

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

SENATE BILL 1389

By: Monson

AS INTRODUCED

An Act relating to the Oklahoma Firefighters Pension and Retirement System; amending 11 O.S. 2001, Sections 49-106.1, as last amended by Section 2, Chapter 334, O.S.L. 2003, 49-109, 49-113, as last amended by Section 3, Chapter 334, O.S.L. 2003, 49-117.3, as last amended by Section 8, Chapter 128, O.S.L. 2003 and 49-126, as amended by Section 4, Chapter 334, O.S.L. 2003 (11 O.S. Supp. 2003, Sections 49-106.1, 49-113, 49-117.3 and 49-126), which relate to retirement; clarifying language; characterizing certain payments as disability payments; expanding certain benefit to surviving spouse; providing for adjustments of certain surviving spouse benefit; providing marriage limitation; providing exception; applying retirement formula to certain disability pensions; clarifying restoration to active service; deleting and moving language; providing certain reduction in disability pension benefits for those who participate in the Oklahoma Firefighters Deferred Option Plan; clarifying language concerning not in the line of duty disability; establishing death benefits for certain disabled firefighters; clarifying certain trustee-to-trustee payments; providing certain protection to alternate payee; clarifying definition; providing definition of "alternate payee"; providing exception for certain child support orders and federal tax levies; 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. 2001, Section 49-106.1, as last amended by Section 2, Chapter 334, O.S.L. 2003 (11 O.S. Supp. 2003, Section 49-106.1), is amended to read as follows:

Section 49-106.1 A. In lieu of terminating employment and accepting a service retirement pension pursuant to Sections 49-101 and 49-106 of this title, any member of the Oklahoma Firefighters Pension and Retirement System who has not less than twenty (20) years of creditable service and who is eligible to receive a service

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

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

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

D. When a member begins participation in the Oklahoma Firefighters Deferred Option Plan, the contribution of the member shall cease. The employer contributions shall continue to be paid in accordance with subsection B of Section 49-122 of this title. Employer contributions for members who elect the Oklahoma Firefighters Deferred Option Plan shall be credited equally to the Oklahoma Firefighters Pension and Retirement System and to the member's Oklahoma Firefighters Deferred Option Plan account. The monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the member's Oklahoma Firefighters Deferred Option Plan account.

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

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

F. A member in the plan shall receive at the option of the member, a lump sum payment from the account equal to the payments to the account, or an annuity based upon the account of the member or may elect any other method of payment if approved by the Board of Trustees. If a member becomes so physically or mentally disabled while in, or in consequence of, the performance of his duty, as to prevent the effective performance of his duties that the State Board approves an in line of duty disability pension, the payment from the account shall be an in line of duty disability payment.

G. If a member dies while maintaining an account balance in the plan the System shall pay to the designated recipient or recipients of the member, or if there is no designated recipient or if the designated recipient predeceases the member, to the estate of the member a lump sum payment equal to the account balance of the member. If such member was receiving, or eligible to receive, an in line of duty disability pension at the time of his death, payment of the account balance shall be an in line of duty disability payment.

If a designated recipient is the surviving spouse of the member, the surviving spouse shall receive his or her portion of the account balance of the member pursuant to subsection F of this section.

H. In lieu of participating in the Oklahoma Firefighters Deferred Option Plan pursuant to subsections A, B, C, D, E and F of this section, a member may elect to participate in the Oklahoma

Firefighters Deferred Option Plan pursuant to this subsection as follows:

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

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

2. At the termination date, the monthly pension benefit shall be determined based on earlier attained credited service and on the final average salary as of the back drop date. The member's

individual deferred option account shall be credited with an amount equal to the deferred benefit balance, the member shall terminate employment with all participating municipalities as a firefighter, and shall start receiving the member's accrued monthly retirement benefit from the System. Such a member may be reemployed by a participating municipality but only in a position not covered under the System, and receive in-service distributions of such member's accrued monthly retirement benefit from the System. The provisions of subsections B, C, E, F and G of this section shall apply to this subsection. A member shall not participate in the Oklahoma Firefighters Deferred Option Plan pursuant to this subsection if the member has elected to participate in the Oklahoma Firefighters Deferred Option Plan pursuant to subsections A, B, C, D, E and F of this section.

