

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB826 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Terry ODonnell \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

PROPOSED  
COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 826

By: Howard of the Senate

and

O'Donnell of the House

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to firefighter retirement; amending 11 O.S. 2011, Section 49-106.1, as last amended by Section 3, Chapter 281, O.S.L. 2014 (11 O.S. Supp. 2020, Section 49-106.1), which relates to the deferred option plan; specifying that certain distributions be subject to certain law; requiring interest of certain plan be distributed; specifying methods of distribution; specifying methods of distribution if certain election is not made; providing that certain amount be reduced by certain withdrawals from account; providing that if a minimum distribution is to be made, a mandatory distribution of interest is not required; and specifying when certain distribution be made; 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. 2011, Section 49-106.1, as last amended by Section 3, Chapter 281, O.S.L. 2014 (11 O.S. Supp. 2020, 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

1 and 49-106 of this title, any member of the Oklahoma Firefighters  
2 Pension and Retirement System serving as an active firefighter in a  
3 fire department of a participating municipality who has not less  
4 than twenty (20) years of creditable service, or any member of the  
5 Oklahoma Firefighters Pension and Retirement System whose first  
6 employment with a participating employer of the System occurs on or  
7 after November 1, 2013, and who has not less than twenty-two (22)  
8 years of creditable service and who is eligible to receive a service  
9 retirement pension may elect to participate in the Oklahoma  
10 Firefighters Deferred Option Plan and defer the receipts of benefits  
11 in accordance with the provisions of this section.

12 B. For purposes of this section, creditable service shall  
13 include service credit reciprocally recognized pursuant to Sections  
14 49-100.1 through 49-100.8 and Sections 49-101, 49-101.1 and 49-101.2  
15 of this title but for eligibility purposes only.

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

1 by a participating municipality but only in a position not covered  
2 under the System, and receive in-service distributions of such  
3 member's accrued monthly retirement benefit from the System.

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

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

18 2. A member who participates in this plan shall earn interest  
19 at a rate of two percentage points below the rate of return of the  
20 investment portfolio of the System, but no less than the actuarial  
21 assumed interest rate as certified by the actuary in the yearly  
22 evaluation report of the actuary. The interest shall be credited to  
23 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, subject to the mandatory distribution of interest  
16 provisions in subsection G of this section and the required minimum  
17 distributions of the Internal Revenue Code of 1986, 26 U.S.C., as  
18 amended. If a member becomes so physically or mentally disabled  
19 while in, or in consequence of, the performance of his or her duty  
20 as to prevent the effective performance of his or her duties that  
21 the State Board approves an in-line-of-duty disability pension, the  
22 payment from the account shall be an in-line-of-duty disability  
23 payment. Notwithstanding any other provision contained herein to  
24 the contrary, commencement of distributions under the Oklahoma

1 Firefighters Deferred Option Plan shall be no later than the time as  
2 set forth in subsection B of Section 49-106 of this title ~~and~~ a. A  
3 member whose first service with a participating municipality of the  
4 System occurs on or after November 1, 2013, and who participates for  
5 the first time in the Oklahoma Firefighters Deferred Option Plan on  
6 or after November 1, 2013, must receive a distribution of the entire  
7 remaining balance in the member's Oklahoma Firefighters Deferred  
8 Option Plan account no later than April 1 of the calendar year  
9 following the later of:

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

12 2. The actual retirement date of the member.

13 G. Upon the effective date of this act and for each plan year  
14 thereafter, for retired members, disabled members and surviving  
15 spouses receiving monthly retirement benefits from the System, the  
16 interest earned annually on the accumulated Plan B balance of the  
17 member, as determined as of June 30 of the relevant plan year, shall  
18 be distributed each year as a direct payment to the member or, if  
19 applicable, the member's surviving spouse, or as a payment or  
20 transfer to an eligible retirement plan pursuant to the provisions  
21 of Section 49-106.3 of this title. A member's failure to make an  
22 election of either a direct lump sum payment or direct rollover of  
23 the interest earned for the applicable plan year shall result in:

24

1       1. An automatic rollover of the interest earned for the  
2 applicable plan year to an individual retirement plan, consistent  
3 with the mandatory distribution rules of Section 401(a)(31) of the  
4 Internal Revenue Code of 1986, as amended, for any member before the  
5 member attains the later of age 62 or the member's normal retirement  
6 date; or

7       2. A direct lump sum distribution to the member for any other  
8 member before he or she attains the required minimum distribution  
9 age specified by the Internal Revenue Code of 1986, as amended.

10       The amount of mandatory distribution of interest earned annually  
11 for any plan year shall be reduced by the amount of voluntary  
12 withdrawals from the member's Plan B balance during the plan year.  
13 No individual shall receive both a mandatory distribution of  
14 interest and an IRS-required minimum distribution in the same  
15 calendar year. In any calendar year in which the System would  
16 otherwise distribute both a mandatory distribution of interest and  
17 an IRS required minimum distribution to an individual, only the IRS-  
18 required minimum distribution shall be made.

