

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 466

By: Bergstrom

AS INTRODUCED

An Act relating to public retirement systems; amending 62 O.S. 2011, Section 3103, as last amended by Section 1, Chapter 121, O.S.L. 2020 (62 O.S. Supp. 2020, Section 3103), which relates to the Oklahoma Pension Legislation Actuarial Analysis Act; modifying definition; amending 11 O.S. 2011, Sections 49-100.1, as last amended by Section 2, Chapter 388, O.S.L. 2013, 49-103, as amended by Section 1, Chapter 36, O.S.L. 2016 and 49-104 (11 O.S. Supp. 2020, Sections 49-100.1 and 49-103), which relate to the Oklahoma Firefighters Pension and Retirement System; modifying definitions; providing for membership by certain firefighters employed by federally recognized Native American tribes; modifying provisions related to local retirement boards; providing for service in designated capacities with respect to federally recognized Native American tribes; and providing effective dates.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 62 O.S. 2011, Section 3103, as last amended by Section 1, Chapter 121, O.S.L. 2020 (62 O.S. Supp. 2020, Section 3103), is amended to read as follows:

Section 3103. As used in the Oklahoma Pension Legislation Actuarial Analysis Act:

1 1. "Amendment" means any amendment, including a substitute
2 bill, made to a retirement bill by any committee of the House or
3 Senate, any conference committee of the House or Senate or by the
4 House or Senate;

5 2. "RB number" means that number preceded by the letters "RB"
6 assigned to a retirement bill by the respective staffs of the
7 Oklahoma State Senate and the Oklahoma House of Representatives when
8 the respective staff office prepares a retirement bill for a member
9 of the Legislature;

10 3. "Legislative Actuary" means the firm or entity that enters
11 into a contract with the Legislative Service Bureau pursuant to
12 Section 452.15 of Title 74 of the Oklahoma Statutes to provide the
13 actuarial services and other duties provided for in the Oklahoma
14 Pension Legislation Actuarial Analysis Act;

15 4. "Nonfiscal amendment" means an amendment to a retirement
16 bill having a fiscal impact, which amendment does not change any
17 factor of an actuarial investigation specified in subsection A of
18 Section 3109 of this title;

19 5. "Nonfiscal retirement bill" means a retirement bill:

- 20 a. which does not affect the cost or funding factors of a
21 retirement system,
- 22 b. which affects such factors only in a manner which does
23 not:

- 1 (1) grant a benefit increase under the retirement
2 system affected by the bill,
3 (2) create an actuarial accrued liability for or
4 increase the actuarial accrued liability of the
5 retirement system affected by the bill, or
6 (3) increase the normal cost of the retirement system
7 affected by the bill,
8 c. which authorizes the purchase by an active member of
9 the retirement system, at the actuarial cost for the
10 purchase as computed pursuant to the statute in effect
11 on the effective date of the measure allowing such
12 purchase, of years of service for purposes of reaching
13 a normal retirement date in the applicable retirement
14 system, but which cannot be used in order to compute
15 the number of years of service for purposes of
16 computing the retirement benefit for the member,
17 d. which provides for the computation of a service-
18 connected disability retirement benefit for members of
19 the Oklahoma Law Enforcement Retirement System
20 pursuant to Section 2-305 of Title 47 of the Oklahoma
21 Statutes if the members were unable to complete twenty
22 (20) years of service as a result of the disability,
23 e. which requires membership in the defined benefit plan
24 authorized by Section 901 et seq. of Title 74 of the

1 Oklahoma Statutes for persons whose first elected or
2 appointed service occurs on or after November 1, 2018,
3 if such persons had any prior service in the Oklahoma
4 Public Employees Retirement System prior to November
5 1, 2015,

6 f. which provides for a one-time increase in retirement
7 benefits if the increase in retirement benefits is not
8 a permanent increase in the gross annual retirement
9 benefit payable to a member or beneficiary, occurs
10 only once pursuant to a single statutory authorization
11 and does not exceed:

12 (1) the lesser of two percent (2%) of the gross
13 annual retirement benefit of the member or One
14 Thousand Dollars (\$1,000.00) and requires that
15 the benefit may only be provided if the funded
16 ratio of the affected retirement system would not
17 be less than sixty percent (60%) but not greater
18 than eighty percent (80%) after the benefit
19 increase is paid,

