

ENROLLED SENATE
BILL NO. 524

BY: HENDRICK of the SENATE

and

ROBERTS (Larry) of the
HOUSE

AN ACT RELATING TO CITIES AND TOWNS AND MOTOR VEHICLES; AMENDING 11 O.S. 1981, SECTION 49-100.1, AS LAST AMENDED BY SECTION 1, CHAPTER 143, O.S.L. 1990, AND SECTION 12, CHAPTER 267, O.S.L. 1988 (11 O.S. SUPP. 1990, SECTIONS 49-100.1 AND 50-114.1) AND 47 O.S. 1981, SECTION 2-300, AS LAST AMENDED BY SECTION 8, CHAPTER 337, O.S.L. 1990 (47 O.S. SUPP. 1990, SECTION 2-300), WHICH RELATE TO THE OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM, THE OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM AND THE OKLAHOMA LAW ENFORCEMENT RETIREMENT SYSTEM; MODIFYING AND PROVIDING DEFINITIONS; REQUIRING RETIREMENT BENEFITS TO BE SUBJECT TO LIMITATIONS OF THE INTERNAL REVENUE CODE; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 11 O.S. 1981, Section 49-100.1, as last amended by Section 1, Chapter 143, O.S.L. 1990 (11 O.S. Supp. 1990, Section 49-100.1), is amended to read as follows:

Section 49-100.1 As used in this article:

1. "System" means the Oklahoma Firefighters Pension and Retirement System and all predecessor municipal fire fighters pension and retirement systems;
2. "Article" means Article 49 of this title;
3. "State Board" means the Oklahoma Firefighters Pension and Retirement Board;
4. "Local board" means the local fire fighters pension and retirement boards;
5. "Fund" means the Oklahoma Firefighters Pension and Retirement Fund;
6. "Member" means all eligible fire fighters of a participating municipality or a fire protection district;
7. "Normal retirement date" means the date at which the member is eligible to receive the unreduced payments of the member's accrued retirement benefit. Such date shall be the first day of the month coinciding with or following the date the member completes twenty (20) years of credited service. If the member's employment continues past the normal retirement date of the member, the actual retirement date of the member shall be the first day of the month

after the member terminates employment with more than twenty (20) years of credited service;

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

9. "Participating municipality" means a municipality or fire protection district which is making contributions to the System on behalf of its fire fighters;

10. "Disability" means the complete inability of the fire fighter to perform any and every duty of his regular occupation; provided further, that once benefits have been paid for twenty-four (24) months the provisions of Section 49-110 of this title shall apply to the fire fighter;

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

12. "Eligible employer" means any municipality with a municipal fire department or a fire protection district with an organized fire department;

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

14. "Final average salary" means the average paid gross salary of the fire fighter for normally scheduled hours over the highest salaried thirty (30) consecutive months of the last sixty (60) months of credited service. Gross salary shall not include payment for accumulated sick or annual leave upon termination of employment, any uniform allowances or any other compensation for reimbursement of out-of-pocket expenses. Only salary on which the required contributions have been made may be used in computing the final average salary. Gross salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986 and any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986. Only salary on which required contributions have been made may be used in computing final average salary;

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

16. "Beneficiary" means a member's surviving spouse, child or children at the time of the member's death. The surviving spouse must have been married to the fire fighter for the thirty (30) continuous months preceding the fire fighter's death provided a 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 survivor benefits. A surviving spouse shall be a beneficiary until the spouse remarries. A surviving child of a member shall be a beneficiary until reaching eighteen (18) years of age. Children adopted by the member after the member's retirement are not beneficiaries. This definition of beneficiary shall be in addition to any other requirement set forth in this article; ~~and~~

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

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49-106.2 of Title 11, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision contained herein to the contrary, the benefits payable to a member in the System shall be subject to the limitations of Section 415 of the Internal Revenue Code of 1986 in accordance with the provisions of paragraphs 1 and 2 of this section.

