

3 Senate Bill No. 859
4 As Amended

5 SENATE BILL NO. 859 - By: BARRINGTON of the Senate and JOYNER of the
6 House.

7 [cities and towns - Oklahoma Firefighters Deferred Option
8 Plan -
9 emergency]

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

11 SECTION 1. AMENDATORY 11 O.S. 2001, Section 29-202, as
12 amended by Section 2, Chapter 460, O.S.L. 2003 (11 O.S. Supp. 2006,
13 Section 29-202), is amended to read as follows:

14 Section 29-202. As used in Sections 29-201 through 29-205 of
15 this title:

16 1. "Volunteer firefighter" means a person who is enrolled as a
17 member of a fire department and who serves in such capacity without
18 receiving a regular salary. A person who is a salaried public
19 safety employee of a municipality shall not serve as a volunteer
20 firefighter of a volunteer fire department unless the person is off
21 duty and such service is not a condition of employment. A public
22 safety employee is a person employed to serve as a salaried
23 firefighter, police or other law enforcement officer or emergency
24 medical technician;

1 2. "Volunteer fire department" means a fire department which
2 has in its employ not more than two full-time salaried firefighters;
3 and

4 3. "Municipality" means a municipality which has qualified to
5 participate in the Oklahoma Firefighters Pension and Retirement
6 System.

7 SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-106.1, as
8 last amended by Section 3, Chapter 546, O.S.L. 2004 (11 O.S. Supp.
9 2006, Section 49-106.1), is amended to read as follows:

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

18 B. For purposes of this section, creditable service shall
19 include service credit reciprocally recognized pursuant to Sections
20 49-100.1 through 49-100.8 and Sections 49-101, 49-101.1 and 49-101.2
21 of this title but for eligibility purposes only.

22 C. The duration of participation in the Oklahoma Firefighters
23 Deferred Option Plan for active firefighters shall not exceed five

1 (5) years. Participation in the Oklahoma Firefighters Deferred
2 Option Plan must begin the first day of a month and end on the last
3 day of a month. At the conclusion of a member's participation in
4 the Oklahoma Firefighters Deferred Option Plan, the member shall
5 terminate employment with all participating municipalities as a
6 firefighter, and shall start receiving the member's accrued monthly
7 retirement benefit from the System. Such a member may be reemployed
8 by a participating municipality but only in a position not covered
9 under the System, and receive in-service distributions of such
10 member's accrued monthly retirement benefit from the System.

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

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

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

9 F. A member in the plan shall receive, at the option of the
10 member, a lump sum payment from the account equal to the payments to
11 the account or an annuity based upon the account of the member or
12 may elect any other method of payment if approved by the Board of
13 Trustees. If a member becomes so physically or mentally disabled
14 while in, or in consequence of, the performance of his or her duty
15 as to prevent the effective performance of his or her duties that
16 the State Board approves an in line of duty disability pension, the
17 payment from the account shall be an in line of duty disability
18 payment.

19 G. If a member dies while maintaining an account balance in the
20 plan the System shall pay to the designated recipient or recipients
21 of the member, or if there is no designated recipient or if the
22 designated recipient predeceases the member, to the spouse of the
23 member, or if there is no spouse or if the spouse predeceases the

1 member, to the estate of the member a lump sum payment equal to the
2 account balance of the member. If such member was receiving, or
3 eligible to receive, an in line of duty disability pension at the
4 time of his or her death, payment of the account balance shall be an
5 in line of duty disability payment. If a designated recipient is
6 the surviving spouse of the member, the surviving spouse shall
7 receive his or her portion of the account balance of the member
8 pursuant to subsection F of this section.