20 (2) the lesser of two percent (2%) of the gross
21 annual retirement benefit of the member or One
22 Thousand Two Hundred Dollars (\$1,200.00) and
23 requires that the benefit may only be provided if
24 the funded ratio of the affected retirement
25

1 system would be greater than eighty percent (80%)
2 but not greater than one hundred percent (100%)
3 after the benefit increase is paid,

4 (3) the lesser of two percent (2%) of the gross
5 annual retirement benefit of the member or One
6 Thousand Four Hundred Dollars (\$1,400.00) and
7 requires that the benefit may only be provided if
8 the funded ratio of the affected retirement
9 system would be greater than one hundred percent
10 (100%) after the benefit increase is paid, or

11 (4) the greater of two percent (2%) of the gross
12 annual retirement benefit of the volunteer
13 firefighter or One Hundred Dollars (\$100.00) for
14 persons who retired from the Oklahoma
15 Firefighters Pension and Retirement System as
16 volunteer firefighters and who did not retire
17 from the Oklahoma Firefighters Pension and
18 Retirement System as a paid firefighter.

19 As used in this subparagraph, "funded ratio" means the
20 figure derived by dividing the actuarial value of
21 assets of the applicable retirement system by the
22 actuarial accrued liability of the applicable
23 retirement system, ~~or~~

- 1 g. which provides a cost-of-living benefit increase
2 pursuant to the provisions of ~~Sections 2 through 7 of~~
3 ~~this act~~ Sections 49-143.7 and 50-136.9 of Title 11 of
4 the Oklahoma Statutes, Section 1104K of Title 20 of
5 the Oklahoma Statutes, Section 2-305,12 of Title 47 of
6 the Oklahoma Statutes, Section 17-116.22 of Title 70
7 of the Oklahoma Statutes and Section 930.11 of Title
8 74 of the Oklahoma Statutes, or
- 9 f. which allows for the participation of firefighters of
10 a fire department, operating within Oklahoma, of an
11 Oklahoma-based federally recognized Native American
12 tribe pursuant to the provisions of Sections 2 through
13 4 of this act.

14 A nonfiscal retirement bill shall include any retirement bill that
15 has as its sole purpose the appropriation or distribution or
16 redistribution of monies in some manner to a retirement system for
17 purposes of reducing the unfunded liability of such system or the
18 earmarking of a portion of the revenue from a tax to a retirement
19 system or increasing the percentage of the revenue earmarked from a
20 tax to a retirement system;

21 6. "Reduction-in-cost amendment" means an amendment to a
22 retirement bill having a fiscal impact which reduces the cost of the
23 bill as such cost is determined by the actuarial investigation for
24 the bill prepared pursuant to Section 3109 of this title;

1 7. "Retirement bill" means any bill or joint resolution
2 introduced or any bill or joint resolution amended by a member of
3 the Oklahoma Legislature which creates or amends any law directly
4 affecting a retirement system. A retirement bill shall not mean a
5 bill or resolution that impacts the revenue of any state tax in
6 which a portion of the revenue generated from such tax is earmarked
7 for the benefit of a retirement system;

8 8. "Retirement bill having a fiscal impact" means any
9 retirement bill creating or establishing a retirement system and any
10 other retirement bill other than a nonfiscal retirement bill; and

11 9. "Retirement system" means the Teachers' Retirement System of
12 Oklahoma, the Oklahoma Public Employees Retirement System, the
13 Uniform Retirement System for Justices and Judges, the Oklahoma
14 Firefighters Pension and Retirement System, the Oklahoma Police
15 Pension and Retirement System, the Oklahoma Law Enforcement
16 Retirement System, or a retirement system established after January
17 1, 2006.

18 SECTION 2. AMENDATORY 11 O.S. 2011, Section 49-100.1, as
19 last amended by Section 2, Chapter 388, O.S.L. 2013 (11 O.S. Supp.
20 2020, Section 49-100.1), is amended to read as follows:

21 Section 49-100.1. As used in this article:

22 1. "System" means the Oklahoma Firefighters Pension and
23 Retirement System and all predecessor municipal firefighters pension
24 and retirement systems;

1 2. "Article" means Article 49 of this title;

2 3. "State Board" means the Oklahoma Firefighters Pension and
3 Retirement Board;

4 4. "Local board" means the local firefighters pension and
5 retirement boards;

6 5. "Fund" means the Oklahoma Firefighters Pension and
7 Retirement Fund;