1. Except as provided in subparagraphs c through g of this paragraph, any accrued retirement benefit payable to a member shall not exceed the lesser of:

a. Ninety Thousand Dollars (\$90,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of the Treasury or his delegate, effective January 1 of each calendar year and applicable to the limitation year ending with or within such calendar year,

b. one hundred percent (100%) of the average earnings of the member for the three (3) consecutive calendar years, while a member in the System, in which the members's earnings were the highest. For purposes of this subparagraph, earnings for any limitation year shall be the earned income of the member, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with a participating municipality, provided such amounts are actually paid or includable in gross income during such year. Earnings shall exclude the following:

(1) contributions by a participating municipality to a plan of deferred compensation which are not included in the gross income of the member for the taxable year in which contributed or any distributions from a funded plan of deferred compensation, and

(2) other amounts which received special tax benefits, or contributions made by a participating municipality, whether or not under a salary reduction agreement, towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code of 1986, whether or not the amounts are actually excludable from the gross income of the member,

c. except as provided in subparagraph e of this paragraph, the limitations specified in subparagraphs a and b of this paragraph shall not be applicable with respect to any member whose total annual accrued retirement benefit payable from the System is less than Ten Thousand Dollars (\$10,000.00) and who has not

at any time participated in any contribution plan, within the meaning of Section 415(k) of the Internal Revenue Code of 1986, maintained by a participating municipality,

- d. if a member has less than ten (10) years of participation in the System and all predecessor municipal firefighter pension and retirement systems, the dollar limitation otherwise applicable under subparagraph a of this paragraph shall be reduced by multiplying such limitation by a fraction, the numerator of which is the number of the years of participation in the System of the member, but never less than one (1), and the denominator of which is ten (10). This subparagraph, to the extent required by the Secretary of the Treasury, shall be applied separately to each change in benefit structure hereunder,
- e. if a member has been credited with less than ten (10) years of credited service, the percentage-of-average-earnings limitation otherwise applicable under subparagraph b of this paragraph and the dollar amount otherwise applicable under subparagraph c of this paragraph shall be reduced by multiplying each by a fraction, the numerator of which is the number of the years of credited service of the member, but never less than one (1), and the denominator of which is ten (10),
- f. the limitations specified in this section shall apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins between attainment of age sixty-two (62) and age sixty-five (65) by the member. If payment is in a different form, the amount thereof shall be adjusted to be the actuarial equivalent of a single life annuity and the limitations shall be applied to such adjusted amount. Such adjustment shall be based on the actuarial tables adopted by the State Board. If payment begins before the member reaches sixty-two (62) years of age, the limitation in subparagraph a of this paragraph shall be reduced on an actuarially equivalent basis determined in accordance with the actuarial tables adopted by the State Board; provided however, if such payment begins after the member reaches fifty-five (55) years of age, the reduced limit shall not be less than Seventy-five Thousand Dollars (\$75,000.00) and, if payment begins prior to the member reaching fifty-five (55) years of age, the reduced limit shall not be less than the actuarial equivalent of the Seventy-five Thousand Dollar (\$75,000.00) limit for age fifty-five (55) based on actuarial tables adopted by the State Board; provided, further that in no event shall such amount be reduced below Fifty Thousand Dollars (\$50,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of Treasury, or his delegate. If payment begins after the member reaches sixty-five (65) years of age, the limitation in subparagraph a of this paragraph shall be the actuarial equivalent of such amount otherwise applicable at the member reaching sixty-five (65)

years of age, based on the actuarial tables adopted by the State Board. The interest rate to be used in such actuarial equivalent amount shall be the rate specified in the actuarial tables adopted by the State Board; however, the interest rate used in determining an actuarially equivalent single life amount or pre-age sixty-two (62) amount shall not be less than five percent (5%) and the interest rate used in determining an actuarially equivalent post age sixty-five (65) amount shall not be greater than five percent (5%),

g. in no event shall the maximum annual accrued retirement benefit of a member allowable under this section be less than the annual amount of such accrued retirement benefit, including early pension and qualified joint and survivor annuity amounts, duly accrued by the member as of the last day of the limitation year beginning in 1982, or as of the last day of the limitation year beginning in 1986, whichever is greater, disregarding any plan changes or cost-of-living adjustments occurring after July 1, 1982, as to the 1982 accrued amount, and May 5, 1986, as to the 1986 accrued amount.

