

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 1118

By: Mazzei of the Senate

and

McDaniel (Randy) of the
House

COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Firefighters Pension and Retirement System; amending 11 O.S. 2011, Section 49-100.1, as amended by Section 1, Chapter 364, O.S.L. 2012 (11 O.S. Supp. 2012, Section 49-100.1), which relates to definitions; modifying definition; amending 11 O.S. 2011, Section 49-122, which relates to funding employee and employer funding percentages; modifying percentage of employee deduction; amending 36 O.S. 2011, Section 312.1, which relates to disbursement and appropriation of fees and taxes; updating percentage of taxes collected on premiums; 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, as amended by Section 1, Chapter 364, O.S.L. 2012 (11 O.S. Supp. 2012, Section 49-100.1), is amended to read as follows:

Section 49-100.1. As used in this article:

- 1 1. "System" means the Oklahoma Firefighters Pension and
2 Retirement System and all predecessor municipal firefighters pension
3 and retirement systems;
- 4 2. "Article" means Article 49 of this title;
- 5 3. "State Board" means the Oklahoma Firefighters Pension and
6 Retirement Board;
- 7 4. "Local board" means the local firefighters pension and
8 retirement boards;
- 9 5. "Fund" means the Oklahoma Firefighters Pension and
10 Retirement Fund;
- 11 6. "Member" means all eligible firefighters of a participating
12 municipality or a fire protection district who perform the essential
13 functions of fire suppression, prevention, and life safety duties in
14 a fire department. The term "member" shall include but not be
15 limited to the person serving as fire chief of any participating
16 municipality, provided that a person serving as fire chief of a
17 participating municipality shall meet the age, agility, physical and
18 other eligibility requirements required by law at the time said
19 person becomes a member of the System. Effective July 1, 1987, a
20 member does not include a "leased employee". The term "leased
21 employee" means any person (other than an employee of the recipient)
22 who pursuant to an agreement between the recipient and any other
23 person ("leasing organization") has performed services for the
24 recipient (or for the recipient and related persons determined in

1 accordance with Section 414(n) (6) of the Internal Revenue Code of
2 1986, as amended) on a substantially full-time basis for a period of
3 at least one year, and such services are performed under primary
4 direction or control by the recipient. Contributions or benefits
5 provided a leased employee by the leasing organization which are
6 attributable to services performed for the recipient employer shall
7 be treated as provided by the recipient employer. A leased employee
8 shall not be considered an employee of the recipient if the
9 requirements of the safe harbor provisions of Section 414(n) (5) of
10 the Internal Revenue Code of 1986, as amended, are satisfied.

11 Effective July 1, 1999, any individual who agrees with the
12 participating municipality that the individual's services are to be
13 performed as a leased employee or an independent contractor shall
14 not be a member regardless of any classification as a common law
15 employee by the Internal Revenue Service or any other governmental
16 agency, or any court of competent 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~~ For members whose first
20 participating service occurs prior to July 1, 2013, such date shall
21 be the first day following the date the member completes twenty (20)
22 years of credited service. ~~If~~ For members whose first participating
23 date occurs after July 1, 2013, such date shall be the first day
24 following the date the member completes twenty-two (22) years of

1 credited service. For members whose first participating service
2 occurs prior to July 1, 2013, if the member's employment continues
3 past the normal retirement date of the member, the actual retirement
4 date of the member shall be the first day following the date the
5 member terminates employment with more than twenty (20) years of
6 credited service. For members whose first participating service
7 occurs on or after July 1, 2013, if the member's employment
8 continues past the normal retirement date of the member, the actual
9 retirement date of the member shall be the first day following the
10 date the member terminates employment with more than twenty-two (22)
11 years of credited service;

12 8. "Credited service" means the period of service used to
13 determine the eligibility for and the amount of benefits payable to
14 a member. Credited service shall consist of the period during which
15 the member participated in the System or the predecessor municipal
16 systems as an active employee in an eligible membership
17 classification, plus any service prior to the establishment of the
18 predecessor municipal systems which was credited under the
19 predecessor municipal systems; provided, however, "credited service"
20 for members from a fire protection district shall not begin accruing
21 before July 1, 1982;

