

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1740

By: Johnson (Constance)

AS INTRODUCED

An Act relating to retirement; amending 11 O.S. 2001, Sections 49-106.1, as last amended by Section 3, Chapter 546, O.S.L. 2004, 49-109, as amended by Section 4, Chapter 546, O.S.L. 2004, 49-112, and 49-113, as last amended by Section 2, Chapter 203, O.S.L. 2005 (11 O.S. Supp 2005, Sections 49-106.1, 49-109 and 49-113), which relate to the Oklahoma Firefighters Pension and Retirement System; modifying eligibility for participation in the Oklahoma Firefighters Deferred Option Plan; defining terms; clarifying when certain disability pension ceases; modifying distribution of pension for members who lose their life related to the performance of duty while on certain active military duty; specifying distribution of pension for member who loses life under certain circumstances; clarifying amount paid to a member's estate; 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 3, Chapter 546, O.S.L. 2004 (11 O.S. Supp. 2005, 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 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 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 or her duty as to prevent the effective performance of his or her 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 spouse of the member, or if there is no spouse or if the spouse 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 or her 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 and subsection I of this section, 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.~~

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

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

- a. "back drop election date" means the date the surviving spouse or member elects to commence participation in the Oklahoma Firefighters Deferred Option Plan pursuant to subsection H of this section and this subsection,
- b. "interest" means the actuarial assumed interest rate as certified by the actuary in the yearly evaluation report of the actuary,
- c. "monthly adjustment amount" means the difference between the monthly pension prior to the back drop election and the adjusted monthly pension due to the back drop election,
- d. "back drop pension adjustment amount" means the sum of all the monthly adjustment amounts adjusted for interest from the pension commencement date to the back drop election date, and
- e. "deferred benefit balance adjustment amount" means the deferred benefit balance adjusted for interest from the pension commencement date to the back drop election date.

2. Effective July 1, 2003, if a member who has more than twenty (20) years of creditable service and is eligible to receive a service retirement pension dies on or after July 1, 2003, and prior to terminating employment, the member's 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 subsection H of this section on the day immediately preceding such member's death. The surviving spouse must make any such election within one (1) year from the date of the member's death. If such election is made, the monthly pension such surviving spouse is receiving, or is entitled to receive, shall be adjusted in accordance with the provisions of subsection H of this section to account for the member's participation in the Oklahoma Firefighters Deferred Option Plan. The deferred benefit balance such surviving spouse is entitled to receive shall be reduced by the back drop pension adjustment amount and increased by the deferred benefit balance adjustment amount. The surviving spouse may only make a back drop election if the deferred benefit balance after the adjustment described in this paragraph is greater than Zero Dollars (\$0.00). The surviving spouse may only make this election if the member has not previously elected to participate 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.

3. Effective July 1, 2006, if a member has more than twenty (20) years of creditable service on or after July 1, 2004, and is eligible for a retirement for disability monthly pension pursuant to Section 49-109 of this title on or after July 1, 2004, such member 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 subsection H of this section, on the day immediately preceding the date of the member's

disability retirement, provided such election is made within two (2) years from the date of the member's disability retirement. The disability monthly pension such member is receiving, or entitled to receive, shall be adjusted in accordance with the provisions of subsection H of this section to account for the member's participation in the Oklahoma Firefighters Deferred Option Plan. The deferred benefit balance such member is entitled to receive shall be reduced by the back drop pension adjustment amount and increased by the deferred benefit balance adjustment amount. The member may only make a back drop election if the deferred benefit balance after the adjustment described in this paragraph is greater than Zero Dollars (\$0.00). The member may only make this election if the member has not previously elected to participate in the Oklahoma Firefighters Deferred Option Plan.

4. Effective July 1, 2006, if a member has more than twenty (20) years of creditable service on or after July 1, 2005, and filed a grievance for wrongful termination occurring on or after July 1, 2005, but is not reinstated as an active member, such member 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 subsection H of this section on the day immediately preceding the date of the member's termination. Such election must be made within two (2) years from the date of the member's termination as an active member and, if the member's case pertaining to the member's termination is on appeal to a court of competent jurisdiction, within such period set by the State Board in its sole discretion. The monthly pension such member is receiving, or entitled to receive, shall be adjusted in accordance with the provisions of subsection H of this section to account for the member's participation in the Oklahoma Firefighters Deferred Option Plan. The deferred benefit balance such member is entitled to receive shall be reduced by the back drop pension



adjustment amount and increased by the deferred benefit balance adjustment amount. The member may only make a back drop election if the deferred benefit balance after the adjustment described in this paragraph is greater than Zero Dollars (\$0.00). The member may only make this election if the member has not previously elected to participate in the Oklahoma Firefighters Deferred Option Plan.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-109, as amended by Section 4, Chapter 546, O.S.L. 2004 (11 O.S. Supp. 2005, Section 49-109), is amended to read as follows:

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

1. Fifty percent (50%) of the average monthly salary which was paid to the firefighter during the last thirty (30) months of the firefighter's service; 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, that whenever such disability shall cease such disability pension shall cease; provided further, that if.~~

B. If the disability ceases within two (2) years from the date of the 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 firefighter held at the time of the firefighter's disability retirement provided the firefighter is capable of performing the duties of a firefighter; ~~provided further that if.~~ Whenever such disability shall cease, such disability pension provided pursuant to paragraph 1 of subsection A of this section shall cease. 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.~~ C. 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 firefighter's normal retirement date, shall become so physically or mentally disabled from causes not arising in the line of duty 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 firefighter's service period which shall be fifty percent (50%) of the average monthly salary which was paid to the firefighter during the last sixty (60) months of the firefighter's service.

~~C.~~ D. 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. Any member or beneficiary eligible to receive a monthly benefit pursuant to this section may make an election to waive all or a portion of monthly benefits.

SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-112, is amended to read as follows:

Section 49-112. A. Whenever any member of the fire department shall lose his or her life by reason of any injury or sickness sustained by him or her while in, or in consequence of, the performance of his or her duty or while on active duty in the National Guard and Reserves called to active duty, leaving a surviving spouse, or child or children under the age of eighteen (18) years, then, upon satisfactory proof of such facts made to it, the State Board shall order and direct that a monthly pension be paid. Such amount shall be determined in accordance with the provisions of subsection A of Section ~~49-113~~ 49-109 of this title. In the event of the death of the surviving spouse, the pension shall cease, and should there then be but one living child such child shall receive an amount equal to one hundred percent (100%) of the pension, but if there then be more than one living child, one hundred percent (100%) of the 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. 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 shall continue so long as such disability remains. Upon the death of the firefighter and surviving spouse, if any, the physically or mentally disabled child shall be entitled to have paid to the child's 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 the physically or mentally disabled child, or there if is no trust, to the child's legally

appointed guardian, an amount not to exceed one hundred percent (100%) of the pension. The money 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 provided shall be calculated after payments have been made to all eligible children as provided in this subsection. If the member does not leave a beneficiary or disabled child as described in this subsection, the accumulated contributions made to the System by the member shall be paid to the estate of the member.

B. Whenever any member of the fire department who has not terminated employment shall lose his or her life for any reason not described in subsection A of this section, after completing ten (10) years of credited service and prior to completing twenty (20) years of credited service, leaving a surviving spouse, or child or children under the age of eighteen (18) years, then upon satisfactory proof of such facts made to it, The State Board shall order and direct that a monthly pension be paid. Such amount shall be fifty percent (50%) of the average monthly salary which was paid to the firefighter during the last sixty (60) months of the firefighter's service. In the event of the death of the surviving spouse, the pension shall cease, and should there then be but one living child such child shall receive an amount equal to one hundred percent (100%) of the pension, but if there then be more than one living child, one hundred percent (100%) of the pension shall be divided equally between the children until each child reaches the age of eighteen (18) years or 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. 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 shall continue so long as the disability remains. Upon the death of the firefighter and surviving spouse, if any, said physically or mentally disabled child shall be entitled to have paid to the child's 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, or if there is no trust, to the child's legally appointed guardian, an amount not to exceed one hundred percent (100%) of the pension. The money 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 provided shall be calculated after payments have been made to all eligible children as provided in this subsection. If the member does not leave a beneficiary or disabled child as described in this subsection, the accumulated contributions made to the System by the member shall be paid to the estate of the member.

SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-113, as last amended by Section 2, Chapter 203, O.S.L. 2005 (11 O.S. Supp. 2005, Section 49-113), is amended to read as follows:

Section 49-113. A. 1. In the event of the death of a firefighter who at the time of the firefighter's death was drawing a pension, other than a disability pension, or who at the time of the 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~~ C of Section 49-109 of this title.

4. Effective March 1, 1997, if a 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)~~ Zero Dollars (\$0.00), shall be paid to the member's estate.

5. Any person eligible to receive a payment pursuant to this section may make an election to waive all or a portion of monthly payments.

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, that upon the death of the firefighter and surviving spouse, if any, said physically or mentally disabled child shall be entitled to have paid to the child's 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, or if there is no trust, to the child's legally appointed guardian, 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, 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 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, or if there is no trust, to the child's or children's legally appointed guardian, 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 5. 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.

50-2-3296

ARE

6/13/2015 8:34:42 AM