3. Effective July 1, 2003, if a member who has more than twenty (20) years of creditable service and who is eligible to receive a service retirement pension dies on or after July 1, 2003, and prior to terminating employment, his/her surviving spouse shall be eligible to elect to receive a benefit determined as if the member had elected to participate in the Oklahoma Firefighters Deferred Option Plan in accordance with this subsection on the day immediately preceding the member's death, provided such election is made within one year from the date of the member's death. The monthly pension such surviving spouse is receiving, or entitled to receive, shall be adjusted in accordance with the provisions of this subsection to account for the member's participation in the Oklahoma Firefighters Deferred Option Plan. The adjusted monthly pension so determined shall be subtracted from the monthly pension the surviving spouse was receiving prior to the election, and the difference for each month, if greater than zero (0), shall be adjusted to include interest based on the actuarial assumed interest rate as certified by the actuary in the yearly evaluation report of

the actuary. The sum of all such adjusted monthly amounts shall be used to reduce the surviving spouse's account balance in the Oklahoma Firefighters Deferred Option Plan. For purposes of this election, the surviving spouse must have been married to the firefighter for the thirty (30) continuous months preceding the firefighter's death; provided the surviving spouse of a member who died while in, or as a consequence of, the performance of the member's duty for a participating municipality, shall not be subject to the marriage limitation for this election.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-109, is amended to read as follows:

Section 49-109. A. Whenever any ~~fire fighter~~ firefighter serving in any capacity in a regularly constituted fire department of a municipality shall become so physically or mentally disabled ~~as to prevent the effective performance of the fire fighter's duties~~ while in, ~~and~~ or in consequence of, the performance of the ~~fire fighter's~~ firefighter's duty, as to prevent the effective performance of the firefighter's duties the State Board may, upon the ~~fire fighter's~~ firefighter's written request, or without such request if the State Board deems it for the good of the department, retire the ~~fire fighter~~ firefighter from active service, and if so retired, shall direct that the ~~fire fighter~~ firefighter be paid from the System a monthly pension ~~of one-half (1/2)~~ equal to the greater of:

1. Fifty percent (50%) of the average monthly salary which was paid to the ~~fire fighter~~ firefighter during the last thirty (30) months of the ~~fire fighter's~~ firefighter's service, ~~provided;~~ or

2. Two and one-half percent (2 1/2%) of the firefighter's final average salary multiplied by the member's years of credited service, not to exceed thirty (30) years, provided such firefighter has completed twenty (20) or more years of credited service; provided further, that whenever such disability shall cease such disability

pension shall cease; provided, that if the disability ceases within two (2) years from the date of the ~~fire fighter's~~ firefighter's disability retirement and before the firefighter's normal retirement date, the formerly disabled person shall be restored to active service at the salary attached to the rank the ~~fire fighter~~ firefighter held at the time of the ~~fire fighter's~~ firefighter's disability retirement provided the ~~fire fighter~~ firefighter is capable of performing the duties of a ~~fire fighter~~. ~~No fire fighter shall accrue additional service time while receiving a disability pension; provided further, that nothing herein contained shall affect the eligibility of any fire fighter to apply for and receive a retirement pension after the fire fighter's normal retirement date; provided further, that no fire fighter shall receive retirement benefits from the System during the time the fire fighter is receiving disability benefits from the System; provided further, that whenever any such fire fighter~~ firefighter; provided further, that if a firefighter participates in the Oklahoma Firefighters Deferred Option Plan pursuant to Section 49-106.1 of this title, the firefighter's disability pension provided pursuant to this subsection shall be reduced to account for the firefighter's participation in the Oklahoma Firefighters Deferred Option Plan.

B. Whenever any firefighter, who has served in any capacity in a regularly constituted fire department of a municipality of the state, and who has served less than the ~~fire fighter's~~ firefighter's normal retirement date, shall become so physically or mentally disabled ~~as to prevent the effective performance of the fire fighter's duties or shall suffer death from causes not arising in the line of duty, the fire fighter or beneficiaries~~ as to prevent the effective performance of the firefighter's duties, the firefighter shall be entitled to a pension during the continuance of said disability based upon the ~~fire fighter's~~ firefighter's service period which shall be one-half (1/2) of the average monthly salary

which was paid to the ~~fire fighter~~ firefighter during the last sixty (60) months of the ~~fire fighter's~~ firefighter's service.

