

**SENATE FLOOR VERSION**

March 29, 2021

ENGROSSED HOUSE  
BILL NO. 2278

By: West (Josh) of the House

and

Rosino of the Senate

An Act relating to public retirement systems;  
amending 11 O.S. 2011, Sections 49-106 and 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  
relate to the Oklahoma Firefighters Pension and  
Retirement System; modifying distribution  
requirements; 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, is amended to read as follows:

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

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

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

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

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

15 2. The actual retirement date of the member.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 2. The actual retirement date of the member.

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

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



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

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

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

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

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

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

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

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

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

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

6 a. "back drop election date" means the date the surviving  
7 spouse or member elects to commence participation in  
8 the Oklahoma Firefighters Deferred Option Plan  
9 pursuant to subsection H of this section and this  
10 subsection,

11 b. "interest" means the actuarial assumed interest rate  
12 as certified by the actuary in the yearly evaluation  
13 report of the actuary,

14 c. "monthly adjustment amount" means the difference  
15 between the monthly pension prior to the back drop  
16 election and the adjusted monthly pension due to the  
17 back drop election,

18 d. "back drop pension adjustment amount" means the sum of  
19 all the monthly adjustment amounts adjusted for  
20 interest from the pension commencement date to the  
21 back drop election date, and

22 e. "deferred benefit balance adjustment amount" means the  
23 interest on the deferred benefit balance from the  
24

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

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

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

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

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

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

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

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

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

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

10 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE  
11 March 29, 2021 - DO PASS  
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