2. If a member also participates, or has participated, in one or more defined contribution plans, within the meaning of Section 415(k) of the Internal Revenue Code of 1986, maintained by a participating municipality, the sum of the defined benefit plan fraction and defined contribution plan fraction, as defined in (1) and (2) below, shall not exceed one. If, in any limitation year, the sum of the defined benefit plan fraction and the defined contribution plan fraction for a member would exceed one without adjustment of the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to paragraph 1 of this section, the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to paragraph 1 of this section shall be reduced to the extent necessary to reduce the sum of the defined benefit plan fraction and the defined contribution plan fraction for the member to one, or the State Board may take such other action as will cause the sum to equal one or less. As used in this paragraph:

- a. "Defined benefit fraction" means a fraction:
- (1) the numerator of which is the projected annual accrued retirement benefit of the member from the System, determined as of the close of the limitation year, and
 - (2) the denominator of which is the lesser of one hundred twenty-five percent (125%) of the dollar limitation under Section 415(b)(1)(A) of the Internal Revenue Code of 1986 or one hundred forty percent (140%) of the percentage limitation under Section 415(b)(1)(B) of the Internal Revenue Code of 1986 for the year of determination, taking into account the effect of Section 235(g)(4) of the Tax Equity and Fiscal Responsibility Act of 1982,
- b. "Defined contribution fraction" means a fraction:
- (1) the numerator of which is the sum of the annual additions, as defined in Section 415(c)(2) of the Internal Revenue Code of 1986, to the accounts of the member under all defined contribution plans maintained by the participating municipalities as

- of the close of the limitation year, subject to reduction to the extent permitted under the transition rule in Section 235(g)(3) of the Tax Equity and Fiscal Responsibility Act of 1982, and
- (2) the denominator of which is the sum of the lesser of one hundred twenty-five percent (125%) of the dollar limitation under Section 415(c)(1)(A) of the Internal Revenue Code of 1986 or one hundred forty percent (140%) of the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code of 1986, for such limitation year and for all prior limitation years during which the member was employed by an eligible employer. At the option of the State Board, the denominator may be increased by using for limitation years ending prior to January 1, 1983, an amount equal to the denominator in effect for the limitation year ending in 1982, multiplied by the transition fraction provided in Section 415(e)(6)(B) of the Internal Revenue Code of 1986.

The State Board is hereby authorized to make the special election under Internal Revenue Code Section 415(b)(10). If this special election is made, the Section 415 limit for a member who joined the System prior to January 1, 1990 shall be the greater of: (1) the applicable Code Section 415 limit, or (2) the member's benefit under the System without regard to any benefit increases pursuant to a System amendment adopted after October 14, 1987.

In the event that the special election is made, subparagraph f of paragraph 1 of this section shall read as follows: f. The limitations specified in this section shall apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins at the age at which the member could receive an unreduced primary insurance amount under the federal Social Security laws (i.e., "social security retirement age") determined by disregarding the age increase factor thereunder and as if early retirement were sixty-two (62). If payment is in a different form, the amount thereof shall be adjusted to be the actuarial equivalent of a single life annuity and the limitations shall be applied to such adjusted amount. Such adjustment shall be based on the actuarial tables adopted by the State Board. If payment begins before the member's social security retirement age, the limitation in subparagraph a of this paragraph shall be reduced by applying a reduction factor consistent with social security reduction factors, as prescribed by the Secretary of the Treasury; provided, however, that in no event shall such amount be reduced below Fifty Thousand Dollars (\$50,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of the Treasury, or his delegate. If payment begins after the participant's social security retirement age, the limitation in subparagraph a of this paragraph shall be the actuarial equivalent of such amount otherwise applicable at the member's social security retirement age, based on the actuarial tables adopted by the State Board. The interest rate to be used in determining such actuarial equivalent amount shall be the rate specified in the actuarial tables adopted by the State Board; however, the interest rate used in determining an actuarially equivalent single life amount shall not be less than five percent (5%) and the interest rate used in determining an actuarially equivalent post-social-security-retirement-age amount shall not be greater than five percent (5%).

The State Board is hereby authorized to do all acts and things necessary and proper to carry out the purpose of the System and to make the least costly amendments and changes, if any, as may be necessary to qualify the System under the applicable sections of the Internal Revenue Code of 1986, as amended.

SECTION 3. AMENDATORY Section 12, Chapter 267, O.S.L. 1988 (11 O.S. Supp. 1990, Section 50-114.1), is amended to read as follows:

Section 50-114.1 Notwithstanding any other provision contained herein to the contrary, the benefits payable to a member in the System shall be subject to the limitations of Section 415 of the Internal Revenue Code of 1986 in accordance with the provisions of paragraphs 1 and 2 of this section.