C. No firefighter shall accrue additional service time while receiving a disability pension; provided further, that nothing herein contained shall affect the eligibility of any firefighter to apply for and receive a retirement pension after the firefighter's normal retirement date; provided further, that no firefighter shall receive retirement benefits from the System during the time the firefighter is receiving disability benefits from the System.

SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-113, as last amended by Section 3, Chapter 334, O.S.L. 2003 (11 O.S. Supp. 2003, Section 49-113), is amended to read as follows:

Section 49-113. A. 1. In the event of the death ~~for any cause~~ of a ~~fire fighter~~ firefighter who at the time of the ~~fire fighter's~~ firefighter's death was drawing a pension, other than a disability pension, or who at the time of the ~~fire fighter's~~ firefighter's death (whether death occurred while on duty, but not in or in consequence of the performance of duty, or while on vacation or off duty) was eligible, upon written request, to retire and draw a pension, other than a disability pension, the beneficiary of such person shall be paid an amount not to exceed one hundred percent (100%) of said pension.

2. In the event of the death of a firefighter who at the time of the firefighter's death was drawing, or eligible to draw, a disability pension for a physical or mental disability that occurred while in, or in consequence of, the performance of the firefighter's duty, and which prevented the effective performance of the firefighter's duties, and which caused the State Board to retire the firefighter from active service, the beneficiary of such person shall be paid an amount not to exceed one hundred percent (100%) of the pension paid in accordance with subsection A of Section 49-109 of this title.



3. In the event of the death of a firefighter who at the time of the firefighter's death was drawing, or eligible to draw, a disability pension for a physical or mental disability from causes not arising in the line of duty and which prevented the effective performance of the firefighter's duties, the beneficiary of such person shall be paid an amount not to exceed one hundred percent (100%) of the pension paid in accordance with subsection B of Section 49-109 of this title.

Effective March 1, 1997, if a ~~fire fighter~~ firefighter to whom a retirement or disability benefit has been awarded, or who is eligible therefore, dies prior to the date as of which the total amount of retirement or disability benefit paid equals the total amount of the employee contributions paid by or on behalf of the member and the member does not have a surviving beneficiary, the total benefits paid as of the date of the member's death shall be subtracted from the accumulated employee contribution amount and the balance, if greater than zero (0), shall be paid to the member's estate.

B. In the event of the death of the surviving spouse, the pension shall cease, and should there then be but one living child same shall receive an amount equal to one hundred percent (100%) of said pension, but if there then be more than one living child, one hundred percent (100%) of said pension shall be divided equally between the children until each child reaches the age of eighteen (18) years or until the age of twenty-two (22) years if the child is enrolled full time and regularly attending a public or private school or any institution of higher education. Provided, that in the event the State Board finds that such a child who is not married at the time of death of the member or the member's surviving spouse and who at the time the child attains or attained the age of eighteen (18) years is either physically or mentally disabled, the pension thereof shall continue so long as such disability remains;

provided, further, that upon the death of the fire fighter and surviving spouse, if any, said physically or mentally disabled child shall be entitled to have paid to the child's legally appointed guardian or the trustee of a trust, whether inter vivos or testamentary, which trust provides for the receipt of the pension benefits to be held and administered for the sole benefit of said physically or mentally disabled child, an amount not to exceed one hundred percent (100%) of said pension. The money so paid to the guardian or trustee shall be used solely for the benefit of the disabled child and it shall be reported annually to the State Board. The payment so provided shall be calculated after payments have been made to all eligible children as provided in this section; provided further, that beneficiaries now receiving pensions under the provisions of Sections 49-112 or 49-113 of this title shall, upon application to the State Board, thereafter be entitled to a pension equal to the amount which they would have received if this act were in effect at the time the right to said pension accrued.

C. In the event a surviving spouse of a member remarried prior to June 7, 1993, the surviving spouse shall be eligible to receive the pension benefits provided for in this section. To receive the pension benefits provided for in this section the surviving spouse falling within this section shall submit a written request for such benefits to the Oklahoma Firefighters Pension and Retirement System. The Oklahoma Firefighters Pension and Retirement System shall approve requests by surviving spouses meeting the requirements of this section. Upon approval by the Oklahoma Firefighters Pension and Retirement System, the surviving spouse shall be entitled to the pension benefits provided for in this section beginning from the date of approval forward. Pension benefits provided to surviving spouses falling within this section shall not apply to alter any amount of pension benefits paid or due prior to the Oklahoma

Firefighters Pension and Retirement System's approval of the remarried surviving spouse's written request for benefits.