19       H. If a member dies while maintaining an account balance in the  
20 plan the System shall pay to the designated recipient or recipients  
21 of the member, or if there is no designated recipient or if the  
22 designated recipient predeceases the member, to the spouse of the  
23 member, or if there is no spouse or if the spouse predeceases the  
24 member, to the estate of the member a lump-sum payment equal to the

1 account balance of the member. If such member was receiving, or  
2 eligible to receive, an in-line-of-duty disability pension at the  
3 time of his or her death, payment of the account balance shall be an  
4 in-line-of-duty disability payment. If a designated recipient is  
5 the surviving spouse of the member, the surviving spouse shall  
6 receive his or her portion of the account balance of the member  
7 pursuant to subsection F of this section. The surviving spouse,  
8 whether or not he or she is a designated recipient of the member,  
9 may elect to receive his or her portion of the account balance of  
10 the member in the same manner as was applicable to the member.

11 ~~H.~~ I. In lieu of participating in the Oklahoma Firefighters  
12 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of  
13 this section, a member may elect to participate in the Oklahoma  
14 Firefighters Deferred Option Plan pursuant to this subsection as  
15 follows:

16 1. For purposes of this subsection and subsection ~~F~~ J of this  
17 section, the following definitions shall apply:

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

22 b. "termination date" means the date the member elects to  
23 participate in the Oklahoma Firefighters Deferred  
24 Option Plan pursuant to this subsection, and the date

1 the member terminates employment with all  
2 participating municipalities as an active firefighter,

3 c. "earlier attained credited service" means the credited  
4 service earned by a member as of the back drop date,  
5 and

6 d. "deferred benefit balance" means all monthly  
7 retirement benefits that would have been payable had  
8 the member elected to cease employment on the back  
9 drop date and receive a service retirement from the  
10 back drop date to the termination date, all the  
11 member's contributions and one-half (1/2) of the  
12 employer contributions from the back drop date to the  
13 termination date, with interest based on how the  
14 benefit would have accumulated on a compound annual  
15 basis as if the member had participated in the  
16 Oklahoma Firefighters Deferred Option Plan pursuant to  
17 subsections A, B, C, D, E and F of this section from  
18 the back drop date to the termination date; and

19 2. At the termination date, the monthly pension benefit shall  
20 be determined based on earlier attained credited service and on the  
21 final average salary as of the back drop date. The member's  
22 individual deferred option account shall be credited with an amount  
23 equal to the deferred benefit balance, the member shall terminate  
24 employment with all participating municipalities as a firefighter,

1 and shall start receiving the member's accrued monthly retirement  
2 benefit from the System. Such a member may be reemployed by a  
3 participating municipality but only in a position not covered under  
4 the System, and receive in-service distributions of such member's  
5 accrued monthly retirement benefit from the System. The provisions  
6 of subsections B, C, E, F and ~~G~~ H of this section shall apply to  
7 this subsection. A member shall not participate in the Oklahoma  
8 Firefighters Deferred Option Plan pursuant to this subsection if the  
9 member has elected to participate in the Oklahoma Firefighters  
10 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of  
11 this section.

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

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

17 a. "back drop election date" means the date the surviving  
18 spouse or member elects to commence participation in  
19 the Oklahoma Firefighters Deferred Option Plan  
20 pursuant to subsection ~~H~~ I of this section and this  
21 subsection,

22 b. "interest" means the actuarial assumed interest rate  
23 as certified by the actuary in the yearly evaluation  
24 report of the actuary,

1 c. "monthly adjustment amount" means the difference  
2 between the monthly pension prior to the back drop  
3 election and the adjusted monthly pension due to the  
4 back drop election,

5 d. "back drop pension adjustment amount" means the sum of  
6 all the monthly adjustment amounts adjusted for  
7 interest from the pension commencement date to the  
8 back drop election date, and

9 e. "deferred benefit balance adjustment amount" means the  
10 interest on the deferred benefit balance from the  
11 pension commencement date to the back drop election  
12 date.

13 2. If a member who has more than twenty (20) years of  
14 creditable service and is eligible to receive a service, or a member  
15 of the Oklahoma Firefighters Pension and Retirement System whose  
16 first employment with a participating employer of the System occurs  
17 on or after November 1, 2013, and such member has more than twenty-  
18 two (22) years of creditable service, retirement pension dies on or  
19 after June 4, 2007, and prior to terminating employment, the  
20 member's surviving spouse shall be eligible to elect to receive a  
21 benefit determined as if the member had elected to participate in  
22 the Oklahoma Firefighters Deferred Option Plan in accordance with  
23 subsection ¶ I of this section on the day immediately preceding such  
24 member's death. Prior to July 1, 2010, the surviving spouse must

1 make any such election within one (1) year from the date of the  
2 member's death. Effective July 1, 2010, the surviving spouse must  
3 make any such election within ninety (90) days from the date of the  
4 member's death. If on or after June 4, 2007, such election is made,  
5 the monthly pension such surviving spouse is entitled to receive  
6 shall be adjusted in accordance with the provisions of subsection #  
7 I of this section to account for the member's participation in the  
8 Oklahoma Firefighters Deferred Option Plan. The surviving spouse  
9 may only make this election if the member has not previously elected  
10 to participate in the Oklahoma Firefighters Deferred Option Plan.  
11 For purposes of this election, the surviving spouse must have been  
12 married to the firefighter for the thirty (30) continuous months  
13 preceding the firefighter's death; provided, the surviving spouse of  
14 a member who died while in, or as a consequence of, the performance  
15 of the member's duty for a participating municipality shall not be  
16 subject to the marriage limitation for this election.

