

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 3329

By: Sanders

COMMITTEE SUBSTITUTE

An Act relating to public retirement systems; amending 62 O.S. 2011, Section 3103, which relates to the Oklahoma Pension Legislation Actuarial Analysis Act; modifying definition; amending 11 O.S. 2011, Sections 49-106.1, as last amended by Section 3, Chapter 281, O.S.L. 2014 and 49-135, as last amended by Section 1, Chapter 134, O.S.L. 2015 (11 O.S. Supp. 2017, Sections 49-106.1 and 49-135), which relate to volunteer firefighting services; modifying provisions related to Deferred Retirement Option Plan; modifying provisions related to certain volunteer services; providing immunity for Oklahoma Firefighters Pension and Retirement System from certain claims; providing for waiver with respect to disability benefits; and providing effective dates.

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

SECTION 1. AMENDATORY 62 O.S. 2011, Section 3103, is amended to read as follows:

Section 3103. As used in the Oklahoma Pension Legislation Actuarial Analysis Act:

1 1. "Amendment" means any amendment, including a substitute
2 bill, made to a retirement bill by any committee of the House or
3 Senate, any conference committee of the House or Senate or by the
4 House or Senate;

5 2. "RB number" means that number preceded by the letters "RB"
6 assigned to a retirement bill by the respective staffs of the
7 Oklahoma State Senate and the Oklahoma House of Representatives when
8 the respective staff office prepares a retirement bill for a member
9 of the Legislature;

10 3. "Legislative Actuary" means the firm or entity that enters
11 into a contract with the Legislative Service Bureau pursuant to
12 Section 452.15 of Title 74 of the Oklahoma Statutes to provide the
13 actuarial services and other duties provided for in the Oklahoma
14 Pension Legislation Actuarial Analysis Act;

15 4. "Nonfiscal amendment" means an amendment to a retirement
16 bill having a fiscal impact, which amendment does not change any
17 factor of an actuarial investigation specified in subsection A of
18 Section 3109 of this title;

19 5. "Nonfiscal retirement bill" means a retirement bill which
20 does not affect the cost or funding factors of a retirement system
21 or a retirement bill which affects such factors only in a manner
22 which ~~does not~~:

- 23 a. does not grant a benefit increase under the retirement
24 system affected by the bill,

- 1 b. does not create an actuarial accrued liability for or
2 increase the actuarial accrued liability of the
3 retirement system affected by the bill, ~~or~~
4 c. does not increase the normal cost of the retirement
5 system affected by the bill except as otherwise
6 provided by subparagraph a of this paragraph, or
7 d. authorizes a person to perform volunteer firefighter
8 services according to the requirements of Section 49-
9 135 of Title 11 of the Oklahoma Statutes and the
10 provisions of Section 49-106.1 of Title 11 of the
11 Oklahoma Statutes with respect to the Oklahoma
12 Firefighters Deferred Option Retirement Plan.

13 A nonfiscal retirement bill shall include any retirement bill that
14 has as its sole purpose the appropriation or distribution or
15 redistribution of monies in some manner to a retirement system for
16 purposes of reducing the unfunded liability of such system or the
17 earmarking of a portion of the revenue from a tax to a retirement
18 system or increasing the percentage of the revenue earmarked from a
19 tax to a retirement system.

20 6. "Reduction in cost amendment" means an amendment to a
21 retirement bill having a fiscal impact which reduces the cost of the
22 bill as such cost is determined by the actuarial investigation for
23 the bill prepared pursuant to Section 3109 of this title;
24

1 7. "Retirement bill" means any bill or joint resolution
2 introduced or any bill or joint resolution amended by a member of
3 the Oklahoma Legislature which creates or amends any law directly
4 affecting a retirement system. A retirement bill shall not mean a
5 bill or resolution that impacts the revenue of any state tax in
6 which a portion of the revenue generated from such tax is earmarked
7 for the benefit of a retirement system;

8 8. "Retirement bill having a fiscal impact" means any
9 retirement bill creating or establishing a retirement system and any
10 other retirement bill other than a nonfiscal retirement bill; and

11 9. "Retirement system" means the Teachers' Retirement System of
12 Oklahoma, the Oklahoma Public Employees Retirement System, the
13 Uniform Retirement System for Justices and Judges, the Oklahoma
14 Firefighters Pension and Retirement System, the Oklahoma Police
15 Pension and Retirement System, the Oklahoma Law Enforcement
16 Retirement System, or a retirement system established after January
17 1, 2006.

