

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

HOUSE BILL 2825

By: Roberts (Sean)

AS INTRODUCED

An Act relating to public retirement systems; amending 11 O.S. 2011, Section 49-100.1, which relates to the Oklahoma Firefighters Pension and Retirement System; modifying provisions related to membership; authorizing chiefs and deputy chiefs to make certain election regarding membership in 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 49-100.1, is amended to read as follows:

Section 49-100.1 As used in this article:

1. "System" means the Oklahoma Firefighters Pension and Retirement System and all predecessor municipal firefighters pension and retirement systems;

2. "Article" means Article 49 of this title;

3. "State Board" means the Oklahoma Firefighters Pension and Retirement Board;

1 4. "Local board" means the local firefighters pension and
2 retirement boards;

3 5. "Fund" means the Oklahoma Firefighters Pension and
4 Retirement Fund;

5 6. "Member" means all eligible firefighters of a participating
6 municipality or a fire protection district who perform the essential
7 functions of fire suppression, prevention, and life safety duties in
8 a fire department. The term "member" shall include but not be
9 limited to the person serving as fire chief of any participating
10 municipality, provided that a person serving as fire chief of a
11 participating municipality shall meet the age, agility, physical and
12 other eligibility requirements required by law at the time said
13 person becomes a member of the System. A fire chief or deputy chief
14 may make an election not to participate as a member of the System if
15 the election is made in writing and submitted to the System within
16 thirty (30) days of the date upon which the chief or deputy chief is
17 hired by the municipality or within thirty (30) days of the date
18 upon which the fire chief or deputy fire chief is promoted to such
19 position. Effective July 1, 1987, a member does not include a
20 "leased employee". The term "leased employee" means any person
21 (other than an employee of the recipient) who pursuant to an
22 agreement between the recipient and any other person ("leasing
23 organization") has performed services for the recipient (or for the
24 recipient and related persons determined in accordance with Section

1 414(n) (6) of the Internal Revenue Code of 1986, as amended) on a
2 substantially full-time basis for a period of at least one year, and
3 such services are performed under primary direction or control by
4 the recipient. Contributions or benefits provided a leased employee
5 by the leasing organization which are attributable to services
6 performed for the recipient employer shall be treated as provided by
7 the recipient employer. A leased employee shall not be considered
8 an employee of the recipient if the requirements of the safe harbor
9 provisions of Section 414(n) (5) of the Internal Revenue Code of
10 1986, as amended, are satisfied. Effective July 1, 1999, any
11 individual who agrees with the participating municipality that the
12 individual's services are to be performed as a leased employee or an
13 independent contractor shall not be a member regardless of any
14 classification as a common law employee by the Internal Revenue
15 Service or any other governmental agency, or any court of competent
16 jurisdiction;

17 7. "Normal retirement date" means the date at which the member
18 is eligible to receive the unreduced payments of the member's
19 accrued retirement benefit. Such date shall be the first day
20 following the date the member completes twenty (20) years of
21 credited service. If the member's employment continues past the
22 normal retirement date of the member, the actual retirement date of
23 the member shall be the first day following the date the member
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1 terminates employment with more than twenty (20) years of credited
2 service;

3 8. "Credited service" means the period of service used to
4 determine the eligibility for and the amount of benefits payable to
5 a member. Credited service shall consist of the period during which
6 the member participated in the System or the predecessor municipal
7 systems as an active employee in an eligible membership
8 classification, plus any service prior to the establishment of the
9 predecessor municipal systems which was credited under the
10 predecessor municipal systems; provided, however, "credited service"
11 for members from a fire protection district shall not begin accruing
12 before July 1, 1982;

13 9. "Participating municipality" means a municipality, county
14 fire department organized pursuant to subsection D of Section 351 of
15 Title 19 of the Oklahoma Statutes, or fire protection district which
16 is making contributions to the System on behalf of its firefighters;

17 10. "Disability" means the complete inability of the
18 firefighter to perform any and every duty of the firefighter's
19 regular occupation; provided further, that once benefits have been
20 paid for twenty-four (24) months the provisions of Section 49-110 of
21 this title shall apply to the firefighter;

22 11. "Executive Director" means the managing officer of the
23 System employed by the State Board;

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1 12. "Eligible employer" means any municipality with a municipal
2 fire department or a fire protection district with an organized fire
3 department;

4 13. "Entry date" means the date as of which an eligible
5 employer joins the System. The first entry date pursuant to this
6 article shall be January 1, 1981;

7 14. "Final average salary" means the average paid gross salary
8 of the firefighter for normally scheduled hours over the highest
9 salaried thirty (30) consecutive months of the last sixty (60)
10 months of credited service. Gross salary shall not include payment
11 for accumulated sick or annual leave upon termination of employment,
12 any uniform allowances or any other compensation for reimbursement
13 of out-of-pocket expenses. Only salary on which the required
14 contributions have been made may be used in computing the final
15 average salary. Effective January 1, 1988, gross salary shall
16 include any amount of elective salary reduction under Section 125 of
17 the Internal Revenue Code of 1986, as amended. Gross salary shall
18 include any amount of elective salary reduction under Section 457 of
19 the Internal Revenue Code of 1986, as amended, and any amount of
20 nonelective salary reduction under Section 414(h) of the Internal
21 Revenue Code of 1986, as amended. Effective July 1, 1998, for
22 purposes of determining a member's compensation, any contribution by
23 the member to reduce the member's regular cash remuneration under
24 132(f) (4) of the Internal Revenue Code of 1986, as amended, shall be

1 treated as if the member did not make such an election. Only salary
2 on which required contributions have been made may be used in
3 computing final average salary.