8 6. "Member" means all eligible firefighters of a participating
9 municipality ~~or a~~, fire protection district or fire department,
10 operating within this state, of an Oklahoma-based federally
11 recognized Native American tribe that adopts a resolution or other
12 affirmative act allowing a fire department to become a participating
13 municipality, as defined in paragraph 9 of this section, who perform
14 the essential functions of fire suppression, prevention, and life
15 safety duties in a fire department. The term "member" shall include
16 but not be limited to the person serving as fire chief of any
17 participating municipality, provided that a person serving as fire
18 chief of a participating municipality shall meet the age, agility,
19 physical and other eligibility requirements required by law at the
20 time said person becomes a member of the System. Effective July 1,
21 1987, a member does not include a "leased employee". The term
22 "leased employee" means any person (other than an employee of the
23 recipient) who pursuant to an agreement between the recipient and
24 any other person ("leasing organization") has performed services for

1 the recipient (or for the recipient and related persons determined
2 in accordance with Section 414(n)(6) of the Internal Revenue Code of
3 1986, as amended) on a substantially full-time basis for a period of
4 at least one (1) year, and such services are performed under primary
5 direction or control by the recipient. Contributions or benefits
6 provided a leased employee by the leasing organization which are
7 attributable to services performed for the recipient employer shall
8 be treated as provided by the recipient employer. A leased employee
9 shall not be considered an employee of the recipient if the
10 requirements of the safe harbor provisions of Section 414(n)(5) of
11 the Internal Revenue Code of 1986, as amended, are satisfied.

12 Effective July 1, 1999, any individual who agrees with the
13 participating municipality that the individual's services are to be
14 performed as a leased employee or an independent contractor shall
15 not be a member regardless of any classification as a common law
16 employee by the Internal Revenue Service or any other governmental
17 agency, or any court of competent jurisdiction;

18 7. "Normal retirement date" means the date at which the member
19 is eligible to receive the unreduced payments of the member's
20 accrued retirement benefit. Such date shall be the first day
21 following the date the member completes twenty (20) years of
22 credited service. For a member whose first employment with a
23 participating employer of the System occurs on or after November 1,
24 2013, such date shall be the first day following the date the member

1 completes twenty-two (22) years of credited service and has attained
2 the age of at least fifty (50) years. If the member's employment
3 continues past the normal retirement date of the member, the actual
4 retirement date of the member shall be the first day following the
5 date the member terminates employment with more than twenty (20)
6 years of credited service, or with respect to members who are
7 required to complete twenty-two (22) years of service, the first day
8 following the date the member terminates employment with more than
9 twenty-two (22) years of service and who has also attained the age
10 of at least fifty (50) years;

11 8. "Credited service" means the period of service used to
12 determine the eligibility for and the amount of benefits payable to
13 a member. Credited service shall consist of the period during which
14 the member participated in the System or the predecessor municipal
15 systems as an active employee in an eligible membership
16 classification, plus any service prior to the establishment of the
17 predecessor municipal systems which was credited under the
18 predecessor municipal systems; provided, however, "credited service"
19 for members from a fire protection district shall not begin accruing
20 before July 1, 1982;

21 9. "Participating municipality" means a municipality, county
22 fire department organized pursuant to subsection D of Section 351 of
23 Title 19 of the Oklahoma Statutes, ~~or~~ fire protection district or
24 fire department, operating within this state, of an Oklahoma-based

1 federally recognized Native American tribe which is making
2 contributions to the System on behalf of its firefighters. All
3 participating municipalities shall appoint a fire chief who shall
4 supervise and administer the fire department;

5 10. "Disability" means the complete inability of the
6 firefighter to perform any and every duty of the firefighter's
7 regular occupation; provided further, that once benefits have been
8 paid for twenty-four (24) months the provisions of Section 49-110 of
9 this title shall apply to the firefighter;

10 11. "Executive Director" means the managing officer of the
11 System employed by the State Board;

12 12. "Eligible employer" means any municipality with a municipal
13 fire department, any county fire department organized pursuant to
14 subsection D of Section 351 of Title 19 of the Oklahoma Statutes ~~or,~~
15 any fire protection district with an organized fire department or a
16 fire department operating within this state of an Oklahoma-based
17 federally recognized Native American tribe with respect to
18 firefighters employed by the fire department on or after November 1,
19 2021, upon tribal adoption of a resolution or other affirmative act
20 allowing such fire department to become a participating employer of
21 the System;

