

1 ENGROSSED HOUSE
2 BILL NO. 2278

By: West (Josh) of the House

3 and

4 Rosino of the Senate
5
6

7 An Act relating to public retirement systems;
8 amending 11 O.S. 2011, Sections 49-106 and 49-106.1,
9 as last amended by Section 3, Chapter 281, O.S.L.
10 2014 (11 O.S. Supp. 2020, Section 49-106.1), which
11 relate to the Oklahoma Firefighters Pension and
12 Retirement System; modifying distribution
13 requirements; and declaring an emergency.

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

15 SECTION 1. AMENDATORY 11 O.S. 2011, Section 49-
16 106, is amended to read as follows:

17 Section 49-106. A. Any firefighter who reaches the
18 firefighter's normal retirement date shall be entitled, upon written
19 request, to retire from such service and be paid from the System a
20 monthly pension equal to the member's accrued retirement benefit;
21 provided, that the pension shall cease during any period of time the
22 member may thereafter serve for compensation in any municipal fire
23 department in the state. If such a member is reemployed by a
24 participating municipality in a position which is not covered by the

1 System, retirement shall also include receipt by such member of in-
2 service distributions from the System.

3 B. With respect to distributions under the System made for
4 calendar years beginning on or after January 1, 2005, the System
5 shall apply the minimum distribution incidental benefit
6 requirements, incidental benefit requirements, and minimum
7 distribution requirements of Section 401(a)(9) of the Internal
8 Revenue Code of 1986, as amended, in accordance with the final
9 regulations under Section 401(a)(9) of the Internal Revenue Code of
10 1986, as amended, ~~which were issued in April 2002 and June 2004~~
11 including Treasury Regulations Sections 1.401(a)(9)-1 through
12 1.401(a)(9)-9; provided, however, that for distributions required to
13 be made after December 31, 2019, for individuals who attain seventy
14 and one-half (70 1/2) years of age after December 31, 2019, such
15 distributions shall take into account that age 70 1/2 was stricken
16 and age 72 was inserted in Section 401(a)(9)(B)(iv)(I), Section
17 401(a)(9)(C)(i)(I) and Section 401(a)(9)(C)(ii)(I) of the Internal
18 Revenue Code of 1986, as amended, notwithstanding any provision of
19 the System to the contrary. With respect to distributions under the
20 System made for calendar years beginning on or after January 1,
21 2001, through December 31, 2004, the System shall apply the minimum
22 distribution requirements and incidental benefit requirements of
23 Section 401(a)(9) of the Internal Revenue Code of 1986, as amended,
24 in accordance with the regulations under Section 401(a)(9) of the

1 Internal Revenue Code of 1986, as amended, which were proposed in
2 January 2001, notwithstanding any provision of the System to the
3 contrary. Effective July 1, 1989, notwithstanding any other
4 provision contained herein to the contrary, in no event shall
5 commencement of distribution of the accrued retirement benefit of a
6 member be delayed beyond April 1 of the calendar year following the
7 later of:

8 1. The calendar year in which the member reaches seventy and
9 one-half (70 1/2) years of age for a member who attains age seventy
10 and one-half (70 1/2) before January 1, 2020, or effective for
11 distributions required to be made after December 31, 2019, the
12 calendar year in which the member reaches seventy-two (72) years of
13 age for an individual who attains age seventy and one-half (70 1/2)
14 after December 31, 2019; or

15 2. The actual retirement date of the member.

16 Effective September 8, 2009, notwithstanding anything to the
17 contrary of the System, the System, which is a governmental plan
18 (within the meaning of Section 414(d) of the Internal Revenue Code
19 of 1986, as amended) is treated as having complied with Section
20 401(a)(9) of the Internal Revenue Code of 1986, as amended, for all
21 years to which Section 401(a)(9) of the Internal Revenue Code of
22 1986, as amended, applies to the System if the System complies with
23 a reasonable and good-faith interpretation of Section 401(a)(9) of
24 the Internal Revenue Code of 1986, as amended.

1 C. Any member or beneficiary eligible to receive a monthly
2 benefit from the System may make an election to waive all or a
3 portion of monthly benefits.

4 D. If the requirements of Section 49-106.5 of this title are
5 satisfied, a member who, by reason of attainment of normal
6 retirement date or age, is separated from service as a public safety
7 officer with the member's participating municipality, may elect to
8 have payment made directly to the provider for qualified health
9 insurance premiums by deduction from his or her monthly pension
10 payment, after December 31, 2006, in accordance with Section 402(1)
11 of the Internal Revenue Code of 1986, as amended.