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

14 1. For purposes of this subsection and subsection I of this
15 section, the following definitions shall apply:

- 16 a. "back drop date" means the member's normal retirement
17 date or the date five (5) years before the member
18 elects to participate in the Oklahoma Firefighters
19 Deferred Option Plan, whichever date is later,
- 20 b. "termination date" means the date the member elects to
21 participate in the Oklahoma Firefighters Deferred
22 Option Plan pursuant to this subsection, and the date

1 the member terminates employment with all
2 participating municipalities as an active firefighter,
3 c. "earlier attained credited service" means the credited
4 service earned by a member as of the back drop date,
5 and
6 d. "deferred benefit balance" means all monthly
7 retirement benefits that would have been payable had
8 the member elected to cease employment on the back
9 drop date and receive a service retirement from the
10 back drop date to the termination date, all the
11 member's contributions and one-half (1/2) of the
12 employer contributions from the back drop date to the
13 termination date, with interest based on how the
14 benefit would have accumulated on a compound annual
15 basis as if the member had participated in the
16 Oklahoma Firefighters Deferred Option Plan pursuant to
17 subsections A, B, C, D, E and F of this section from
18 the back drop date to the termination date; and

19 2. At the termination date, the monthly pension benefit shall
20 be determined based on earlier attained credited service and on the
21 final average salary as of the back drop date. The member's
22 individual deferred option account shall be credited with an amount
23 equal to the deferred benefit balance, the member shall terminate

1 employment with all participating municipalities as a firefighter,
2 and shall start receiving the member's accrued monthly retirement
3 benefit from the System. Such a member may be reemployed by a
4 participating municipality but only in a position not covered under
5 the System, and receive in-service distributions of such member's
6 accrued monthly retirement benefit from the System. The provisions
7 of subsections B, C, E, F and G of this section shall apply to this
8 subsection. A member shall not participate in the Oklahoma
9 Firefighters Deferred Option Plan pursuant to this subsection if the
10 member has elected to participate in the Oklahoma Firefighters
11 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of
12 this section.

13 ~~3. Effective July 1, 2003, if a member who has more than twenty~~
14 ~~(20) years of creditable service and who is eligible to receive a~~
15 ~~service retirement pension dies on or after July 1, 2003, and prior~~
16 ~~to terminating employment, his/her surviving spouse shall be~~
17 ~~eligible to elect to receive a benefit determined as if the member~~
18 ~~had elected to participate in the Oklahoma Firefighters Deferred~~
19 ~~Option Plan in accordance with this subsection on the day~~
20 ~~immediately preceding the member's death, provided such election is~~
21 ~~made within one year from the date of the member's death. The~~
22 ~~monthly pension such surviving spouse is receiving, or entitled to~~
23 ~~receive, shall be adjusted in accordance with the provisions of this~~

1 ~~subsection to account for the member's participation in the Oklahoma~~
2 ~~Firefighters Deferred Option Plan. The adjusted monthly pension so~~
3 ~~determined shall be subtracted from the monthly pension the~~
4 ~~surviving spouse was receiving prior to the election, and the~~
5 ~~difference for each month, if greater than zero (0), shall be~~
6 ~~adjusted to include interest based on the actuarial assumed interest~~
7 ~~rate as certified by the actuary in the yearly evaluation report of~~
8 ~~the actuary. The sum of all such adjusted monthly amounts shall be~~
9 ~~used to reduce the surviving spouse's account balance in the~~
10 ~~Oklahoma Firefighters Deferred Option Plan. For purposes of this~~
11 ~~election, the surviving spouse must have been married to the~~
12 ~~firefighter for the thirty (30) continuous months preceding the~~
13 ~~firefighter's death; provided, the surviving spouse of a member who~~
14 ~~died while in, or as a consequence of, the performance of the~~
15 ~~member's duty for a participating municipality shall not be subject~~
16 ~~to the marriage limitation for this election.~~

17 I. Certain surviving spouses and members shall be eligible to
18 participate in the Oklahoma Firefighters Deferred Option Plan
19 pursuant to subsection H of this section and this subsection.