22 13. "Entry date" means the date as of which an eligible
23 employer joins the System. The first entry date pursuant to this
24 article shall be January 1, 1981;

1 14. "Final average salary" means the average paid gross salary
2 of the firefighter for normally scheduled hours over the highest
3 salaried thirty (30) consecutive months of the last sixty (60)
4 months of credited service. Gross salary shall not include payment
5 for accumulated sick or annual leave upon termination of employment,
6 any uniform allowances or any other compensation for reimbursement
7 of out-of-pocket expenses. Only salary on which the required
8 contributions have been made may be used in computing the final
9 average salary. Effective January 1, 1988, gross salary shall
10 include any amount of elective salary reduction under Section 125 of
11 the Internal Revenue Code of 1986, as amended. Gross salary shall
12 include any amount of elective salary reduction under Section 457 of
13 the Internal Revenue Code of 1986, as amended, and any amount of
14 nonelective salary reduction under Section 414(h) of the Internal
15 Revenue Code of 1986, as amended. Effective July 1, 1998, for
16 purposes of determining a member's compensation, any contribution by
17 the member to reduce the member's regular cash remuneration under
18 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be
19 treated as if the member did not make such an election. Only salary
20 on which required contributions have been made may be used in
21 computing final average salary.

22 In addition to other applicable limitations, and notwithstanding
23 any other provision to the contrary, for plan years beginning on or
24 after July 1, 2002, the annual gross salary of each "Noneligible
25

1 Member" taken into account under the System shall not exceed the
2 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")
3 annual salary limit. The EGTRRA annual salary limit is Two Hundred
4 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for
5 increases in the cost of living in accordance with Section
6 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
7 annual salary limit in effect for a calendar year applies to any
8 period, not exceeding twelve (12) months, over which salary is
9 determined ("determination period") beginning in such calendar year.
10 If a determination period consists of fewer than twelve (12) months,
11 the EGTRRA salary limit will be multiplied by a fraction, the
12 numerator of which is the number of months in the determination
13 period, and the denominator of which is twelve (12). For purposes
14 of this subsection, a "Noneligible Member" is any member who first
15 became a member during a plan year commencing on or after July 1,
16 1996.

17 For plan years beginning on or after July 1, 2002, any reference
18 to the annual salary limit under Section 401(a)(17) of the Internal
19 Revenue Code of 1986, as amended, shall mean the EGTRRA salary limit
20 set forth in this subsection.

21 Effective June 9, 2010, gross salary shall also include gross
22 salary, as described above, for services, but paid by the later of
23 two and one-half (2 1/2) months after a firefighter's severance from
24 employment or the end of the calendar year that includes the date
25

1 the firefighter terminated employment, if it is a payment that,
2 absent a severance from employment, would have been paid to the
3 firefighter while the firefighter continued in employment with the
4 participating municipality.

5 Effective June 9, 2010, any payments not described above shall
6 not be considered gross salary if paid after severance from
7 employment, even if they are paid by the later of two and one-half
8 (2 1/2) months after the date of severance from employment or the
9 end of the calendar year that includes the date of severance from
10 employment, except payments to an individual who does not currently
11 perform services for the participating municipality by reason of
12 qualified military service within the meaning of Section 414(u) (5)
13 of the Internal Revenue Code of 1986, as amended, to the extent
14 these payments do not exceed the amounts the individual would have
15 received if the individual had continued to perform services for the
16 participating municipality rather than entering qualified military
17 service.

18 Effective June 9, 2010, back pay, within the meaning of Section
19 1.415(c)-2(g) (8) of the Income Tax Regulations, shall be treated as
20 gross salary for the year to which the back pay relates to the
21 extent the back pay represents wages and compensation that would
22 otherwise be included in this definition.