22 9. "Participating municipality" means a municipality, county
23 fire department organized pursuant to subsection D of Section 351 of
24 Title 19 of the Oklahoma Statutes, or fire protection district which

1 is making contributions to the System on behalf of its firefighters.
2 All participating municipalities shall appoint a fire chief who
3 shall supervise and administer the fire department;

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

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

11 12. "Eligible employer" means any municipality with a municipal
12 fire department or a fire protection district with an organized fire
13 department;

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

17 14. "Final average salary" means the average paid gross salary
18 of the firefighter for normally scheduled hours over the highest
19 salaried thirty (30) consecutive months of the last sixty (60)
20 months of credited service. Gross salary shall not include payment
21 for accumulated sick or annual leave upon termination of employment,
22 any uniform allowances or any other compensation for reimbursement
23 of out-of-pocket expenses. Only salary on which the required
24 contributions have been made may be used in computing the final

1 average salary. Effective January 1, 1988, gross salary shall
2 include any amount of elective salary reduction under Section 125 of
3 the Internal Revenue Code of 1986, as amended. Gross salary shall
4 include any amount of elective salary reduction under Section 457 of
5 the Internal Revenue Code of 1986, as amended, and any amount of
6 nonelective salary reduction under Section 414(h) of the Internal
7 Revenue Code of 1986, as amended. Effective July 1, 1998, for
8 purposes of determining a member's compensation, any contribution by
9 the member to reduce the member's regular cash remuneration under
10 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be
11 treated as if the member did not make such an election. Only salary
12 on which required contributions have been made may be used in
13 computing final average salary.

14 In addition to other applicable limitations, and notwithstanding
15 any other provision to the contrary, for plan years beginning on or
16 after July 1, 2002, the annual gross salary of each "Noneligible
17 Member" taken into account under the System shall not exceed the
18 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")
19 annual salary limit. The EGTRRA annual salary limit is Two Hundred
20 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for
21 increases in the cost of living in accordance with Section
22 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
23 annual salary limit in effect for a calendar year applies to any
24 period, not exceeding twelve (12) months, over which salary is

1 determined ("determination period") beginning in such calendar year.
2 If a determination period consists of fewer than twelve (12) months,
3 the EGTRRA salary limit will be multiplied by a fraction, the
4 numerator of which is the number of months in the determination
5 period, and the denominator of which is twelve (12). For purposes
6 of this subsection, a "Noneligible Member" is any member who first
7 became a member during a plan year commencing on or after July 1,
8 1996.

9 For plan years beginning on or after July 1, 2002, any reference
10 to the annual salary limit under Section 401(a)(17) of the Internal
11 Revenue Code of 1986, as amended, shall mean the EGTRRA salary limit
12 set forth in this subsection.

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

21 Effective June 9, 2010, any payments not described above shall
22 not be considered gross salary if paid after severance from
23 employment, even if they are paid by the later of two and one-half
24 (2 1/2) months after the date of severance from employment or the

1 end of the calendar year that includes the date of severance from
2 employment, except payments to an individual who does not currently
3 perform services for the participating municipality by reason of
4 qualified military service within the meaning of Section 414(u) (5)
5 of the Internal Revenue Code of 1986, as amended, to the extent
6 these payments do not exceed the amounts the individual would have
7 received if the individual had continued to perform services for the
8 participating municipality rather than entering qualified military
9 service.

10 Effective June 9, 2010, back pay, within the meaning of Section
11 1.415(c)-2(g) (8) of the Income Tax Regulations, shall be treated as
12 gross salary for the year to which the back pay relates to the
13 extent the back pay represents wages and compensation that would
14 otherwise be included in this definition.

