
6 thereafter be entitled to the provisions of this subsection. The
7 provisions of this subsection shall not apply where any such person
8 dies during the period of said service or enlistment, and shall not
9 entitle the surviving spouse or children to any benefits, and shall
10 not apply to any member who shall have served on active duty
11 (including initial active duty) for training purposes only and/or
12 inactive duty training.

13 B. Effective February 1, 1997, credited service received
14 pursuant to this section or credited service for wartime military
15 service received as otherwise provided by law shall be used in
16 determining the member's retirement benefit but shall not be used in
17 determining years of service for retirement, vesting purposes or
18 eligibility for participation in the Oklahoma Firefighters Deferred
19 Option Plan. For a member of the System hired on or after July 1,
20 2003, if the military service credit authorized by this section is
21 used to compute the retirement benefit of the member and the member
22 retires from the System, such military service credit shall not be
23 used to compute the retirement benefit in any other retirement

1 system created pursuant to the Oklahoma Statutes and the member may
2 receive credit for such service only in the retirement system from
3 which the member first retires.

4 C. A member who retires or elects to participate in the
5 Oklahoma Firefighters Deferred Option Plan on or after July 1, 1998,
6 shall be entitled to prior service credit, not to exceed five (5)
7 years, for those periods of military service on active duty prior to
8 membership in the Oklahoma Firefighters Pension and Retirement
9 System.

10 For purposes of this subsection, "military service" means
11 service in the Armed Forces of the United States by honorably
12 discharged persons during the following time periods, as reflected
13 on such person's Defense Department Form 214, as follows:

14 1. During the following periods, including the beginning and
15 ending dates, and only for the periods served, from:

16 a. April 6, 1917, to November 11, 1918, commonly referred
17 to as World War I,

18 b. September 16, 1940, to December 7, 1941, for members
19 of the 45th Division,

20 c. December 7, 1941, to December 31, 1946, commonly
21 referred to as World War II,

22 d. June 27, 1950, to January 31, 1955, commonly referred
23 to as the Korean Conflict or the Korean War,

- 1 e. February 28, 1961, to May 7, 1975, commonly referred
2 to as the Vietnam era, except that:
- 3 (1) for the period from February 28, 1961, to August
4 4, 1964, military service shall only include
5 service in the Republic of Vietnam during that
6 period, and
- 7 (2) for purposes of determining eligibility for
8 education and training benefits, such period
9 shall end on December 31, 1976, or
- 10 f. August 1, 1990, to December 31, 1991, commonly
11 referred to as the Gulf War, the Persian Gulf War, or
12 Operation Desert Storm, but excluding any person who
13 served on active duty for training only, unless
14 discharged from such active duty for a service-
15 connected disability;

16 2. During a period of war or combat military operation other
17 than a conflict, war or era listed in paragraph 1 of this
18 subsection, beginning on the date of Congressional authorization,
19 Congressional resolution, or Executive Order of the President of the
20 United States, for the use of the Armed Forces of the United States
21 in a war or combat military operation, if such war or combat
22 military operation lasted for a period of ninety (90) days or more,
23 for a person who served, and only for the period served, in the area

1 of responsibility of the war or combat military operation, but
2 excluding a person who served on active duty for training only,
3 unless discharged from such active duty for a service-connected
4 disability, and provided that the burden of proof of military
5 service during this period shall be with the member, who must
6 present appropriate documentation establishing such service.

7 D. An eligible member pursuant to subsection C of this section
8 shall include only those persons who shall have served during the
9 times or in the areas prescribed in subsection C of this section,
10 and only if such person provides appropriate documentation in such
11 time and manner as required by the System to establish such military
12 service prescribed in this section, or for service pursuant to
13 division (1) of subparagraph e of paragraph 1 of subsection C of
14 this section, those persons who were awarded service medals, as
15 authorized by the United States Department of Defense as reflected
16 in the veteran's Defense Department Form 214, related to the Vietnam
17 Conflict for service prior to August 5, 1964. The provisions of
18 subsection C of this section shall include military retirees, whose
19 retirement was based only on active service, that have been rated as
20 having twenty percent (20%) or greater service-connected disability
21 by the Veterans Administration or the Armed Forces of the United
22 States. The provisions of subsection C of this section shall not
23 apply to any person who shall have served on active duty for

1 training purposes only unless discharged from active duty for a
2 service-connected disability.

3 E. Notwithstanding any provision herein to the contrary,
4 contributions, benefits and service credit with respect to qualified
5 military service shall be provided in accordance with Section 414(u)
6 of the Internal Revenue Code of 1986, which is in accordance with
7 the Uniformed Services Employment and Reemployment Rights Act of
8 1994, as amended (USERRA). The municipality's contributions to the
9 System for a member covered by USERRA are due when such a member
10 makes up his or her contributions that were missed due to his or her
11 qualified military service.

12 F. Members or beneficiaries shall make application to the
13 System for credited service related to wartime military service.
14 Interest on additional benefits related to wartime military service
15 owed by the System to a retired member or beneficiary as provided by
16 law shall cease accruing one (1) year after the effective date the
17 additional benefits are payable by the System or July 1, 2000,
18 whichever is later, if the member has not applied to the System for
19 credited service related to such wartime military service.

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

5 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND GROUP HEALTH, dated
6 2-15-05 - DO PASS, As Amended and Coauthored.