18 SECTION 2. AMENDATORY 11 O.S. 2011, Section 49-106.1, as
19 last amended by Section 3, Chapter 281, O.S.L. 2014 (11 O.S. Supp.
20 2017, Section 49-106.1), is amended to read as follows:

21 Section 49-106.1 A. In lieu of terminating employment and
22 accepting a service retirement pension pursuant to Sections 49-101
23 and 49-106 of this title, any member of the Oklahoma Firefighters
24 Pension and Retirement System serving as an active firefighter in a

1 fire department of a participating municipality who has not less
2 than twenty (20) years of creditable service, or any member of the
3 Oklahoma Firefighters Pension and Retirement System whose first
4 employment with a participating employer of the System occurs on or
5 after November 1, 2013, and who has not less than twenty-two (22)
6 years of creditable service and who is eligible to receive a service
7 retirement pension may elect to participate in the Oklahoma
8 Firefighters Deferred Option Plan and defer the receipts of benefits
9 in accordance with the provisions of this section.

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

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

1 member's accrued monthly retirement benefit from the System. The
2 provisions of this subsection shall not prohibit a member from
3 performing volunteer services as authorized by Section 49-106 of
4 this title.

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

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

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

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

1 3. Effective November 1, 2013, the Oklahoma Firefighters
2 Deferred Option Plan account for a member whose first service with a
3 participating municipality of the System occurs on or after November
4 1, 2013, and who participates for the first time in the Oklahoma
5 Firefighters Deferred Option Plan on or after November 1, 2013, and
6 has completed active participation in the Oklahoma Firefighters
7 Deferred Option Plan, shall earn interest at a rate equal to the
8 actual rate of return of the investment portfolio of the System,
9 less one (1) percentage point to offset administrative costs of the
10 System as determined by the System.

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 and a
24 member whose first service with a participating municipality of the

1 System occurs on or after November 1, 2013, and who participates for
2 the first time in the Oklahoma Firefighters Deferred Option Plan on
3 or after November 1, 2013, must receive a distribution of the entire
4 remaining balance in the member's Oklahoma Firefighters Deferred
5 Option Plan account no later than April 1 of the calendar year
6 following the later of:

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

9 2. The actual retirement date of the member.

10 G. If a member dies while maintaining an account balance in the
11 plan the System shall pay to the designated recipient or recipients
12 of the member, or if there is no designated recipient or if the
13 designated recipient predeceases the member, to the spouse of the
14 member, or if there is no spouse or if the spouse predeceases the
15 member, to the estate of the member a lump-sum payment equal to the
16 account balance of the member. If such member was receiving, or
17 eligible to receive, an in-line-of-duty disability pension at the
18 time of his or her death, payment of the account balance shall be an
19 in-line-of-duty disability payment. If a designated recipient is
20 the surviving spouse of the member, the surviving spouse shall
21 receive his or her portion of the account balance of the member
22 pursuant to subsection F of this section. The surviving spouse,
23 whether or not he or she is a designated recipient of the member,
24

1 may elect to receive his or her portion of the account balance of
2 the member in the same manner as was applicable to the member.

3 H. In lieu of participating in the Oklahoma Firefighters
4 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of
5 this section, a member may elect to participate in the Oklahoma
6 Firefighters Deferred Option Plan pursuant to this subsection as
7 follows:

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

10 a. "back drop date" means the member's normal retirement
11 date or the date five (5) years before the member
12 elects to participate in the Oklahoma Firefighters
13 Deferred Option Plan, whichever date is later,

14 b. "termination date" means the date the member elects to
15 participate in the Oklahoma Firefighters Deferred
16 Option Plan pursuant to this subsection, and the date
17 the member terminates employment with all
18 participating municipalities as an active firefighter,

19 c. "earlier attained credited service" means the credited
20 service earned by a member as of the back drop date,
21 and

22 d. "deferred benefit balance" means all monthly
23 retirement benefits that would have been payable had
24 the member elected to cease employment on the back

1 drop date and receive a service retirement from the
2 back drop date to the termination date, all the
3 member's contributions and one-half (1/2) of the
4 employer contributions from the back drop date to the
5 termination date, with interest based on how the
6 benefit would have accumulated on a compound annual
7 basis as if the member had participated in the
8 Oklahoma Firefighters Deferred Option Plan pursuant to
9 subsections A, B, C, D, E and F of this section from
10 the back drop date to the termination date; and