1. Except as provided in subparagraphs c through g of this paragraph, any accrued retirement benefit payable to a member shall not exceed the lesser of:

- a. Ninety Thousand Dollars (\$90,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of the Treasury or his delegate, effective January 1 of each calendar year and applicable to the limitation year ending with or within such calendar year.
- b. One hundred percent (100%) of the average earnings of the member for the three (3) consecutive calendar years, while a member in the System, in which the members's earnings were the highest. For purposes of this subparagraph, earnings for any limitation year shall be the earned income of the member, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with a participating municipality, provided such amounts are actually paid or includable in gross income during such year. Earnings shall exclude the following:
 - (1) Contributions by a participating municipality to a plan of deferred compensation which are not included in the gross income of the member for the taxable year in which contributed or any distributions from a funded plan of deferred compensation, and
 - (2) Other amounts which received special tax benefits, or contributions made by a participating municipality, whether or not under a salary reduction agreement, towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code of 1986, whether or not the amounts are actually excludable from the gross income of the member.
- c. Except as provided in subparagraph e of this paragraph, the limitations specified in subparagraphs a and b of this paragraph shall not be applicable with respect to any member whose total annual accrued retirement benefit payable from the System is less than Ten Thousand Dollars (\$10,000.00) and who has not at any time participated in any contribution plan, within the meaning of Section 415(k) of the Internal Revenue Code of 1986, maintained by a participating municipality.
- d. If a member has less than ten (10) years of participation in the System and all predecessor

municipal police pension and retirement systems, the dollar limitation otherwise applicable under subparagraph a of this paragraph shall be reduced by multiplying such limitation by a fraction, the numerator of which is the number of the years of participation in the System of the member, but never less than one (1), and the denominator of which is ten (10). This subparagraph, to the extent required by the Secretary of the Treasury, shall be applied separately to each change in benefit structure hereunder.

- e. If a member has been credited with less than ten (10) years of credited service, the percentage-of-average-earnings limitation otherwise applicable under subparagraph b of this paragraph and the dollar amount otherwise applicable under subparagraph c of this paragraph shall be reduced by multiplying each by a fraction, the numerator of which is the number of the years of credited service of the member, but never less than one (1), and the denominator of which is ten (10).
- f. The limitations specified in this section shall apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins between attainment of age sixty-two (62) and age sixty-five (65) by the member. If payment is in a different form, the amount thereof shall be adjusted to be the actuarial equivalent of a single life annuity and the limitations shall be applied to such adjusted amount. Such adjustment shall be based on the actuarial tables adopted by the State Board. If payment begins before the member reaches sixty-two (62) years of age, the limitation in subparagraph a of this paragraph shall be reduced on an actuarially equivalent basis determined in accordance with the actuarial tables adopted by the State Board; provided however, if such payment begins after the member reaches fifty-five (55) years of age, the reduced limit shall not be less than Seventy-five Thousand Dollars (\$75,000.00) and, if payment begins prior to the member reaching fifty-five (55) years of age, the reduced limit shall not be less than the actuarial equivalent of the Seventy-five Thousand Dollar (\$75,000.00) limit for age fifty-five (55) based on actuarial tables adopted by the State Board; provided, further that in no event shall such amount be reduced below Fifty Thousand Dollars (\$50,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of Treasury, or his delegate. If payment begins after the member reaches sixty-five (65) years of age, the limitation in subparagraph a of this paragraph shall be the actuarial equivalent of such amount otherwise applicable at the member reaching sixty-five (65) years of age, based on the actuarial tables adopted by the State Board. The interest rate to be used in such actuarial equivalent amount shall be the rate specified in the actuarial tables adopted by the State Board; however, the interest rate used in determining an actuarially equivalent single life amount or pre

age sixty-two (62) amount shall not be less than five percent (5%) and the interest rate used in determining an actuarially equivalent post age sixty-five (65) amount shall not be greater than five percent (5%).

- g. In no event shall the maximum annual accrued retirement benefit of a member allowable under this section be less than the annual amount of such accrued retirement benefit, including early pension and qualified joint and survivor annuity amounts, duly accrued by the member as of the last day of the limitation year beginning in 1982, or as of the last day of the limitation year beginning in 1986, whichever is greater, disregarding any plan changes or cost-of-living adjustments occurring after July 1, 1982, as to the 1982 accrued amount, and May 5, 1986, as to the 1986 accrued amount.