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

22 a. "back drop election date" means the date the surviving
23 spouse or member elects to commence participation in

1 the Oklahoma Firefighters Deferred Option Plan
2 pursuant to subsection H of this section and this
3 subsection,

4 b. "interest" means the actuarial assumed interest rate
5 as certified by the actuary in the yearly evaluation
6 report of the actuary,

7 c. "monthly adjustment amount" means the difference
8 between the monthly pension prior to the back drop
9 election and the adjusted monthly pension due to the
10 back drop election,

11 d. "back drop pension adjustment amount" means the sum of
12 all the monthly adjustment amounts adjusted for
13 interest from the pension commencement date to the
14 back drop election date, and

15 e. "deferred benefit balance adjustment amount" means the
16 deferred benefit balance adjusted for interest from
17 the pension commencement date to the back drop
18 election date.

19 2. If a member who has more than twenty (20) years of
20 creditable service and is eligible to receive a service retirement
21 pension dies on or after the effective date of this act, and prior
22 to terminating employment, the member's surviving spouse shall be
23 eligible to elect to receive a benefit determined as if the member

1 had elected to participate in the Oklahoma Firefighters Deferred
2 Option Plan in accordance with subsection H of this section on the
3 day immediately preceding such member's death. The surviving spouse
4 must make any such election within one (1) year from the date of the
5 member's death. If such election is made, the monthly pension such
6 surviving spouse is receiving, or is entitled to receive, shall be
7 adjusted in accordance with the provisions of subsection H of this
8 section to account for the member's participation in the Oklahoma
9 Firefighters Deferred Option Plan. The deferred benefit balance
10 such surviving spouse is entitled to receive shall be reduced by the
11 back drop pension adjustment amount and increased by the deferred
12 benefit balance adjustment amount. The surviving spouse may only
13 make a back drop election if the deferred benefit balance after the
14 adjustment described in this paragraph is greater than Zero Dollars
15 (\$0.00). The surviving spouse may only make this election if the
16 member has not previously elected to participate in the Oklahoma
17 Firefighters Deferred Option Plan. For purposes of this election,
18 the surviving spouse must have been married to the firefighter for
19 the thirty (30) continuous months preceding the firefighter's death;
20 provided, the surviving spouse of a member who died while in, or as
21 a consequence of, the performance of the member's duty for a
22 participating municipality shall not be subject to the marriage
23 limitation for this election.

1 3. If a member has more than twenty (20) years of creditable
2 service and is eligible for a retirement for disability monthly
3 pension pursuant to Section 49-109 of this title on or after the
4 effective date of this act, such member shall be eligible to elect
5 to receive a benefit determined as if the member had elected to
6 participate in the Oklahoma Firefighters Deferred Option Plan, in
7 accordance with subsection H of this section, on the day immediately
8 preceding the date of the member's disability retirement, provided
9 such election is made within two (2) years from the date of the
10 member's disability retirement. The disability monthly pension such
11 member is receiving, or entitled to receive, shall be adjusted in
12 accordance with the provisions of subsection H of this section to
13 account for the member's participation in the Oklahoma Firefighters
14 Deferred Option Plan. The deferred benefit balance such member is
15 entitled to receive shall be reduced by the back drop pension
16 adjustment amount and increased by the deferred benefit balance
17 adjustment amount. The member may only make a back drop election if
18 the deferred benefit balance after the adjustment described in this
19 paragraph is greater than Zero Dollars (\$0.00). The member may only
20 make this election if the member has not previously elected to
21 participate in the Oklahoma Firefighters Deferred Option Plan.

