

HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2320

By: McDaniel (Randy) and
Pittman of the House

and

Anderson of the Senate

COMMITTEE SUBSTITUTE

An Act relating to public retirement systems;
amending 11 O.S. 2011, Sections 49-106.1 and 49-122,
which relate to the Oklahoma Firefighters Pension and
Retirement System; modifying provisions related to
Deferred Retirement Option Plan; prescribing maximum
interest rate on certain account balances; modifying
employee contribution rate; modifying employer
contribution rate; amending 36 O.S. 2011, Section
312.1, which relates to the apportionment of
insurance premium tax revenues; modifying percentage
of revenue apportioned to the Oklahoma Firefighters
Pension and Retirement System; providing an effective
date; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 2011, Section 49-106.1, is
amended to read as follows:

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

9 B. For purposes of this section, creditable service shall
10 include service credit reciprocally recognized pursuant to Sections
11 49-100.1 through 49-100.8 and Sections 49-101, 49-101.1 and 49-101.2
12 of this title but for eligibility purposes only.

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

3 D. When a member begins participation in the Oklahoma
4 Firefighters Deferred Option Plan, the contribution of the member
5 shall cease. The employer contributions shall continue to be paid
6 in accordance with subsection B of Section 49-122 of this title.

7 Employer contributions for members who elect the Oklahoma
8 Firefighters Deferred Option Plan shall be credited equally to the
9 Oklahoma Firefighters Pension and Retirement System and to the
10 member's Oklahoma Firefighters Deferred Option Plan account. The
11 monthly retirement benefits that would have been payable had the
12 member elected to cease employment and receive a service retirement
13 shall be paid into the member's Oklahoma Firefighters Deferred
14 Option Plan account.

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

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

3 b. For any period of time beyond the five-year period
4 authorized by subsection C of this section that the
5 System allows a member to maintain a Deferred
6 Retirement Option Plan account for all accounts in
7 existence prior to July 1, 2012, and for all such
8 accounts created on or after July 1, 2012, the rate of
9 interest upon the account balance shall be seven and
10 five-tenths percent (7.5%) per annum.

11 F. A member in the plan shall receive, at the option of the
12 member, a lump sum payment from the account equal to the payments to
13 the account or an annuity based upon the account of the member or
14 may elect any other method of payment if approved by the Board of
15 Trustees. If a member becomes so physically or mentally disabled
16 while in, or in consequence of, the performance of his or her duty
17 as to prevent the effective performance of his or her duties that
18 the State Board approves an in line of duty disability pension, the
19 payment from the account shall be an in line of duty disability
20 payment. Notwithstanding any other provision contained herein to
21 the contrary, commencement of distributions under the Oklahoma
22 Firefighters Deferred Option Plan shall be no later than the time as
23 set forth in subsection B of Section 49-106 of this title.

1 G. If a member dies while maintaining an account balance in the
2 plan the System shall pay to the designated recipient or recipients
3 of the member, or if there is no designated recipient or if the
4 designated recipient predeceases the member, to the spouse of the
5 member, or if there is no spouse or if the spouse predeceases the
6 member, to the estate of the member a lump sum payment equal to the
7 account balance of the member. If such member was receiving, or
8 eligible to receive, an in line of duty disability pension at the
9 time of his or her death, payment of the account balance shall be an
10 in line of duty disability payment. If a designated recipient is
11 the surviving spouse of the member, the surviving spouse shall
12 receive his or her portion of the account balance of the member
13 pursuant to subsection F of this section. The surviving spouse,
14 whether or not he or she is a designated recipient of the member,
15 may elect to receive his or her portion of the account balance of
16 the member in the same manner as was applicable to the member.

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

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

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

3 2. At the termination date, the monthly pension benefit shall
4 be determined based on earlier attained credited service and on the
5 final average salary as of the back drop date. The member's
6 individual deferred option account shall be credited with an amount
7 equal to the deferred benefit balance, the member shall terminate
8 employment with all participating municipalities as a firefighter,
9 and shall start receiving the member's accrued monthly retirement
10 benefit from the System. Such a member may be reemployed by a
11 participating municipality but only in a position not covered under
12 the System, and receive in-service distributions of such member's
13 accrued monthly retirement benefit from the System. The provisions
14 of subsections B, C, E, F and G of this section shall apply to this
15 subsection. A member shall not participate in the Oklahoma
16 Firefighters Deferred Option Plan pursuant to this subsection if the
17 member has elected to participate in the Oklahoma Firefighters
18 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of
19 this section.