15 Effective for years beginning after December 31, 2008, gross
16 salary shall also include differential wage payments under Section
17 414(u) (12) of the Internal Revenue Code of 1986, as amended;

18 15. "Accrued retirement benefit" means two and one-half percent
19 (2 1/2%) of the firefighter's final average salary multiplied by the
20 member's years of credited service not to exceed thirty (30) years;

21 16. "Beneficiary" means a member's surviving spouse or any
22 surviving children, including biological and adopted children, at
23 the time of the member's death. The surviving spouse must have been
24 married to the firefighter for the thirty (30) continuous months

1 preceding the firefighter's death provided a surviving spouse of a
2 member who died while in, or as a consequence of, the performance of
3 the member's duty for a participating municipality, shall not be
4 subject to the marriage limitation for survivor benefits. A
5 surviving child of a member shall be a beneficiary until reaching
6 eighteen (18) years of age or twenty-two (22) years of age if the
7 child is enrolled full time and regularly attending a public or
8 private school or any institution of higher education. Any child
9 adopted by a member after the member's retirement shall be a
10 beneficiary only if the child is adopted by the member for the
11 thirty (30) continuous months preceding the member's death. Any
12 child who is adopted by a member after the member's retirement and
13 such member dies accidentally or as a consequence of the performance
14 of the member's duty as a firefighter shall not be subject to the
15 thirty-month adoption requirement. This definition of beneficiary
16 shall be in addition to any other requirement set forth in this
17 article;

18 17. "Accumulated contributions" means the sum of all
19 contributions made by a member to the System and includes both
20 contributions deducted from the compensation of a member and
21 contributions of a member picked up and paid by the participating
22 municipality of the member. Accumulated contributions shall not
23 include any interest on the contributions of the member, interest on
24

1 any amount contributed by the municipality or state and any amount
2 contributed by the municipality or state; and

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

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

8 Section 49-122. A. Each municipality having a paid member of a
9 fire department shall deduct monthly from the salary of each member
10 of the fire department of such municipality an amount equal to ~~eight~~
11 ~~percent (8%)~~ nine percent (9%) of the actual paid gross salary of
12 each member of the fire department. The deduction shall be
13 considered the minimum deduction. At the option of the
14 municipality, the municipality may pay all or any part of the
15 member's required contribution. The treasurer of each municipality
16 shall deduct the authorized deductions from the salary of each paid
17 member of the fire department. The treasurer of the municipality
18 shall deposit within ten (10) days from each ending payroll date in
19 the System the amount deducted from the salary of each member of the
20 fire department. Amounts deducted from the salary of a member and
21 not paid to the System after thirty (30) days from each ending
22 payroll date shall be subject to a monthly late charge of one and
23 one-half percent (1 1/2%) of the unpaid balance to be paid by the
24 municipality to the System.

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

5 Although the contributions so picked up are designated as member
6 contributions, such contributions shall be treated as contributions
7 being paid by the municipality in lieu of contributions by the
8 member in determining tax treatment under the Internal Revenue Code
9 of 1986, as amended, and such picked up contributions shall not be
10 includable in the gross income of the member until such amounts are
11 distributed or made available to the member or the beneficiary of
12 the member. The member, by the terms of this System, shall not have
13 any option to choose to receive the contributions so picked up
14 directly and the picked up contributions must be paid by the
15 municipality to the System.

16 Member contributions which are picked up shall be treated in the
17 same manner and to the same extent as member contributions made
18 prior to the date on which member contributions were picked up by
19 the municipality. Member contributions so picked up shall be
20 included in salary for purposes of the System.

21 The municipality shall pay the member contributions from the
22 same source of funds used in paying salary to the member, by
23 effecting an equal cash reduction in gross salary of the member, or
24 by an offset against future salary increases, or by a combination of

1 reduction in gross salary and offset against future salary
2 increases.

3 The treasurer of each municipality shall deduct the picked up
4 contributions from the salary of each paid member of the fire
5 department. The treasurer of the municipality shall deposit monthly
6 in the System the amount picked up from the salary of each member of
7 the fire department.