12 SECTION 2. AMENDATORY 11 O.S. 2011, Section 49-106.1, as
13 last amended by Section 3, Chapter 281, O.S.L. 2014 (11 O.S. Supp.
14 2020, Section 49-106.1), is amended to read as follows:

15 Section 49-106.1 A. In lieu of terminating employment and
16 accepting a service retirement pension pursuant to Sections 49-101
17 and 49-106 of this title, any member of the Oklahoma Firefighters
18 Pension and Retirement System serving as an active firefighter in a
19 fire department of a participating municipality who has not less
20 than twenty (20) years of creditable service, or any member of the
21 Oklahoma Firefighters Pension and Retirement System whose first
22 employment with a participating employer of the System occurs on or
23 after November 1, 2013, and who has not less than twenty-two (22)
24 years of creditable service and who is eligible to receive a service

1 retirement pension may elect to participate in the Oklahoma
2 Firefighters Deferred Option Plan and defer the receipts of benefits
3 in accordance with the provisions of this section.

4 B. For purposes of this section, creditable service shall
5 include service credit reciprocally recognized pursuant to Sections
6 49-100.1 through 49-100.8 and Sections 49-101, 49-101.1 and 49-101.2
7 of this title but for eligibility purposes only.

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

20 D. When a member begins participation in the Oklahoma
21 Firefighters Deferred Option Plan, the contribution of the member
22 shall cease. The employer contributions shall continue to be paid
23 in accordance with subsection B of Section 49-122 of this title.
24 Employer contributions for members who elect the Oklahoma

1 Firefighters Deferred Option Plan shall be credited equally to the
2 Oklahoma Firefighters Pension and Retirement System and to the
3 member's Oklahoma Firefighters Deferred Option Plan account. The
4 monthly retirement benefits that would have been payable had the
5 member elected to cease employment and receive a service retirement
6 shall be paid into the member's Oklahoma Firefighters Deferred
7 Option Plan account.

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

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

16 3. Effective November 1, 2013, the Oklahoma Firefighters
17 Deferred Option Plan account for a member whose first service with a
18 participating municipality of the System occurs on or after November
19 1, 2013, and who participates for the first time in the Oklahoma
20 Firefighters Deferred Option Plan on or after November 1, 2013, and
21 has completed active participation in the Oklahoma Firefighters
22 Deferred Option Plan, shall earn interest at a rate equal to the
23 actual rate of return of the investment portfolio of the System,
24

1 less one (1) percentage point to offset administrative costs of the
2 System as determined by the System.

3 F. A member in the plan shall receive, at the option of the
4 member, a lump-sum payment from the account equal to the payments to
5 the account or an annuity based upon the account of the member or
6 may elect any other method of payment if approved by the Board of
7 Trustees. If a member becomes so physically or mentally disabled
8 while in, or in consequence of, the performance of his or her duty
9 as to prevent the effective performance of his or her duties that
10 the State Board approves an in-line-of-duty disability pension, the
11 payment from the account shall be an in-line-of-duty disability
12 payment. Notwithstanding any other provision contained herein to
13 the contrary, commencement of distributions under the Oklahoma
14 Firefighters Deferred Option Plan shall be no later than the time as
15 set forth in subsection B of Section 49-106 of this title and a
16 member whose first service with a participating municipality of the
17 System occurs on or after November 1, 2013, and who participates for
18 the first time in the Oklahoma Firefighters Deferred Option Plan on
19 or after November 1, 2013, must receive a distribution of the entire
20 remaining balance in the member's Oklahoma Firefighters Deferred
21 Option Plan account no later than April 1 of the calendar year
22 following the later of:

23 1. The calendar year in which the member reaches seventy and
24 one-half (70 1/2) years of age for a member who attains age seventy

1 and one-half (70 1/2) before January 1, 2020, or effective for
2 distributions required to be made after December 31, 2019, the
3 calendar year in which the member reaches seventy-two (72) years of
4 age for an individual who attains age seventy and one-half (70 1/2)
5 after December 31, 2019; or

6 2. The actual retirement date of the member.