20 I. Certain surviving spouses and members shall be eligible to
21 participate in the Oklahoma Firefighters Deferred Option Plan
22 pursuant to subsection H of this section and this subsection.
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1 1. For purposes of this subsection, the following definitions
2 shall apply:

- 3 a. "back drop election date" means the date the surviving
4 spouse or member elects to commence participation in
5 the Oklahoma Firefighters Deferred Option Plan
6 pursuant to subsection H of this section and this
7 subsection,
- 8 b. "interest" means the actuarial assumed interest rate
9 as certified by the actuary in the yearly evaluation
10 report of the actuary,
- 11 c. "monthly adjustment amount" means the difference
12 between the monthly pension prior to the back drop
13 election and the adjusted monthly pension due to the
14 back drop election,
- 15 d. "back drop pension adjustment amount" means the sum of
16 all the monthly adjustment amounts adjusted for
17 interest from the pension commencement date to the
18 back drop election date, and
- 19 e. "deferred benefit balance adjustment amount" means the
20 interest on the deferred benefit balance from the
21 pension commencement date to the back drop election
22 date.
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1 2. If a member who has more than twenty (20) years of
2 creditable service and is eligible to receive a service retirement
3 pension dies on or after June 4, 2007, and prior to terminating
4 employment, the member's surviving spouse 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 such member's death. Prior to July 1, 2010, the surviving
9 spouse must make any such election within one (1) year from the date
10 of the member's death. Effective July 1, 2010, the surviving spouse
11 must make any such election within ninety (90) days from the date of
12 the member's death. If on or after June 4, 2007, such election is
13 made, the monthly pension such surviving spouse is entitled to
14 receive shall be adjusted in accordance with the provisions of
15 subsection H of this section to account for the member's
16 participation in the Oklahoma Firefighters Deferred Option Plan.
17 The surviving spouse may only make this election if the member has
18 not previously elected to participate in the Oklahoma Firefighters
19 Deferred Option Plan. For purposes of this election, the surviving
20 spouse must have been married to the firefighter for the thirty (30)
21 continuous months preceding the firefighter's death; provided, the
22 surviving spouse of a member who died while in, or as a consequence
23 of, the performance of the member's duty for a participating

1 municipality shall not be subject to the marriage limitation for
2 this election.

3 3. If a member has more than twenty (20) years of creditable
4 service and is eligible for a retirement for disability monthly
5 pension pursuant to Section 49-109 of this title on or after June 4,
6 2007, such member shall be eligible to elect to receive a benefit
7 determined as if the member had elected to participate in the
8 Oklahoma Firefighters Deferred Option Plan, in accordance with
9 subsection H of this section, on the day immediately preceding the
10 date of the member's disability retirement, provided such election
11 is made within two (2) years from the date of the member's
12 disability retirement. The disability monthly pension such member
13 is receiving, or entitled to receive, shall be adjusted in
14 accordance with the provisions of subsection H of this section to
15 account for the member's participation in the Oklahoma Firefighters
16 Deferred Option Plan. The deferred benefit balance such member is
17 entitled to receive shall be reduced by the back drop pension
18 adjustment amount and increased by the deferred benefit balance
19 adjustment amount. The member may only make a back drop election if
20 the deferred benefit balance after the adjustment described in this
21 paragraph is greater than Zero Dollars (\$0.00). The member may only
22 make this election if the member has not previously elected to
23 participate in the Oklahoma Firefighters Deferred Option Plan.