2. If a member also participates, or has participated, in one or more defined contribution plans, within the meaning of Section 415(k) of the Internal Revenue Code of 1986, maintained by a participating municipality, the sum of the defined benefit plan fraction and defined contribution plan fraction, as defined in (1) and (2) below, shall not exceed one. If, in any limitation year, the sum of the defined benefit plan fraction and the defined contribution plan fraction for a member would exceed one without adjustment of the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to paragraph 1 of this section, the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to paragraph 1 of this section shall be reduced to the extent necessary to reduce the sum of the defined benefit plan fraction and the defined contribution plan fraction for the member to one, or the State Board may take such other action as will cause the sum to equal one or less. As used in this paragraph:

- a. "Defined benefit fraction" means a fraction:
 - (1) the numerator of which is the projected annual accrued retirement benefit of the member from the System, determined as of the close of the limitation year, and
 - (2) the denominator of which is the lesser of one hundred twenty-five percent (125%) of the dollar limitation under Section 415(b)(1)(A) of the Internal Revenue Code of 1986 or one hundred forty percent (140%) of the percentage limitation under Section 415(b)(1)(B) of the Internal Revenue Code of 1986 for the year of determination, taking into account the effect of Section 235(g)(4) of the Tax Equity and Fiscal Responsibility Act of 1982.
- b. "Defined contribution fraction" means a fraction:
 - (1) the numerator of which is the sum of the annual additions, as defined in Section 415(c)(2) of the Internal Revenue Code of 1986, to the accounts of the member under all defined contribution plans maintained by the participating municipalities as of the close of the limitation year, subject to reduction to the extent permitted under the transition rule in Section 235(g)(3) of the Tax Equity and Fiscal Responsibility Act of 1982, and
 - (2) the denominator of which is the sum of the lesser of one hundred twenty-five percent (125%) of the

dollar limitation under Section 415(c)(1)(A) of the Internal Revenue Code of 1986 or one hundred forty percent (140%) of the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code of 1986, for such limitation year and for all prior limitation years during which the member was employed by an eligible employer. At the option of the State Board, the denominator may be increased by using for limitation years ending prior to January 1, 1983, an amount equal to the denominator in effect for the limitation year ending in 1982, multiplied by the transition fraction provided in Section 415(e)(6)(B) of the Internal Revenue Code of 1986.

The State Board is hereby authorized to make the special election under Internal Revenue Code Section 415(b)(10). If this special election is made, the Section 415 limit for a member who joined the System prior to January 1, 1990 shall be the greater of: (1) the applicable Code Section 415 limit, or (2) the member's benefit under the System without regard to any benefit increases pursuant to a System amendment adopted after October 14, 1987.

In the event that the special election is made, subparagraph f of paragraph 1 of this section shall read as follows: f. The limitations specified in this section shall apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins at the age at which the member could receive an unreduced primary insurance amount under the federal Social Security laws (i.e., "social security retirement age") determined by disregarding the age increase factor thereunder and as if early retirement were sixty-two (62). If payment is in a different form, the amount thereof shall be adjusted to be the actuarial equivalent of a single life annuity and the limitations shall be applied to such adjusted amount. Such adjustment shall be based on the actuarial tables adopted by the State Board. If payment begins before the member's social security retirement age, the limitation in subparagraph a of this paragraph shall be reduced by applying a reduction factor consistent with social security reduction factors, as prescribed by the Secretary of the Treasury; provided, however, that in no event shall such amount be reduced below Fifty Thousand Dollars (\$50,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of the Treasury, or his delegate. If payment begins after the participant's social security retirement age, the limitation in subparagraph a of this paragraph shall be the actuarial equivalent of such amount otherwise applicable at the member's social security retirement age, based on the actuarial tables adopted by the State Board. The interest rate to be used in determining such actuarial equivalent amount shall be the rate specified in the actuarial tables adopted by the State Board; however, the interest rate used in determining an actuarially equivalent single life amount shall not be less than five percent (5%) and the interest rate used in determining an actuarially equivalent post-social-security-retirement-age amount shall not be greater than five percent (5%).

The State Board is hereby authorized to do all acts and things necessary and proper to carry out the purpose of the System and to make the least costly amendments and changes, if any, as may be necessary to qualify the System under the applicable sections of the Internal Revenue Code of 1986, as amended.