22 4. If a member has more than twenty (20) years of creditable
23 service and filed a grievance for wrongful termination occurring on

1 or after the effective date of this act, but is not reinstated as an
2 active member, such member shall be eligible to elect to receive a
3 benefit determined as if the member had elected to participate in
4 the Oklahoma Firefighters Deferred Option Plan in accordance with
5 subsection H of this section on the day immediately preceding the
6 date of the member's termination. Such election must be made within
7 two (2) years from the date of the member's termination as an active
8 member and, if the member's case pertaining to the member's
9 termination is on appeal to a court of competent jurisdiction,
10 within such period set by the State Board in its sole discretion.
11 The monthly pension such member is receiving, or entitled to
12 receive, shall be adjusted in accordance with the provisions of
13 subsection H of this section to account for the member's
14 participation in the Oklahoma Firefighters Deferred Option Plan.
15 The deferred benefit balance such member is entitled to receive
16 shall be reduced by the back drop pension adjustment amount. The
17 member may only make a back drop election if the deferred benefit
18 balance after the adjustment described in this paragraph is greater
19 than Zero Dollars (\$0.00). The member may only make this election
20 if the member has not previously elected to participate in the
21 Oklahoma Firefighters Deferred Option Plan.

22 SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-112, is
23 amended to read as follows:

1 Section 49-112. A. Whenever any member of the fire department
2 shall lose his or her life by reason of any injury or sickness
3 sustained by him or her while in, or in consequence of, the
4 performance of his or her duty or while on active duty in the
5 National Guard and Reserves called to active duty, leaving a
6 surviving spouse, or child or children under the age of eighteen
7 (18) years, then, upon satisfactory proof of such facts made to it,
8 the State Board shall order and direct that a monthly pension be
9 paid. Such amount shall be determined in accordance with the
10 provisions of subsection A of Section ~~49-113~~ 49-109 of this title.
11 In the event of the death of the surviving spouse, the pension shall
12 cease, and should there then be but one living child such child
13 shall receive an amount equal to one hundred percent (100%) of the
14 pension, but if there then be more than one living child, one
15 hundred percent (100%) of the pension shall be divided equally
16 between the children until each child reaches the age of eighteen
17 (18) years or until the age of twenty-two (22) years if the child is
18 enrolled full-time and regularly attending a public or private
19 school or any institution of higher education. In the event the
20 State Board finds that such a child who is not married at the time
21 of death of the member or the member's surviving spouse and who at
22 the time the child attains or attained the age of eighteen (18)
23 years is either physically or mentally disabled, the pension shall

1 continue so long as such disability remains. Upon the death of the
2 firefighter and surviving spouse, if any, the physically or mentally
3 disabled child shall be entitled to have paid to the child's trustee
4 of a trust, whether inter vivos or testamentary, which trust
5 provides for the receipt of the pension benefits to be held and
6 administered for the sole benefit of the physically or mentally
7 disabled child, or if there is no trust, to the child's legally
8 appointed guardian, an amount not to exceed one hundred percent
9 (100%) of the pension. The money paid to the guardian or trustee
10 shall be used solely for the benefit of the disabled child and it
11 shall be reported annually to the State Board. The payment provided
12 shall be calculated after payments have been made to all eligible
13 children as provided in this subsection. If the member does not
14 leave a beneficiary or disabled child as described in this
15 subsection, the accumulated contributions made to the System by the
16 member shall be paid to the estate of the member.

17 B. Whenever any member of the fire department who has not
18 terminated employment shall lose his or her life for any reason not
19 described in subsection A of this section, after completing ten (10)
20 years of credited service and prior to completing twenty (20) years
21 of credited service, leaving a surviving spouse, or child or
22 children under the age of eighteen (18) years, then upon
23 satisfactory proof of such facts made to it, the State Board shall

1 order and direct that a monthly pension be paid. Such amount shall
2 be fifty percent (50%) of the average monthly salary which was paid
3 to the firefighter during the last sixty (60) months of the
4 firefighter's service. In the event of the death of the surviving
5 spouse, the pension shall cease, and should there then be but one
6 living child such child shall receive an amount equal to one hundred
7 percent (100%) of the pension, but if there then be more than one
8 living child, one hundred percent (100%) of the pension shall be
9 divided equally between the children until each child reaches the
10 age of eighteen (18) years or the age of twenty-two (22) years if
11 the child is enrolled full-time and regularly attending a public or
12 private school or any institution of higher education. In the event
13 the State Board finds that such a child who is not married at the
14 time of death of the member or the member's surviving spouse and who
15 at the time the child attains or attained the age of eighteen (18)
16 years is either physically or mentally disabled, the pension shall
17 continue so long as the disability remains. Upon the death of the
18 firefighter and surviving spouse, if any, said physically or
19 mentally disabled child shall be entitled to have paid to the
20 child's trustee of a trust, whether inter vivos or testamentary,
21 which trust provides for the receipt of the pension benefits to be
22 held and administered for the sole benefit of said physically or
23 mentally disabled child, or if there is no trust, to the child's