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1 4. If a member has more than twenty (20) years of creditable
2 service and filed a grievance for wrongful termination occurring on
3 or after June 4, 2007, but is not reinstated as an active member,
4 such member shall be eligible to elect to receive a benefit
5 determined as if the member had elected to participate in the
6 Oklahoma Firefighters Deferred Option Plan in accordance with
7 subsection H of this section on the day immediately preceding the
8 date of the member's termination. Such election must be made within
9 two (2) years from the date of the member's termination as an active
10 member and, if the member's case pertaining to the member's
11 termination is on appeal to a court of competent jurisdiction,
12 within such period set by the State Board in its sole discretion.
13 The monthly pension such member is receiving, or entitled to
14 receive, shall be adjusted in accordance with the provisions of
15 subsection H of this section to account for the member's
16 participation in the Oklahoma Firefighters Deferred Option Plan.
17 The deferred benefit balance such member is entitled to receive
18 shall be reduced by the back drop pension adjustment amount and
19 increased by the deferred benefit balance adjustment amount. The
20 member may only make a back drop election if the deferred benefit
21 balance after the adjustment described in this paragraph is greater
22 than Zero Dollars (\$0.00). The member may only make this election

1 if the member has not previously elected to participate in the
2 Oklahoma Firefighters Deferred Option Plan.

3 5. Subparagraphs d and e of paragraph 1 and paragraphs 3 and 4
4 of this subsection are effective June 4, 2007, provided the Internal
5 Revenue Service issues a favorable determination letter for the
6 System which includes the provisions of such subparagraphs and
7 paragraphs without modification or as modified to conform to any
8 changes required by the Internal Revenue Service as part of its
9 determination letter review process. In the event the Internal
10 Revenue Service does not issue such a determination letter which
11 includes the provisions of such subparagraphs or paragraphs without
12 modification or as modified to conform to any changes required by
13 the Internal Revenue Service as part of its determination letter
14 review process, then subparagraphs d and e of paragraph 1 and
15 paragraphs 3 and 4 of this subsection shall be repealed effective
16 June 4, 2007.

17 SECTION 2. AMENDATORY 11 O.S. 2011, Section 49-122, is
18 amended to read as follows:

19 Section 49-122. A. Each municipality having a paid member of a
20 fire department shall deduct monthly from the salary of each member
21 of the fire department of such municipality an amount equal to ~~eight~~
22 ~~percent (8%)~~ nine percent (9%) of the actual paid gross salary of
23 each member of the fire department. The deduction shall be

1 considered the minimum deduction. At the option of the
2 municipality, the municipality may pay all or any part of the
3 member's required contribution. The treasurer of each municipality
4 shall deduct the authorized deductions from the salary of each paid
5 member of the fire department. The treasurer of the municipality
6 shall deposit within ten (10) days from each ending payroll date in
7 the System the amount deducted from the salary of each member of the
8 fire department. Amounts deducted from the salary of a member and
9 not paid to the System after thirty (30) days from each ending
10 payroll date shall be subject to a monthly late charge of one and
11 one-half percent (1 1/2%) of the unpaid balance to be paid by the
12 municipality to the System.

13 Each municipality shall pick up under the provisions of Section
14 414(h) (2) of the Internal Revenue Code of 1986, as amended, and pay
15 the contribution which the member is required by law to make to the
16 System for all compensation earned after December 31, 1988.

17 Although the contributions so picked up are designated as member
18 contributions, such contributions shall be treated as contributions
19 being paid by the municipality in lieu of contributions by the
20 member in determining tax treatment under the Internal Revenue Code
21 of 1986, as amended, and such picked up contributions shall not be
22 includable in the gross income of the member until such amounts are
23 distributed or made available to the member or the beneficiary of

1 the member. The member, by the terms of this System, shall not have
2 any option to choose to receive the contributions so picked up
3 directly and the picked up contributions must be paid by the
4 municipality to the System.

5 Member contributions which are picked up shall be treated in the
6 same manner and to the same extent as member contributions made
7 prior to the date on which member contributions were picked up by
8 the municipality. Member contributions so picked up shall be
9 included in salary for purposes of the System.

10 The municipality shall pay the member contributions from the
11 same source of funds used in paying salary to the member, by
12 effecting an equal cash reduction in gross salary of the member, or
13 by an offset against future salary increases, or by a combination of
14 reduction in gross salary and offset against future salary
15 increases.

16 The treasurer of each municipality shall deduct the picked up
17 contributions from the salary of each paid member of the fire
18 department. The treasurer of the municipality shall deposit monthly
19 in the System the amount picked up from the salary of each member of
20 the fire department.