SECTION 4. AMENDATORY 47 O.S. 1981, Section 2-300, as last amended by Section 8, Chapter 337, O.S.L. 1990 (47 O.S. Supp. 1990, Section 2-300), is amended to read as follows:

Section 2-300. As used in this act:

1. "System" means the Oklahoma Law Enforcement Retirement System;
2. "Act" means Sections 2-300 through 2-313 of this title;
3. "Board" means the Oklahoma Law Enforcement Retirement Board of the System;
4. "Fund" means the Oklahoma Law Enforcement Retirement Fund;
5. "Member" means all law enforcement officers of the Oklahoma Highway Patrol, the Oklahoma State Bureau of Investigation, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control and the Oklahoma Alcoholic Beverage Control Board designated to perform duties in the investigation and prevention of crime and the enforcement of the criminal laws of this state, and members of the Communications Division and Lake Patrol Division of the Oklahoma Department of Public Safety, park rangers of the Oklahoma Tourism and Recreation Department and inspectors of the Oklahoma State Board of Pharmacy;
6. "Normal retirement date" means the date at which the member is eligible to receive the unreduced payments of the member's accrued retirement benefit. Such date shall be the first day of the month coinciding with or following the date the member:
 - a. completes twenty (20) years of vesting service; or
 - b. attains sixty-two (62) years of age, if:
 - i. the member has been transferred to this System from the Oklahoma Public Employees Retirement System on or after July 1, 1981; and
 - ii. the member would have been vested had the member continued to be a member of the Oklahoma Public Employees Retirement System;

A member who was required to join the System effective July 1, 1980, because of the transfer of the employing agency from the Oklahoma Public Employees Retirement System to the System, and was not a member of the Oklahoma Public Employees Retirement System on the date of such transfer shall be allowed to receive credit for prior law enforcement service rendered to this state, if the member is not receiving or eligible to receive retirement credit or benefits for such service in any other public retirement system, upon payment to the System of the employee contribution the member would have been subject to had the member been a member of the System at the time, plus five percent (5%) interest. Service credit received pursuant to this paragraph shall be used in determining the member's retirement benefit, and shall be used in determining years of service for retirement or vesting purposes;

7. "Actual paid base salary" means the salary received by a member, excluding payment for any accumulated leave or uniform allowance. Salary shall include any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986;

8. "Final average salary" means the average of the highest thirty (30) consecutive complete months of actual paid ~~base~~ gross salary. Gross salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986 and any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986. Only salary on which required contributions have been made may be used in computing the final average salary;

9. "Credited service" means the period of service used to determine the amount of benefits payable to a member. Credited

service shall consist of the period during which the member participated in the System or the predecessor Plan as an active employee in an eligible membership classification, plus any service prior to the establishment of the predecessor Plan which was credited under the predecessor Plan and for officers of the Oklahoma State Bureau of Investigation and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control who became members of the System on July 1, 1980, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1980, and for members of the Communications and Lake Patrol Divisions of the Oklahoma Department of Public Safety, who became members of the System on July 1, 1981, any service credited under the predecessor Plan or the Oklahoma Public Employees Retirement System as of June 30, 1981, and for law enforcement officers of the Oklahoma Alcoholic Beverage Control Board who become members of the System on July 1, 1982, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1982, and for park rangers of the Oklahoma Tourism and Recreation Department who became members of the System on July 1, 1985, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1985, and for inspectors of the Oklahoma State Board of Pharmacy who became members of the System on July 1, 1986, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1986; and

10. "Disability" means a physical or mental condition which, in the judgment of the Board, totally and presumably permanently prevents the member from engaging in the usual and customary duties of the occupation of the member and thereafter prevents the member from performing the duties of any occupation or service for which the member is qualified by reason of training, education or experience. A person is not under a disability when capable of performing a service to the employer, regardless of occupation, providing the salary of the employee is not diminished thereby; and

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-305.4 of Title 47, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision contained herein to the contrary, the benefits payable to a member in the System shall be subject to the limitations of Section 415 of the Internal Revenue Code of 1986 in accordance with the provisions of paragraphs 1 and 2 of this section.