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

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

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

16 3. Beginning July 1, 1992 through June 30, 1993, eleven percent
17 (11%) of the total actual paid gross salaries of the members of the
18 fire department;

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

22 5. Beginning July 1, 1994 through June 30, 1995, twelve percent
23 (12%) of the total actual paid gross salaries of the members of the
24 fire department;

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

4 7. Beginning July 1, 1996 through June 30, 2013, thirteen
5 percent (13%) of the total actual paid gross salaries of the members
6 of the fire department; and

7 8. Beginning July 1, 2013, fourteen percent (14%) of the total
8 actual paid gross salaries of the members of the fire department.

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

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

20 Any municipality that fails to comply with the provisions of
21 this section shall not be entitled to its proportionate share of the
22 Motor Fuel Excise Tax which is received through the Oklahoma Tax
23 Commission. Any county or municipality may exceed the amount of
24 contribution required by this section.

1 The provisions of this section shall ~~supercede~~ supersede any
2 city charter provision in direct conflict with this section.

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

5 Section 312.1. A. For the fiscal year ending June 30, 2004,
6 the Insurance Commissioner shall report and disburse one hundred
7 percent (100%) of the fees and taxes collected under Section 624 of
8 this title to the State Treasurer to be deposited to the credit of
9 the Education Reform Revolving Fund created pursuant to Section
10 ~~41.29b~~ 34.89 of Title 62 of the Oklahoma Statutes. The Insurance
11 Commissioner shall keep an accurate record of all such funds and
12 make an itemized statement and furnish same to the State Auditor and
13 Inspector, as to all other departments of this state. The report
14 shall be accompanied by an affidavit of the Insurance Commissioner
15 or the Chief Clerk of such office certifying to the correctness
16 thereof.

17 B. For the fiscal year beginning July 1, 2006, and for each
18 fiscal year thereafter, the Insurance Commissioner shall apportion
19 an amount of the taxes and fees received from Section 624 of this
20 title, which shall be at least One Million Two Hundred Fifty
21 Thousand Dollars (\$1,250,000.00) each year, but which shall also be
22 computed on an annual basis by the Commissioner as the amount of
23 insurance premium tax revenue loss attributable to the provisions of
24 subsection H of Section 625.1 of this title and increased if

1 necessary to reflect the annual computation, and which shall be
2 apportioned before any other amounts, to the following pension
3 systems and in the following amounts:

4 1. Sixty-five percent (65%) to the Oklahoma Firefighters
5 Pension and Retirement Fund in the manner provided for in Sections
6 49-119, 49-120 and 49-123 of Title 11 of the Oklahoma Statutes;

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

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

11 C. After the apportionment required by subsection B of this
12 section, for the fiscal years beginning July 1, 2004, and ending
13 June 30, 2009, the Insurance Commissioner shall report and disburse
14 all of the fees and taxes collected under Section 624 of this title
15 and Section 2204 of this title, and the same are hereby apportioned
16 as follows:

17 1. Thirty-four percent (34%) of the taxes collected on premiums
18 shall be allocated and disbursed for the Oklahoma Firefighters
19 Pension and Retirement Fund, in the manner provided for in Sections
20 49-119, 49-120 and 49-123 of Title 11 of the Oklahoma Statutes;

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

1 3. Six and one-tenth percent (6.1%) of the taxes collected on
2 premiums shall be allocated and disbursed to the Law Enforcement
3 Retirement Fund; 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 D. After the apportionment required by subsection B of this
15 section, for the fiscal year ending June 30, 2010, and for each
16 fiscal year thereafter the Insurance Commissioner shall report and
17 disburse all of the fees and taxes collected under Section 624 of
18 this title and Section 2204 of this title, and the same are hereby
19 apportioned as follows:

20 1. ~~Thirty-four percent (34%)~~ Thirty-eight percent (38%) of the
21 taxes collected on premiums shall be allocated and disbursed for the
22 Oklahoma Firefighters Pension and Retirement Fund, in the manner
23 provided for in Sections 49-119, 49-120 and 49-123 of Title 11 of
24 the Oklahoma Statutes;

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

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

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

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

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

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

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