21 B. Each municipality having a paid member of a fire department
22 shall deposit monthly with the State Board an amount equal to the
23 following:

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1 1. Prior to July 1, 1991, ten percent (10%) of the total actual
2 paid gross salaries of the members of the fire department;

3 2. Beginning July 1, 1991 through June 30, 1992, ten and one-
4 half percent (10 1/2%) of the total actual paid gross salaries of
5 the members of the fire department;

6 3. Beginning July 1, 1992 through June 30, 1993, eleven percent
7 (11%) of the total actual paid gross salaries of the members of the
8 fire department;

9 4. Beginning July 1, 1993 through June 30, 1994, eleven and
10 one-half percent (11 1/2%) of the total actual paid gross salaries
11 of the members of the fire department;

12 5. Beginning July 1, 1994 through June 30, 1995, twelve percent
13 (12%) of the total actual paid gross salaries of the members of the
14 fire department;

15 6. Beginning July 1, 1995 through June 30, 1996, twelve and
16 one-half percent (12 1/2%) of the total actual paid gross salaries
17 of the members of the fire department; ~~and~~

18 7. Beginning July 1, 1996, through June 30, 2012, thirteen
19 percent (13%) of the total actual paid gross salaries of the members
20 of the fire department; and

21 8. Beginning July 1, 2012, and for each fiscal year
22 thereafter, fourteen percent (14%) of the total actual paid gross
23 salaries of the members of the fire department.

1 C. Each county or municipality having a volunteer member of a
2 fire department shall deposit yearly with the State Board Sixty
3 Dollars (\$60.00) for each volunteer member of the department.

4 Provided, the above-mentioned volunteer county or municipal
5 contributions shall be reevaluated by the next scheduled actuarial
6 study and the amounts adjusted so that in a nine-year period of
7 time, the amounts would reflect the actuarial recommendations at
8 that time. Any county or municipality with an income of less than
9 Twenty-five Thousand Dollars (\$25,000.00) to its general fund during
10 a fiscal year shall be exempt from the provisions of this
11 subsection.

12 Any municipality that fails to comply with the provisions of
13 this section shall not be entitled to its proportionate share of the
14 Motor Fuel Excise Tax which is received through the Oklahoma Tax
15 Commission. Any county or municipality may exceed the amount of
16 contribution required by this section.

17 The provisions of this section shall supercede any city charter
18 provision in direct conflict with this section.

19 SECTION 3. AMENDATORY 36 O.S. 2011, Section 312.1, is
20 amended to read as follows:

21 Section 312.1 A. For the fiscal year ending June 30, 2004, the
22 Insurance Commissioner shall report and disburse one hundred percent
23 (100%) of the fees and taxes collected under Section 624 of this
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1 title to the State Treasurer to be deposited to the credit of the
2 Education Reform Revolving Fund created pursuant to Section ~~41.29b~~
3 34.89 of Title 62 of the Oklahoma Statutes. The Insurance
4 Commissioner shall keep an accurate record of all such funds and
5 make an itemized statement and furnish same to the State Auditor and
6 Inspector, as to all other departments of this state. The report
7 shall be accompanied by an affidavit of the Insurance Commissioner
8 or the Chief Clerk of such office certifying to the correctness
9 thereof.

10 B. For the fiscal year beginning July 1, 2006, and for each
11 fiscal year thereafter, the Insurance Commissioner shall apportion
12 an amount of the taxes and fees received from Section 624 of this
13 title, which shall be at least One Million Two Hundred Fifty
14 Thousand Dollars (\$1,250,000.00) each year, but which shall also be
15 computed on an annual basis by the Commissioner as the amount of
16 insurance premium tax revenue loss attributable to the provisions of
17 subsection H of Section 625.1 of this title and increased if
18 necessary to reflect the annual computation, and which shall be
19 apportioned before any other amounts, to the following pension
20 systems and in the following amounts:

21 1. Sixty-five percent (65%) to the Oklahoma Firefighters
22 Pension and Retirement Fund in the manner provided for in Sections
23 49-119, 49-120 and 49-123 of Title 11 of the Oklahoma Statutes;

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1 2. Twenty-six percent (26%) to the Oklahoma Police Pension and
2 Retirement System pursuant to the provisions of Sections 50-101
3 through 50-136 of Title 11 of the Oklahoma Statutes; and

4 3. Nine percent (9%) to the Law Enforcement Retirement Fund.