17 3. If a member has more than twenty (20) years of creditable  
18 service, or a member of the Oklahoma Firefighters Pension and  
19 Retirement System whose first employment with a participating  
20 employer of the System occurs on or after November 1, 2013, and such  
21 member has more than twenty-two (22) years of creditable service and  
22 is eligible to receive a service retirement pension, and is eligible  
23 for a retirement for disability monthly pension pursuant to Section  
24 49-109 of this title on or after June 4, 2007, such member shall be

1 eligible to elect to receive a benefit determined as if the member  
2 had elected to participate in the Oklahoma Firefighters Deferred  
3 Option Plan, in accordance with subsection # I of this section, on  
4 the day immediately preceding the date of the member's disability  
5 retirement, provided such election is made within two (2) years from  
6 the date of the member's disability retirement. The disability  
7 monthly pension such member is receiving, or entitled to receive,  
8 shall be adjusted in accordance with the provisions of subsection #  
9 I of this section to account for the member's participation in the  
10 Oklahoma Firefighters Deferred Option Plan. The deferred benefit  
11 balance such member is entitled to receive shall be reduced by the  
12 back drop pension adjustment amount and increased by the deferred  
13 benefit balance adjustment amount. The member may only make a back  
14 drop election if the deferred benefit balance after the adjustment  
15 described in this paragraph is greater than Zero Dollars (\$0.00).  
16 The member may only make this election if the member has not  
17 previously elected to participate in the Oklahoma Firefighters  
18 Deferred Option Plan.

19 4. If a member has more than twenty (20) years of creditable  
20 service, or a member of the Oklahoma Firefighters Pension and  
21 Retirement System whose first employment with a participating  
22 employer of the System occurs on or after November 1, 2013, and such  
23 member has more than twenty-two (22) years of creditable service and  
24 is eligible to receive a service retirement pension, and filed a

1 grievance for wrongful termination occurring on or after June 4,  
2 2007, or is not a member of a collective bargaining organization as  
3 a firefighter, is involuntarily terminated and is seeking to have  
4 his or her position as a firefighter reinstated through a legal  
5 process, but is not reinstated as an active member, such member  
6 shall be eligible to elect to receive a benefit determined as if the  
7 member had elected to participate in the Oklahoma Firefighters  
8 Deferred Option Plan in accordance with subsection # I of this  
9 section on the day immediately preceding the date of the member's  
10 termination. Such election must be made within two (2) years from  
11 the date of the member's termination as an active member and, if the  
12 member's case pertaining to the member's termination is on appeal to  
13 a court of competent jurisdiction, within such period set by the  
14 State Board in its sole discretion. The monthly pension such member  
15 is receiving, or entitled to receive, shall be adjusted in  
16 accordance with the provisions of subsection # I of this section to  
17 account for the member's participation in the Oklahoma Firefighters  
18 Deferred Option Plan. The deferred benefit balance such member is  
19 entitled to receive shall be reduced by the back drop pension  
20 adjustment amount and increased by the deferred benefit balance  
21 adjustment amount. The member may only make a back drop election if  
22 the deferred benefit balance after the adjustment described in this  
23 paragraph is greater than Zero Dollars (\$0.00). The member may only

24

1 make this election if the member has not previously elected to  
2 participate in the Oklahoma Firefighters Deferred Option Plan.

3 5. Subparagraphs d and e of paragraph 1 and paragraphs 3 and 4  
4 of this subsection are effective June 4, 2007, provided the Internal  
5 Revenue Service issues a favorable determination letter for the  
6 System which includes the provisions of such subparagraphs and  
7 paragraphs without modification or as modified to conform to any  
8 changes required by the Internal Revenue Service as part of its  
9 determination letter review process. In the event the Internal  
10 Revenue Service does not issue such a determination letter which  
11 includes the provisions of such subparagraphs or paragraphs without  
12 modification or as modified to conform to any changes required by  
13 the Internal Revenue Service as part of its determination letter  
14 review process, then subparagraphs d and e of paragraph 1 and  
15 paragraphs 3 and 4 of this subsection shall be repealed effective  
16 June 4, 2007.

17 SECTION 2. This act shall become effective July 1, 2021.

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

22  
23 58-1-7986 CMA 03/29/21  
24