

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 826

By: Howard of the Senate

and

O'Donnell of the House

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 only one distribution be made per calendar year; and specifying when certain distribution be made.

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 as a
19 payment or transfer to an eligible retirement plan pursuant to the
20 provisions of Section 49-106.3 of this title. Failure to make an
21 election of either a direct lump sum payment or directed rollover of
22 the interest earned for the applicable plan year shall result in:

23 1. An automatic rollover of the interest earned for the
24 applicable plan year to an individual retirement plan, consistent

1 with the mandatory distribution rules of Section 401(a)(31) of the
2 Internal Revenue Code of 1986, as amended, for any member before the
3 member attains the later of age 62 or the member's normal retirement
4 date; or

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

8 The amount of mandatory distribution of interest earned annually
9 for any plan year shall be reduced by the amount of voluntary
10 withdrawals from the member's Plan B balance during the plan year.

11 No individual shall receive both a mandatory distribution of
12 interest and an IRS-required minimum distribution in the same
13 calendar year. In any calendar year in which the System would
14 otherwise distribute both a mandatory distribution of interest and
15 an IRS required minimum distribution to an individual, only the IRS-
16 required minimum distribution shall be made.

17 H. If a member dies while maintaining an account balance in the
18 plan the System shall pay to the designated recipient or recipients
19 of the member, or if there is no designated recipient or if the
20 designated recipient predeceases the member, to the spouse of the
21 member, or if there is no spouse or if the spouse predeceases the
22 member, to the estate of the member a lump-sum payment equal to the
23 account balance of the member. If such member was receiving, or
24 eligible to receive, an in-line-of-duty disability pension at the

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

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

14 1. For purposes of this subsection and subsection ~~I~~ J of this
15 section, the following definitions shall apply:

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

20 b. "termination date" means the date the member elects to
21 participate in the Oklahoma Firefighters Deferred
22 Option Plan pursuant to this subsection, and the date
23 the member terminates employment with all
24 participating municipalities as an active firefighter,

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

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

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

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

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

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

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

1 election and the adjusted monthly pension due to the
2 back drop election,

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

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

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

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

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

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

17 4. 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 filed a
23 grievance for wrongful termination occurring on or after June 4,
24 2007, or is not a member of a collective bargaining organization as

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

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

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