11 2. At the termination date, the monthly pension benefit shall
12 be determined based on earlier attained credited service and on the
13 final average salary as of the back drop date. The member's
14 individual deferred option account shall be credited with an amount
15 equal to the deferred benefit balance, the member shall terminate
16 employment with all participating municipalities as a firefighter,
17 and shall start receiving the member's accrued monthly retirement
18 benefit from the System. Such a member may be reemployed by a
19 participating municipality but only in a position not covered under
20 the System, and receive in-service distributions of such member's
21 accrued monthly retirement benefit from the System; provided, the
22 provisions of this subsection shall not prohibit a member from
23 performing volunteer services as authorized by Section 49-106 of
24 this title. The provisions of subsections B, C, E, F and G of this

1 section shall apply to this subsection. A member shall not
2 participate in the Oklahoma Firefighters Deferred Option Plan
3 pursuant to this subsection if the member has elected to participate
4 in the Oklahoma Firefighters Deferred Option Plan pursuant to
5 subsections A, B, C, D, E and F of this section.

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

9 1. For purposes of this subsection, the following definitions
10 shall apply:

- 11 a. "back drop election date" means the date the surviving
12 spouse or member elects to commence participation in
13 the Oklahoma Firefighters Deferred Option Plan
14 pursuant to subsection H of this section and this
15 subsection,
- 16 b. "interest" means the actuarial assumed interest rate
17 as certified by the actuary in the yearly evaluation
18 report of the actuary,
- 19 c. "monthly adjustment amount" means the difference
20 between the monthly pension prior to the back drop
21 election and the adjusted monthly pension due to the
22 back drop election,
- 23 d. "back drop pension adjustment amount" means the sum of
24 all the monthly adjustment amounts adjusted for

1 interest from the pension commencement date to the
2 back drop election date, and

3 e. "deferred benefit balance adjustment amount" means the
4 interest on the deferred benefit balance from the
5 pension commencement date to the back drop election
6 date.

7 2. If a member who has more than twenty (20) years of
8 creditable service and is eligible to receive a service, or a member
9 of the Oklahoma Firefighters Pension and Retirement System whose
10 first employment with a participating employer of the System occurs
11 on or after November 1, 2013, and such member has more than twenty-
12 two (22) years of creditable service, retirement pension dies on or
13 after June 4, 2007, and prior to terminating employment, the
14 member's surviving spouse shall be eligible to elect to receive a
15 benefit determined as if the member had elected to participate in
16 the Oklahoma Firefighters Deferred Option Plan in accordance with
17 subsection H of this section on the day immediately preceding such
18 member's death. Prior to July 1, 2010, the surviving spouse must
19 make any such election within one (1) year from the date of the
20 member's death. Effective July 1, 2010, the surviving spouse must
21 make any such election within ninety (90) days from the date of the
22 member's death. If on or after June 4, 2007, such election is made,
23 the monthly pension such surviving spouse is entitled to receive
24 shall be adjusted in accordance with the provisions of subsection H

1 of this section to account for the member's participation in the
2 Oklahoma Firefighters Deferred Option Plan. The surviving spouse
3 may only make this election if the member has not previously elected
4 to participate in the Oklahoma Firefighters Deferred Option Plan.
5 For purposes of this election, the surviving spouse must have been
6 married to the firefighter for the thirty (30) continuous months
7 preceding the firefighter's death; provided, the surviving spouse of
8 a member who died while in, or as a consequence of, the performance
9 of the member's duty for a participating municipality shall not be
10 subject to the marriage limitation for this election.

11 3. If a member has more than twenty (20) years of creditable
12 service, or a member of the Oklahoma Firefighters Pension and
13 Retirement System whose first employment with a participating
14 employer of the System occurs on or after November 1, 2013, and such
15 member has more than twenty-two (22) years of creditable service and
16 is eligible to receive a service retirement pension, and is eligible
17 for a retirement for disability monthly pension pursuant to Section
18 49-109 of this title on or after June 4, 2007, such member shall be
19 eligible to elect to receive a benefit determined as if the member
20 had elected to participate in the Oklahoma Firefighters Deferred
21 Option Plan, in accordance with subsection H of this section, on the
22 day immediately preceding the date of the member's disability
23 retirement, provided such election is made within two (2) years from
24 the date of the member's disability retirement. The disability

1 monthly pension such member is receiving, or entitled to receive,
2 shall be adjusted in accordance with the provisions of subsection H
3 of this section to account for the member's participation in the
4 Oklahoma Firefighters Deferred Option Plan. The deferred benefit
5 balance such member is entitled to receive shall be reduced by the
6 back drop pension adjustment amount and increased by the deferred
7 benefit balance adjustment amount. The member may only make a back
8 drop election if the deferred benefit balance after the adjustment
9 described in this paragraph is greater than Zero Dollars (\$0.00).
10 The member may only make this election if the member has not
11 previously elected to participate in the Oklahoma Firefighters
12 Deferred Option Plan.