4 In addition to other applicable limitations, and notwithstanding
5 any other provision to the contrary, for plan years beginning on or
6 after July 1, 2002, the annual gross salary of each "Noneligible
7 Member" taken into account under the System shall not exceed the
8 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")
9 annual salary limit. The EGTRRA annual salary limit is Two Hundred
10 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for
11 increases in the cost of living in accordance with Section
12 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
13 annual salary limit in effect for a calendar year applies to any
14 period, not exceeding twelve (12) months, over which salary is
15 determined ("determination period") beginning in such calendar year.
16 If a determination period consists of fewer than twelve (12) months,
17 the EGTRRA salary limit will be multiplied by a fraction, the
18 numerator of which is the number of months in the determination
19 period, and the denominator of which is twelve (12). For purposes
20 of this subsection, a "Noneligible Member" is any member who first
21 became a member during a plan year commencing on or after July 1,
22 1996.

23 For plan years beginning on or after July 1, 2002, any reference
24 to the annual salary limit under Section 401(a)(17) of the Internal

1 Revenue Code of 1986, as amended, shall mean the EGTRRA salary limit
2 set forth in this subsection.

3 Effective June 9, 2010, gross salary shall also include gross
4 salary, as described above, for services, but paid by the later of
5 two and one-half (2 1/2) months after a firefighter's severance from
6 employment or the end of the calendar year that includes the date
7 the firefighter terminated employment, if it is a payment that,
8 absent a severance from employment, would have been paid to the
9 firefighter while the firefighter continued in employment with the
10 participating municipality.

11 Effective June 9, 2010, any payments not described above shall
12 not be considered gross salary if paid after severance from
13 employment, even if they are paid by the later of two and one-half
14 (2 1/2) months after the date of severance from employment or the
15 end of the calendar year that includes the date of severance from
16 employment, except payments to an individual who does not currently
17 perform services for the participating municipality by reason of
18 qualified military service within the meaning of Section 414(u)(5)
19 of the Internal Revenue Code of 1986, as amended, to the extent
20 these payments do not exceed the amounts the individual would have
21 received if the individual had continued to perform services for the
22 participating municipality rather than entering qualified military
23 service.

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1 Effective June 9, 2010, back pay, within the meaning of Section
2 1.415(c)-2(g) (8) of the Income Tax Regulations, shall be treated as
3 gross salary for the year to which the back pay relates to the
4 extent the back pay represents wages and compensation that would
5 otherwise be included in this definition.

6 Effective for years beginning after December 31, 2008, gross
7 salary shall also include differential wage payments under Section
8 414(u) (12) of the Internal Revenue Code of 1986, as amended;

9 15. "Accrued retirement benefit" means two and one-half percent
10 (2 1/2%) of the firefighter's final average salary multiplied by the
11 member's years of credited service not to exceed thirty (30) years;

12 16. "Beneficiary" means a member's surviving spouse or any
13 surviving children, including biological and adopted children, at
14 the time of the member's death. The surviving spouse must have been
15 married to the firefighter for the thirty (30) continuous months
16 preceding the firefighter's death provided a surviving spouse of a
17 member who died while in, or as a consequence of, the performance of
18 the member's duty for a participating municipality, shall not be
19 subject to the marriage limitation for survivor benefits. A
20 surviving child of a member shall be a beneficiary until reaching
21 eighteen (18) years of age or twenty-two (22) years of age if the
22 child is enrolled full time and regularly attending a public or
23 private school or any institution of higher education. Any child
24 adopted by a member after the member's retirement shall be a

1 beneficiary only if the child is adopted by the member for the
2 thirty (30) continuous months preceding the member's death. Any
3 child who is adopted by a member after the member's retirement and
4 such member dies accidentally or as a consequence of the performance
5 of the member's duty as a firefighter shall not be subject to the
6 thirty-month adoption requirement. This definition of beneficiary
7 shall be in addition to any other requirement set forth in this
8 article;

9 17. "Accumulated contributions" means the sum of all
10 contributions made by a member to the System and includes both
11 contributions deducted from the compensation of a member and
12 contributions of a member picked up and paid by the participating
13 municipality of the member. Accumulated contributions shall not
14 include any interest on the contributions of the member, interest on
15 any amount contributed by the municipality or state and any amount
16 contributed by the municipality or state; and

17 18. "Limitation year" means the year used in applying the
18 limitations of Section 415 of the Internal Revenue Code of 1986,
19 which year shall be the calendar year.

20 SECTION 2. This act shall become effective July 1, 2012.

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

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THOMAS E. CUMMINS CONSULTING ACTUARY, INC.

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January 17, 2012

Representative Sean Roberts
Room 322

Re: RBH No. 8950

RBH No. 8950 allows a fire chief or deputy fire chief to elect out of participation in the Oklahoma Firefighters Pension and Retirement System.

RBH No. 6254 is a nonfiscal retirement bill as defined by the Oklahoma Pension Legislation Actuarial Analysis Act.

Thomas E. Cummins

Thomas E. Cummins, MAAA