1. Except as provided in subparagraphs c through g of this paragraph, any accrued retirement benefit payable to a member shall not exceed the lesser of:

- a. Ninety Thousand Dollars (\$90,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of the Treasury or his delegate, effective January 1 of each calendar year and applicable to the limitation year ending with or within such calendar year,
- b. one hundred percent (100%) of the average earnings of the member for the three (3) consecutive calendar years, while a member in the System, in which the members's earnings were the highest. For purposes of this subparagraph, earnings for any limitation year shall be the earned income of the member, wages, salaries, and fees for professional services, and

other amounts received for personal services actually rendered in the course of employment with a participating employer, provided such amounts are actually paid or includable in gross income during such year. Earnings shall exclude the following:

- (1) contributions by a participating employer to a plan of deferred compensation which are not included in the gross income of the member for the taxable year in which contributed or any distributions from a funded plan of deferred compensation, and
 - (2) other amounts which received special tax benefits, or contributions made by a participating employer, whether or not under a salary reduction agreement, towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code of 1986, whether or not the amounts are actually excludable from the gross income of the member,
- c. except as provided in subparagraph e of this paragraph, the limitations specified in subparagraphs a and b of this paragraph shall not be applicable with respect to any member whose total annual accrued retirement benefit payable from the System is less than Ten Thousand Dollars (\$10,000.00) and who has not at any time participated in any contribution plan, within the meaning of Section 415(k) of the Internal Revenue Code of 1986, maintained by a participating employer,
- d. if a member has less than ten (10) years of participation in the System and all predecessor pension and retirement systems, the dollar limitation otherwise applicable under subparagraph a of this paragraph shall be reduced by multiplying such limitation by a fraction, the numerator of which is the number of the years of participation in the System of the member, but never less than one (1), and the denominator of which is ten (10). This subparagraph, to the extent required by the Secretary of the Treasury, shall be applied separately to each change in benefit structure hereunder,
- e. if a member has been credited with less than ten (10) years of credited service, the percentage-of-average-earnings limitation otherwise applicable under subparagraph b of this paragraph and the dollar amount otherwise applicable under subparagraph c of this paragraph shall be reduced by multiplying each by a fraction, the numerator of which is the number of the years of credited service of the member, but never less than one (1), and the denominator of which is ten (10),
- f. the limitations specified in this section shall apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins between attainment of age sixty-two (62) and age sixty-five (65) by the member. If payment is in a different form, the amount thereof shall be adjusted to be the actuarial equivalent of a single life annuity and the limitations shall be applied to such adjusted amount.

Such adjustment shall be based on the actuarial tables adopted by the Board. If payment begins before the member reaches sixty-two (62) years of age, the limitation in subparagraph a of this paragraph shall be reduced on an actuarially equivalent basis determined in accordance with the actuarial tables adopted by the Board; provided however, if such payment begins after the member reaches fifty-five (55) years of age, the reduced limit shall not be less than Seventy-five Thousand Dollars (\$75,000.00) and, if payment begins prior to the member reaching fifty-five (55) years of age, the reduced limit shall not be less than the actuarial equivalent of the Seventy-five Thousand Dollar (\$75,000.00) limit for age fifty-five (55) based on actuarial tables adopted by the Board; provided, further that in no event shall such amount be reduced below Fifty Thousand Dollars (\$50,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of Treasury, or his delegate. If payment begins after the member reaches sixty-five (65) years of age, the limitation in subparagraph a of this paragraph shall be the actuarial equivalent of such amount otherwise applicable at the member reaching sixty-five (65) years of age, based on the actuarial tables adopted by the State Board. The interest rate to be used in such actuarial equivalent amount shall be the rate specified in the actuarial tables adopted by the Board; however, the interest rate used in determining an actuarially equivalent single life amount or pre-age sixty-two (62) amount shall not be less than five percent (5%) and the interest rate used in determining an actuarially equivalent post age sixty-five (65) amount shall not be greater than five percent (5%),

- g. in no event shall the maximum annual accrued retirement benefit of a member allowable under this section be less than the annual amount of such accrued retirement benefit, including early pension and qualified joint and survivor annuity amounts, duly accrued by the member as of the last day of the limitation year beginning in 1982, or as of the last day of the limitation year beginning in 1986, whichever is greater, disregarding any plan changes or cost-of-living adjustments occurring after July 1, 1982, as to the 1982 accrued amount, and May 5, 1986, as to the 1986 accrued amount.