D. No surviving spouse shall receive benefits from this section, Section 50-117 of this title, or Section 2-306 of Title 47 of the Oklahoma Statutes as the surviving spouse of more than one member of the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, or the Oklahoma Law Enforcement Retirement System. The surviving spouse of more than one member shall elect which member's benefits he or she will receive.

E. Upon the death of a retired member, the benefit payment for the month in which the retired member died, if not previously paid, shall be made to the beneficiary of the member or to the member's estate if there is no beneficiary. Such benefit payment shall be made in an amount equal to a full monthly benefit payment regardless of the day of the month in which the retired member died.

F. Upon the death of an unmarried firefighter who has one or more children, said child or children shall receive pension benefits as provided in subsection B of this section as if the surviving spouse had died; provided, further, that upon the death of the firefighter, said child or children shall be entitled to have the System pay to the child's or children's legally appointed guardian or the trustee of a trust, whether inter vivos or testamentary, which trust provides for the receipt of the pension benefits to be held and administered for the sole benefit of said child, the pension benefits as provided in subsection B of this section in an amount not to exceed one hundred percent (100%) of said pension. The money so paid to the guardian or trustee shall be used solely for the benefit of the child and it shall be reported annually to the State Board.

SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-117.3, as last amended by Section 8, Chapter 128, O.S.L. 2003 (11 O.S. Supp. 2003, Section 49-117.3), is amended to read as follows:

Section 49-117.3 A. The State Board shall adopt rules for computation of the purchase price for transferred credited service. These rules shall base the purchase price for each year purchased on the actuarial cost of the incremental projected benefits to be purchased. The purchase price shall represent the present value of the incremental projected benefits discounted according to the member's age at the time of purchase. Incremental projected benefits shall be the difference between the projected benefit said member would receive without purchasing the transferred credited service and the projected benefit after purchase of the transferred credited service computed as of the earliest age at which the member would be able to retire. Said computation shall assume an unreduced benefit and be computed using interest and mortality assumptions consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation.

B. In the event that the member is unable to pay the purchase price provided for in this section by the due date, the State Board shall permit the members to amortize the purchase price over a period not to exceed sixty (60) months. Said payments shall be made by payroll deductions unless the State Board permits an alternate payment source. The amortization shall include interest in an amount not to exceed the actuarially assumed interest rate adopted by the State Board for investment earnings each year. Any member who ceases to make payment, terminates, retires or dies before completing the payments provided for in this section shall receive prorated service credit for only those payments made, unless the unpaid balance is paid by said member, his or her estate or successor in interest within six (6) months after said member's death, termination of employment or retirement, provided no

retirement benefits shall be payable until the unpaid balance is paid, unless said member or beneficiary affirmatively waives the additional six-month period in which to pay the unpaid balance. The State Board shall promulgate such rules as are necessary to implement the provisions of this subsection.

C. Effective January 1, 2002, payment of the purchase price may be made by a trustee-to-trustee transfer from a Code Section 403(b) annuity, a governmental Code Section 457 plan, and/or a Code Section 401(a) qualified plan. Members amortizing the purchase price and making payments by payroll deduction on or after January 1, 2002, shall have the option of making a cash lump-sum payment for the balance of the remaining payments of the actuarial purchase price with interest due through the date of payment by a trustee-to-trustee transfer from a Code Section 403(b) annuity, a governmental Code Section 457 plan, and/or a Code Section 401(a) qualified plan.