1 legally appointed guardian, an amount not to exceed one hundred
2 percent (100%) of the pension. The money paid to the guardian or
3 trustee shall be used solely for the benefit of the disabled child
4 and it shall be reported annually to the State Board. The payment
5 provided shall be calculated after payments have been made to all
6 eligible children as provided in this subsection. If the member
7 does not leave a beneficiary or disabled child as described in this
8 subsection, the accumulated contributions made to the System by the
9 member shall be paid to the estate of the member.

10 C. For purposes of this section, a child shall not be
11 considered disabled if the child is able to pursue a remunerative
12 occupation, with the remuneration being reasonably substantial
13 rather than merely nominal.

14 SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-113, as
15 last amended by Section 14, Chapter 46, 2nd Extraordinary Session,
16 O.S.L. 2006 (11 O.S. Supp. 2006, Section 49-113), is amended to read
17 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 C 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 therefore, 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 Dollars (\$0.00), shall be paid to the
8 member's 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, that upon the death of the firefighter and surviving
4 spouse, if any, said physically or mentally disabled child shall be
5 entitled to have paid to the child's trustee of a trust, whether
6 inter vivos or testamentary, which trust provides for the receipt of
7 the pension benefits to be held and administered for the sole
8 benefit of said physically or mentally disabled child, or if there
9 is no trust, to the child's legally appointed guardian, an amount
10 not to exceed one hundred percent (100%) of said pension. The money
11 so paid to the guardian or trustee shall be used solely for the
12 benefit of the disabled child and it shall be reported annually to
13 the State Board. A child shall not be considered disabled if the
14 child is able to pursue a remunerative occupation, with the
15 remuneration being reasonably substantial rather than merely
16 nominal. The payment so provided shall be calculated after payments
17 have been made to all eligible children as provided in this section;
18 provided further, that beneficiaries now receiving pensions under
19 the provisions of Sections 49-112 or 49-113 of this title shall,
20 upon application to the State Board, thereafter be entitled to a
21 pension equal to the amount which they would have received if this
22 act were in effect at the time the right to said pension accrued.

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

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

1 than one member shall elect which member's benefits he or she will
2 receive.

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

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

1 SECTION 5. AMENDATORY 11 O.S. 2001, Section 49-126, as
2 last amended by Section 7, Chapter 546, O.S.L. 2004 (11 O.S. Supp.
3 2006, Section 49-126), is amended to read as follows:

4 Section 49-126. A. Except as otherwise provided by this
5 section, no portion of said pension shall, either before or after
6 its order of distribution by the State Board to such disabled
7 members of said fire department, or the surviving spouse, alternate
8 payee as defined in subsection B of this section, or guardian of
9 such minor child or children, to the deceased or retired member of
10 such department, be held, seized, taken, subjected to or detained or
11 levied on by virtue of any attachment, execution, injunction, writ
12 interlocutory or other order or decree, or any process or proceeding
13 whatever, issued out of or by any court of this state for the
14 payment or satisfaction, in whole or in part, of any debt, damages,
15 claim, demand or judgment against such member, or his or her
16 surviving spouse, alternate payee, or the guardian of said minor
17 child or children of any deceased member, nor shall said fund or any
18 claim thereto be directly or indirectly assigned and any attempt to
19 assign or transfer the same shall be void; but the funds shall be
20 held, kept, secured and distributed for the purpose of pensioning
21 the persons named in this article, and for no other purpose
22 whatever. Notwithstanding the foregoing, effective August 5, 1997,
23 the State Board may approve any offset of a member's benefit to pay

1 a judgment or settlement against a member for a crime involving the
2 System, for a breach of the member's fiduciary duty to the System,
3 or for funds or monies incorrectly paid to a member or beneficiary
4 by mistake, provided such offset is in accordance with the
5 requirements of Section 401(a)(13) of the Internal Revenue Code of
6 1986, as amended.