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

23 H. In lieu of participating in the Oklahoma Firefighters
24 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of

1 this section, a member may elect to participate in the Oklahoma
2 Firefighters Deferred Option Plan pursuant to this subsection as
3 follows:

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

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

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

15 c. "earlier attained credited service" means the credited
16 service earned by a member as of the back drop date,
17 and

18 d. "deferred benefit balance" means all monthly
19 retirement benefits that would have been payable had
20 the member elected to cease employment on the back
21 drop date and receive a service retirement from the
22 back drop date to the termination date, all the
23 member's contributions and one-half (1/2) of the
24 employer contributions from the back drop date to the

1 termination date, with interest based on how the
2 benefit would have accumulated on a compound annual
3 basis as if the member had participated in the
4 Oklahoma Firefighters Deferred Option Plan pursuant to
5 subsections A, B, C, D, E and F of this section from
6 the back drop date to the termination date; and

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

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

4 1. For purposes of this subsection, the following definitions
5 shall apply:

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

1 pension commencement date to the back drop election
2 date.

3 2. If a member who has more than twenty (20) years of
4 creditable service and is eligible to receive a service, or a member
5 of the Oklahoma Firefighters Pension and Retirement System whose
6 first employment with a participating employer of the System occurs
7 on or after November 1, 2013, and such member has more than twenty-
8 two (22) years of creditable service, retirement pension dies on or
9 after June 4, 2007, and prior to terminating employment, the
10 member's surviving spouse shall be eligible to elect to receive a
11 benefit determined as if the member had elected to participate in
12 the Oklahoma Firefighters Deferred Option Plan in accordance with
13 subsection H of this section on the day immediately preceding such
14 member's death. Prior to July 1, 2010, the surviving spouse must
15 make any such election within one (1) year from the date of the
16 member's death. Effective July 1, 2010, the surviving spouse must
17 make any such election within ninety (90) days from the date of the
18 member's death. If on or after June 4, 2007, such election is made,
19 the monthly pension such surviving spouse is entitled to receive
20 shall be adjusted in accordance with the provisions of subsection H
21 of this section to account for the member's participation in the
22 Oklahoma Firefighters Deferred Option Plan. The surviving spouse
23 may only make this election if the member has not previously elected
24 to participate in the Oklahoma Firefighters Deferred Option Plan.

1 For purposes of this election, the surviving spouse must have been
2 married to the firefighter for the thirty (30) continuous months
3 preceding the firefighter's death; provided, the surviving spouse of
4 a member who died while in, or as a consequence of, the performance
5 of the member's duty for a participating municipality shall not be
6 subject to the marriage limitation for this election.

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

1 balance such member is entitled to receive shall be reduced by the
2 back drop pension adjustment amount and increased by the deferred
3 benefit balance adjustment amount. The member may only make a back
4 drop election if the deferred benefit balance after the adjustment
5 described in this paragraph is greater than Zero Dollars (\$0.00).
6 The member may only make this election if the member has not
7 previously elected to participate in the Oklahoma Firefighters
8 Deferred Option Plan.

9 4. If a member has more than twenty (20) years of creditable
10 service, or a member of the Oklahoma Firefighters Pension and
11 Retirement System whose first employment with a participating
12 employer of the System occurs on or after November 1, 2013, and such
13 member has more than twenty-two (22) years of creditable service and
14 is eligible to receive a service retirement pension, and filed a
15 grievance for wrongful termination occurring on or after June 4,
16 2007, or is not a member of a collective bargaining organization as
17 a firefighter, is involuntarily terminated and is seeking to have
18 his or her position as a firefighter reinstated through a legal
19 process, but is not reinstated as an active member, such member
20 shall be eligible to elect to receive a benefit determined as if the
21 member had elected to participate in the Oklahoma Firefighters
22 Deferred Option Plan in accordance with subsection H of this section
23 on the day immediately preceding the date of the member's
24 termination. Such election must be made within two (2) years from

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

16 5. Subparagraphs d and e of paragraph 1 and paragraphs 3 and 4
17 of this subsection are effective June 4, 2007, provided the Internal
18 Revenue Service issues a favorable determination letter for the
19 System which includes the provisions of such subparagraphs and
20 paragraphs without modification or as modified to conform to any
21 changes required by the Internal Revenue Service as part of its
22 determination letter review process. In the event the Internal
23 Revenue Service does not issue such a determination letter which
24 includes the provisions of such subparagraphs or paragraphs without

1 modification or as modified to conform to any changes required by
2 the Internal Revenue Service as part of its determination letter
3 review process, then subparagraphs d and e of paragraph 1 and
4 paragraphs 3 and 4 of this subsection shall be repealed effective
5 June 4, 2007.

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

10 Passed the House of Representatives the 18th day of February,
11 2021.

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13 _____
14 Presiding Officer of the House
of Representatives

15 Passed the Senate the ____ day of _____, 2021.

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17 _____
18 Presiding Officer of the Senate
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