SECTION 5. AMENDATORY 11 O.S. 2001, Section 49-126, as amended by Section 4, Chapter 334, O.S.L. 2003 (11 O.S. Supp. 2003, Section 49-126), is amended to read as follows:

Section 49-126. A. Except as otherwise provided by this section, no portion of said pension shall, either before or after its order of distribution by the State Board to such disabled members of said fire department, or the surviving spouse, alternate payee as defined in subsection B of this section, or guardian of such minor child or children, to the deceased or retired member of such department, be held, seized, taken, subjected to or detained or levied on by virtue of any attachment, execution, injunction, writ interlocutory or other order or decree, or any process or proceeding, whatever, issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damages, claim, demand or judgment against such member, or his or her surviving spouse, alternate payee, or the guardian of said minor child or children of any deceased member, nor shall said fund or any

claim thereto be directly or indirectly assigned and any attempt to assign or transfer the same shall be void; but the funds shall be held, kept, secured and distributed for the purpose of pensioning the persons named in this article, and for no other purpose whatever. Notwithstanding the foregoing, effective August 5, 1997, the State Board may approve any offset of a member's benefit to pay a judgment or settlement against a member for a crime involving the System, for a breach of the member's fiduciary duty to the System, or for funds or monies incorrectly paid to a member or beneficiary by mistake, provided such offset is in accordance with the requirements of Section 401(a)(13) of the Internal Revenue Code of 1986, as amended.

B. 1. The provisions of subsection A of this section shall not apply to a qualified domestic order as provided pursuant to this subsection.

2. The term "qualified domestic order" means an order issued by a district court of this state pursuant to the domestic relation laws of the State of Oklahoma which relates to the provision of marital property rights to ~~a spouse or former spouse of a member or provision of support for a minor or disabled child or children~~ an alternate payee and which creates or recognizes the existence of the right of an alternate payee and assigns to an alternate payee the right, to receive a portion of the benefits payable with respect to a member of the System.

3. The term "alternate payee" means any spouse, former spouse, minor or disabled child or children, or other dependent of the member who is recognized by a domestic relations order as having a right to receive benefits payable with respect to a member of the System.

~~3.~~ 4. For purposes of the payment of marital property, to qualify as an alternate payee, a spouse or former spouse must have been married to the related member for a period of not less than

thirty (30) continuous months immediately preceding the commencement of the proceedings from which the qualified domestic order issues.

~~4.~~ 5. A qualified domestic order is valid and binding on the State Board and the related member only if it meets the requirements of this subsection.

~~5.~~ 6. A qualified domestic order shall clearly specify:

- a. the name and last-known mailing address (if any) of the member and the name and mailing address of the alternate payee covered by the order,
- b. the amount or percentage of the member's benefits to be paid by the System to the alternate payee,
- c. the number of payments or period to which such order applies,
- d. the characterization of the benefit as to marital property rights or child support, and
- e. each plan to which such order applies.

~~6.~~ 7. A qualified domestic order meets the requirements of this subsection only if such order:

- a. does not require the System to provide any type or form of benefit, or any option not otherwise provided under state law as relates to the System,
- b. does not require the System to provide increased benefits, and
- c. does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic order or an order recognized by the System as a valid order prior to the effective date of this act.

~~7.~~ 8. A qualified domestic order shall not require payment of benefits to an alternate payee prior to the actual retirement date of the related member.

~~8.~~ 9. The obligation of the System to pay an alternate payee pursuant to a qualified domestic order shall cease upon the earlier of the death of the related member or the death of the alternate payee. Upon the death of the alternate payee, the assignment to the alternate payee of the right to receive a portion of the benefits payable with respect to the member shall cease and the payments of benefits to the member shall be reinstated.

~~9.~~ 10. This subsection shall not be subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. Section 1001, et seq., as amended from time to time, or rules and regulations promulgated thereunder, and court cases interpreting said act.

~~10.~~ 11. The Oklahoma Firefighters Pension and Retirement Board shall promulgate such rules as are necessary to implement the provisions of this subsection.

~~11.~~ 12. An alternate payee who has acquired beneficiary rights pursuant to a valid qualified domestic order must fully comply with all provisions of the rules promulgated by the State Board pursuant to this subsection in order to continue receiving his or her benefit.

C. The provisions of subsection A of this section shall not apply to a Child Support Enforcement Division Order for a support arrearage pursuant to Section 240.23 of Title 56, and current support and judgment payments made pursuant to a valid court order.

D. The provisions of subsection A of this section shall not apply to a federal tax levy made pursuant to Section 6331 of the Internal Revenue Code of 1986, as amended and the collection by the United States on a judgment resulting from an unpaid tax assessment.

SECTION 6. This act shall become effective July 1, 2004.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby



declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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