1 Effective for years beginning after December 31, 2008, gross
2 salary shall also include differential wage payments under Section
3 414(u) (12) of the Internal Revenue Code of 1986, as amended;

4 15. "Accrued retirement benefit" means two and one-half percent
5 (2 1/2%) of the firefighter's final average salary multiplied by the
6 member's years of credited service not to exceed thirty (30) years;

7 16. "Beneficiary" means a member's surviving spouse or any
8 surviving children, including biological and adopted children, at
9 the time of the member's death. The surviving spouse must have been
10 married to the firefighter for the thirty (30) continuous months
11 preceding the firefighter's death provided a surviving spouse of a
12 member who died while in, or as a consequence of, the performance of
13 the member's duty for a participating municipality, shall not be
14 subject to the marriage limitation for survivor benefits. A
15 surviving child of a member shall be a beneficiary until reaching
16 eighteen (18) years of age or twenty-two (22) years of age if the
17 child is enrolled full time and regularly attending a public or
18 private school or any institution of higher education. Any child
19 adopted by a member after the member's retirement shall be a
20 beneficiary only if the child is adopted by the member for the
21 thirty (30) continuous months preceding the member's death. Any
22 child who is adopted by a member after the member's retirement and
23 such member dies accidentally or as a consequence of the performance
24 of the member's duty as a firefighter shall not be subject to the

1 thirty-month adoption requirement. This definition of beneficiary
2 shall be in addition to any other requirement set forth in this
3 article;

4 17. "Accumulated contributions" means the sum of all
5 contributions made by a member to the System and includes both
6 contributions deducted from the compensation of a member and
7 contributions of a member picked up and paid by the participating
8 municipality of the member. Accumulated contributions shall not
9 include any interest on the contributions of the member, interest on
10 any amount contributed by the municipality or state and any amount
11 contributed by the municipality or state; and

12 18. "Limitation year" means the year used in applying the
13 limitations of Section 415 of the Internal Revenue Code of 1986,
14 which year shall be the calendar year.

15 SECTION 3. AMENDATORY 11 O.S. 2011, Section 49-103, as
16 amended by Section 1, Chapter 36, O.S.L. 2016 (11 O.S. Supp. 2020,
17 Section 49-103), is amended to read as follows:

18 Section 49-103. A. The mayor, the clerk and the treasurer of
19 every incorporated municipality, or the equivalent officers of an
20 Oklahoma-based federally recognized Native American tribe that is a
21 participating municipality as defined in paragraph 9 of Section 49-
22 100.1 of this title, are, in addition to the duties now required of
23 them, hereby created and constituted, together with three members
24 from the fire department of such municipality, a local firefighters

1 pension and retirement board of each such municipality, which board
2 shall be known as the Local Firefighters Pension and Retirement
3 Board. The fire department of each such municipality shall elect,
4 by ballot, three members of such fire department, one of whom shall
5 serve for the term of one (1) year, and one for the term of two (2)
6 years, and one for the term of three (3) years, and thereafter such
7 fire department shall, every year, elect by ballot one of its
8 members to serve for the term of three (3) years upon the local
9 board; provided, the provisions of this article shall not apply to
10 any municipality where no regularly organized fire department is
11 maintained, nor to any municipality where the fire department has
12 firefighting apparatus of less than One Thousand Dollars (\$1,000.00)
13 value.

14 B. Local firefighter pension and retirement boards of
15 participating employers of the System shall be terminated on
16 December 31, 2016, and all powers, duties and functions shall be
17 assumed by the Executive Director unless a majority of the active
18 firefighters of an affected fire department elect to continue their
19 local firefighter pension and retirement board before the
20 termination date prescribed by this subsection; provided, that an
21 election shall be held within twenty (20) days of the date a
22 petition is presented to the fire chief of a fire department signed
23 by at least ten percent (10%) of the active firefighters on the
24

1 rolls as of the petition date requesting an election to continue the
2 local firefighter pension and retirement board.

3 SECTION 4. AMENDATORY 11 O.S. 2011, Section 49-104, is
4 amended to read as follows:

5 Section 49-104. The mayor shall be an ex officio member and
6 chairman of the local board, the municipal clerk shall be ex officio
7 secretary, and the municipal treasurer shall be ex officio treasurer
8 of the local board. In the case of an Oklahoma-based federally
9 recognized Native American tribe that is a participating
10 municipality as defined in paragraph 9 of Section 49-100.1 of this
11 title, the persons serving in equivalent offices to a mayor,
12 municipal clerk and municipal treasurer shall serve in those
13 positions for purposes of this section. The mayor shall have a
14 casting vote with the members only when necessary to avoid a tie
15 vote among them. The members shall elect a vice-chairman from among
16 them and promulgate such other rules and offices as may be necessary
17 to ~~insure~~ ensure the orderly conduct of business.

18 SECTION 5. Section 1 of this act shall become effective October
19 1, 2021.

20 SECTION 6. Sections 2 through 4 of this act shall become
21 effective November 1, 2021.

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