5 C. After the apportionment required by subsection B of this
6 section, for the fiscal years beginning July 1, 2004, and ending
7 June 30, 2009, the Insurance Commissioner shall report and disburse
8 all of the fees and taxes collected under Section 624 of this title
9 and Section 2204 of this title, and the same are hereby apportioned
10 as follows:

11 1. Thirty-four percent (34%) of the taxes collected on premiums
12 shall be allocated and disbursed for the Oklahoma Firefighters
13 Pension and Retirement Fund, in the manner provided for in Sections
14 49-119, 49-120 and 49-123 of Title 11 of the Oklahoma Statutes;

15 2. Seventeen percent (17%) of the taxes collected on premiums
16 shall be allocated and disbursed to the Oklahoma Police Pension and
17 Retirement System pursuant to the provisions of Sections 50-101
18 through 50-136 of Title 11 of the Oklahoma Statutes;

19 3. Six and one-tenth percent (6.1%) of the taxes collected on
20 premiums shall be allocated and disbursed to the Law Enforcement
21 Retirement Fund; and

22 4. All the balance and remainder of the taxes and fees provided
23 in Section 624 of this title shall be paid to the State Treasurer to
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1 the credit of the General Revenue Fund of the state to provide
2 revenue for general functions of state government. The Insurance
3 Commissioner shall keep an accurate record of all such funds and
4 make an itemized statement and furnish same to the State Auditor and
5 Inspector, as to all other departments of this state. The report
6 shall be accompanied by an affidavit of the Insurance Commissioner
7 or the Chief Clerk of such office certifying to the correctness
8 thereof.

9 D. After the apportionment required by subsection B of this
10 section, for the fiscal year ending June 30, ~~2010~~ 2013, and for each
11 fiscal year thereafter the Insurance Commissioner shall report and
12 disburse all of the fees and taxes collected under Section 624 of
13 this title and Section 2204 of this title, and the same are hereby
14 apportioned as follows:

15 1. ~~Thirty-four percent (34%)~~ Thirty-six percent (36%) of the
16 taxes collected on premiums shall be allocated and disbursed for the
17 Oklahoma Firefighters Pension and Retirement Fund, in the manner
18 provided for in Sections 49-119, 49-120 and 49-123 of Title 11 of
19 the Oklahoma Statutes;

20 2. Fourteen percent (14%) of the taxes collected on premiums
21 shall be allocated and disbursed to the Oklahoma Police Pension and
22 Retirement System pursuant to the provisions of Sections 50-101
23 through 50-136 of Title 11 of the Oklahoma Statutes;

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1 3. Five percent (5%) of the taxes collected on premiums shall
2 be allocated and disbursed to the Law Enforcement Retirement Fund;
3 and

4 4. All the balance and remainder of the taxes and fees provided
5 in Section 624 of this title shall be paid to the State Treasurer to
6 the credit of the General Revenue Fund of the state to provide
7 revenue for general functions of state government. The Insurance
8 Commissioner shall keep an accurate record of all such funds and
9 make an itemized statement and furnish same to the State Auditor and
10 Inspector, as to all other departments of this state. The report
11 shall be accompanied by an affidavit of the Insurance Commissioner
12 or the Chief Clerk of such office certifying to the correctness
13 thereof.

14 E. The disbursements provided for in subsections A, B, C and D
15 of this section shall be made monthly. The Insurance Commissioner
16 shall report annually to the Governor, the Speaker of the House of
17 Representatives, the President Pro Tempore of the Senate and the
18 State Auditor and Inspector, the amounts collected and disbursed
19 pursuant to this section.

20 F. Notwithstanding any other provision of law to the contrary,
21 no tax credit authorized by law enacted on or after July 1, 2008,
22 which may be used to reduce any insurance premium tax liability
23 shall be used to reduce the amount of insurance premium tax revenue
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1 apporportioned to the Oklahoma Firefighters Pension and Retirement
2 System, the Oklahoma Police Pension and Retirement System or the
3 Oklahoma Law Enforcement Retirement System.

4 SECTION 4. This act shall become effective July 1, 2012.

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

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10 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND
11 FINANCIAL SERVICES, dated 02/09/2012 - DO PASS, As Amended and
Coauthored.

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