13 4. If a member has more than twenty (20) years of creditable
14 service, or a member of the Oklahoma Firefighters Pension and
15 Retirement System whose first employment with a participating
16 employer of the System occurs on or after November 1, 2013, and such
17 member has more than twenty-two (22) years of creditable service and
18 is eligible to receive a service retirement pension, and filed a
19 grievance for wrongful termination occurring on or after June 4,
20 2007, or is not a member of a collective bargaining organization as
21 a firefighter, is involuntarily terminated and is seeking to have
22 his or her position as a firefighter reinstated through a legal
23 process, but is not reinstated as an active member, such member
24 shall be eligible to elect to receive a benefit determined as if the

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

20 5. Subparagraphs d and e of paragraph 1 and paragraphs 3 and 4
21 of this subsection are effective June 4, 2007, provided the Internal
22 Revenue Service issues a favorable determination letter for the
23 System which includes the provisions of such subparagraphs and
24 paragraphs without modification or as modified to conform to any

changes required by the Internal Revenue Service as part of its determination letter review process. In the event the Internal Revenue Service does not issue such a determination letter which includes the provisions of such subparagraphs or paragraphs without modification or as modified to conform to any changes required by the Internal Revenue Service as part of its determination letter review process, then subparagraphs d and e of paragraph 1 and paragraphs 3 and 4 of this subsection shall be repealed effective June 4, 2007.

SECTION 3. AMENDATORY 11 O.S. 2011, Section 49-135, as last amended by Section 1, Chapter 134, O.S.L. 2015 (11 O.S. Supp. 2017, Section 49-135), is amended to read as follows:

Section 49-135. A. No person shall be employed in a fire department who has reached the age of forty-five (45) years, unless it appears he or she shall become eligible for retirement at the age of sixty-five (65) years, or at the age of sixty-seven (67) years for a firefighter whose first service with a participating employer of the System occurs on or after November 1, 2013, or unless he or she be retired from a municipal fire department in the State of Oklahoma. This section shall not apply to professional engineers, or to persons employed as technical specialists on a temporary basis. The State Board shall be authorized to establish the maximum age, within the limits herein prescribed, over which an applicant may not be considered for initial employment, but no person shall be

1 prohibited from making application for reemployment and having such
2 reemployment application considered merely because of his or her
3 age, provided that such person be under the age of forty-five (45)
4 years, and provided further, that such reemployment shall be with
5 the consent of the fire chief of such municipality.

6 B. ~~On or after the effective date of this act, a~~ A person who
7 performs volunteer services as a firefighter, who has attained the
8 age of forty-five (45) or more years as of the first date such
9 volunteer services are performed, for a municipality or a county,
10 shall not be eligible to be ~~a~~ an active member of the Oklahoma
11 Firefighters Pension and Retirement System for any purpose, shall
12 not be eligible for any benefit payable by the System, other than
13 the receipt of a benefit resulting from service as a paid
14 firefighter or a volunteer firefighter performed prior to the date
15 of volunteer services authorized by this subsection and which is
16 otherwise lawfully payable to a retired member of the System, and
17 shall not receive any form of service credit from the System
18 resulting from such volunteer services.

19 C. The System shall not be liable for any form of disability
20 benefit to a person who performs volunteer services authorized by
21 subsection B of this section resulting from any injury or other
22 condition alleged to have resulted from the performance of such
23 volunteer services. A person performing volunteer services
24 authorized by subsection B of this section shall be deemed to have

1 waived any claim to disability benefits from the System with respect
2 to such volunteer services and no person may recover any disability
3 benefit or other benefit from the System resulting from any injury
4 or other condition alleged to arise from the performance of such
5 volunteer services. The provisions of this subsection shall be an
6 affirmative and absolute defense to any claim or cause of action
7 asserted by or on behalf of a person performing volunteer services
8 as described by subsection B of this section.

9 D. The person responsible for decisions regarding the
10 performance of firefighting services having jurisdiction, which in
11 the absence of any other requirement to the contrary shall be the
12 Fire Chief, shall make the final determination on applicants for
13 positions that would involve the performance of volunteer
14 firefighting services if the applicant is over the age of forty-five
15 (45) years based on local rules, regulations, ordinances, guidelines
16 and standard operating procedures.

17 SECTION 4. Section 1 of this act shall become effective October
18 1, 2018.

19 SECTION 5. Sections 2 and 3 of this act shall become effective
20 November 1, 2018.

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