2. If a member also participates, or has participated, in one or more defined contribution plans, within the meaning of Section 415(k) of the Internal Revenue Code of 1986, maintained by a participating employer, the sum of the defined benefit plan fraction and defined contribution plan fraction, as defined in (1) and (2) below, shall not exceed one. If, in any limitation year, the sum of the defined benefit plan fraction and the defined contribution plan fraction for a member would exceed one without adjustment of the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to paragraph 1 of this section, the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to paragraph 1 of this section shall be reduced to the extent necessary to reduce the sum of the defined benefit plan fraction and the defined contribution plan fraction for

the member to one, or the Board may take such other action as will cause the sum to equal one or less. As used in this paragraph:

- a. "Defined benefit fraction" means a fraction:
 - (1) the numerator of which is the projected annual accrued retirement benefit of the member from the System, determined as of the close of the limitation year, and
 - (2) the denominator of which is the lesser of one hundred twenty-five percent (125%) of the dollar limitation under Section 415(b)(1)(A) of the Internal Revenue Code of 1986 or one hundred forty percent (140%) of the percentage limitation under Section 415(b)(1)(B) of the Internal Revenue Code of 1986 for the year of determination, taking into account the effect of Section 235(g)(4) of the Tax Equity and Fiscal Responsibility Act of 1982,
- b. "Defined contribution fraction" means a fraction:
 - (1) the numerator of which is the sum of the annual additions, as defined in Section 415(c)(2) of the Internal Revenue Code of 1986, to the accounts of the member under all defined contribution plans maintained by the participating municipalities as of the close of the limitation year, subject to reduction to the extent permitted under the transition rule in Section 235(g)(3) of the Tax Equity and Fiscal Responsibility Act of 1982, and
 - (2) the denominator of which is the sum of the lesser of one hundred twenty-five percent (125%) of the dollar limitation under Section 415(c)(1)(A) of the Internal Revenue Code of 1986 or one hundred forty percent (140%) of the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code of 1986, for such limitation year and for all prior limitation years during which the member was employed by an eligible employer. At the option of the Board, the denominator may be increased by using for limitation years ending prior to January 1, 1983, an amount equal to the denominator in effect for the limitation year ending in 1982, multiplied by the transition fraction provided in Section 415(e)(6)(B) of the Internal Revenue Code of 1986.

The Board is hereby authorized to make the special election under Internal Revenue Code Section 415(b)(10). If this special election is made, the Section 415 limit for a member who joined the System prior to January 1, 1990 shall be the greater of: (1) the applicable Code Section 415 limit, or (2) the member's benefit under the System without regard to any benefit increases pursuant to a System amendment adopted after October 14, 1987.

In the event that the special election is made, subparagraph f of paragraph 1 of this section shall read as follows: f. The limitations specified in this section shall apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins at the age at which the member could receive an unreduced primary insurance amount under the federal Social Security laws (i.e., "social security retirement age") determined by disregarding the age increase factor thereunder and as if early retirement were sixty-two (62). If payment is in a different form, the amount

thereof shall be adjusted to be the actuarial equivalent of a single life annuity and the limitations shall be applied to such adjusted amount. Such adjustment shall be based on the actuarial tables adopted by the Board. If payment begins before the member's social security retirement age, the limitation in subparagraph a of this paragraph shall be reduced by applying a reduction factor consistent with social security reduction factors, as prescribed by the Secretary of the Treasury; provided, however, that in no event shall such amount be reduced below Fifty Thousand Dollars (\$50,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of the Treasury, or his delegate. If payment begins after the participant's social security retirement age, the limitation in subparagraph a of this paragraph shall be the actuarial equivalent of such amount otherwise applicable at the member's social security retirement age, based on the actuarial tables adopted by the Board. The interest rate to be used in determining such actuarial equivalent amount shall be the rate specified in the actuarial tables adopted by the Board; however, the interest rate used in determining an actuarially equivalent single life amount shall not be less than five percent (5%) and the interest rate used in determining an actuarially equivalent post-social-security-retirement-age amount shall not be greater than five percent (5%).

The Board is hereby authorized to do all acts and things necessary and proper to carry out the purpose of the System and to make the least costly amendments and changes, if any, as may be necessary to qualify the System under the applicable sections of the Internal Revenue Code of 1986, as amended.

SECTION 6. 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.

Passed the Senate the 30th day of May, 1991.

President of the Senate

Passed the House of Representatives the 31st day of May, 1991.

Speaker of the House of Representatives