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

10 2. The term "qualified domestic order" means an order issued by
11 a district court of this state pursuant to the domestic relation
12 laws of this state which relates to the provision of marital
13 property rights to an alternate payee and which creates or
14 recognizes the existence of the right of an alternate payee and
15 assigns to an alternate payee the right to receive a portion of the
16 benefits payable with respect to a member of the System.

17 3. The term "alternate payee" means any spouse, former spouse,
18 minor or disabled child or children, or other dependent of the
19 member who is recognized by a domestic relations order as having a
20 right to receive benefits payable with respect to a member of the
21 System.

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

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

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

7 6. A qualified domestic order shall clearly specify:

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

18 7. A qualified domestic order meets the requirements of this
19 subsection only if such order:

- 20 a. does not require the System to provide any type or
21 form of benefit, or any option not otherwise provided
22 under state law as relates to the System,

1 b. does not require the System to provide increased
2 benefits, and
3 c. does not require the payment of benefits to an
4 alternate payee which are required to be paid to
5 another alternate payee pursuant to another order
6 previously determined to be a qualified domestic order
7 or an order recognized by the System as a valid order
8 prior to the effective date of this act.

9 8. A qualified domestic order shall not require payment of
10 benefits to an alternate payee prior to the actual retirement date
11 of the related member.

12 9. The alternate payee shall have a right to receive benefits
13 payable to a member of the System under the Oklahoma Firefighters
14 Deferred Option plan provided for pursuant to Section 49-106.1 of
15 this title, but only to the extent such benefits have been credited
16 or paid into the member's Oklahoma Firefighters Deferred Option Plan
17 account during the term of the marriage.

18 10. The obligation of the System to pay an alternate payee
19 pursuant to a qualified domestic order shall cease upon the earlier
20 of the death of the related member or the death of the alternate
21 payee. Upon the death of the alternate payee, the assignment to the
22 alternate payee of the right to receive a portion of the benefits

1 payable with respect to the member shall cease and the payments of
2 benefits to the member shall be reinstated.

3 ~~10.~~ 11. This subsection shall not be subject to the provisions
4 of the Employee Retirement Income Security Act of 1974 (ERISA), 29
5 U.S.C.A. Section 1001, et seq., as amended from time to time, or
6 rules and regulations promulgated thereunder, and court cases
7 interpreting said act.

8 ~~11.~~ 12. The Oklahoma Firefighters Pension and Retirement Board
9 shall promulgate such rules as are necessary to implement the
10 provisions of this subsection.

11 ~~12.~~ 13. An alternate payee who has acquired beneficiary rights
12 pursuant to a valid qualified domestic order must fully comply with
13 all provisions of the rules promulgated by the State Board pursuant
14 to this subsection in order to continue receiving his or her
15 benefit.

16 C. The provisions of subsection A of this section shall not
17 apply to a Child Support Enforcement Division order for a support
18 arrearage pursuant to Section 240.23 of Title 56 of the Oklahoma
19 Statutes and current child support payments made pursuant to a valid
20 court order.

21 D. The provisions of subsection A of this section shall not
22 apply to a federal tax levy made pursuant to Section 6331 of the

1 Internal Revenue Code of 1986, as amended, and the collection by the
2 United States on a judgment resulting from an unpaid tax assessment.

3 SECTION 6. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

7 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated
8 2-15-07 - DO PASS, As Amended and Coauthored.