

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 944

BY: HERBERT

AS INTRODUCED

AN ACT RELATING TO COUNTIES AND COUNTY OFFICERS AND STATE GOVERNMENT; AMENDING 19 O.S. 1991, SECTION 956 AND 74 O.S. 1991, SECTION 902, WHICH RELATE TO RETIREMENT SYSTEMS; CLARIFYING STATUTORY REFERENCES; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 19 O.S. 1991, Section 956, is amended to read as follows:

Section 956. No county employee shall be eligible for retirement benefits under ~~this act~~ Section 951 et seq. of this title until such employee:

1. has attained the age of sixty-two (62) years and shall have served for a period of at least fifteen (15) years with said county, and the last two (2) years of such service shall have been consecutive immediately preceding such retirement; or

2. has attained the age of fifty-five (55) years and shall have served for a period of at least thirty (30) years with said county; or

3. has attained the age at which the sum of the employee's age and number of years of service with the county total eighty (80).

To be eligible for retirement benefits the employee's service with the county shall have ceased. Provided, that any county employee who shall have completed fifteen (15) years of service as such county employee, the last two (2) years of which shall have been consecutive, and who, at the time of completing such fifteen (15) years of service shall not have reached the age of sixty-two (62) years, may then elect to retire, such retirement to become effective and all retirement benefits to begin when such county employee shall have attained the age of sixty-two (62) years, provided that such election shall be in writing upon such form as the board of trustees shall direct, and such election shall be signed by such employee and filed with the board of trustees, and any funds paid into the retirement system by such employee may not thereafter be withdrawn by such employee. Provided, that when approved by the board of trustees of the county retirement system and the board of county commissioners of any county which has provided for a retirement fund and system as authorized under the provisions of Section 951 of this title, the board of trustees may lower the mandatory fifteen-year requirement to not less than eight (8) years by a resolution if the following has occurred:

1. Prior to such action, an actuarial report on the system shall be made by an independent professional actuary qualified as an "Enrolled actuary" as defined by the Employee Retirement Income Security Act (ERISA) of 1974, which report shall determine and declare whether the reduction of the mandatory service requirement would result in any additional unfunded or accrued liabilities and, if so, the amount required to make the retirement system actuarially sound expressed in dollars and in percent of the gross payroll.

2. Such report shall be filed with the board of trustees and with the board of county commissioners and notice of the receipt and filing of such report be given by the board of county commissioners by publishing notice thereof in a newspaper of general circulation

in the county. Such report shall be a public document subject to examination by any interested person. Any member of the retirement system or any citizen of the county may, within thirty (30) days from the date of such publication, file a petition in the district court of the county in which the retirement system is located to challenge the validity and accuracy of the actuarial report or any other action taken in connection therewith, and the court is hereby vested with jurisdiction to receive evidence and enter a judgment affirming, modifying or rejecting the actuarial report or any funding provisions, and such report shall be conformed in accordance with any final judgment. The costs, including attorney fees, if any, of such action shall be assessed by the court as it may deem equitable irrespective of the form of the judgment.

3. If the final report determines that additional funding shall be required to implement any reduction of the mandatory service requirement, then and in that event affirmative action by the board of county commissioners, approved by the board of trustees, providing for the funding of any such changed benefits in an amount necessary to make said system actuarially sound upon the implementation of such change shall be established at or prior to the effective date of such reduction in the mandatory service requirement.

4. If the report reveals no additional funding requirement, then the board of county commissioners with the approval of the board of trustees may lower the mandatory fifteen-year service requirement as provided in this section without a corresponding or concurrent funding resolution.

5. It is further provided that if the mandatory service credit is reduced to a period of time less than fifteen (15) years, then and in that event the retirement benefits shall be correspondingly reduced by at least an amount equal to six and two-thirds percent (6 2/3%) from that which would have been earned for fifteen (15) years'

service multiplied by the number of years of reduction in the mandatory service except for those retirees who have eight (8) years' service and are entitled to disability retirement. The entitlement to disability retirement and the amount thereof shall not be affected by this paragraph.

6. No person shall be entitled to receive the benefits of a reduction in the mandatory service requirement who at the time of such reduction is not then an employee of the county, has been continuously employed by the county and a member of the county retirement system for the twenty-four (24) months immediately preceding the reduction in the mandatory service requirement or shall have been an employee with twenty-four (24) months immediately preceding the election by such employee to receive the benefit of the reduced mandatory service requirement.

Provided further, that, for the purposes of this act and the eligibility of employees to participate therein, employees of levee districts shall be considered county employees. Retirement benefits, disability benefits and benefits paid to the surviving spouse shall be calculated on the average of the income of any three (3) years which shall be the years of highest income for said employee during participation in said retirement system.

Any employee of the county covered by this act who shall have completed eight (8) years of employment with said county and who, by reason of disability resulting from the performance of his duties as such employee of said county, shall become disabled to such an extent as to be unable to perform his duties as an employee shall be entitled to disability retirement and to such benefits as the board of trustees shall determine; provided, however, that the board of trustees shall find that said disability is total and permanent, and resulted from the performance of his duty as such employee of the county.

Any person who has been a regular county employee for at least one (1) year immediately preceding the time he is required, by Act of Congress of the United States and/or by order of the President of the United States, or volunteers to leave the employment of the county to enter the military service of the United States government shall receive credit, for the purposes of this act, for all actual time so served in full-time military service, but not to exceed a total of four (4) years in all; provided, however, that to be eligible to receive such credit, the employee shall not withdraw funds previously contributed, as otherwise permitted by the provisions of this act; provided, further, that neither the employee nor the county shall be required to make further contribution to the retirement fund during the period of military service; and, provided, further, that the credit time allowed, hereby, shall not be considered in lieu of the two (2) years' consecutive employment required by this section, as a prerequisite to receiving retirement benefits hereunder. Provided further, that if any county employee who shall have completed at least fifteen (15) years of service to any county covered by this act and who has not yet reached the age of retirement shall die, then, and in such event, the surviving spouse of said county employee shall receive retirement benefits in the amount of sixty-six and two-thirds percent (66 2/3%) of whatever benefits would otherwise be received by said county employee under this act at the age of sixty-two (62) years, such retirement benefits to the surviving spouse to begin on the date said deceased county employee would have reached the age of sixty-two (62) years.

Provided further, that if any county employee receiving or eligible to receive retirement benefits pursuant to the provisions of this act shall die, then, and in such event, the surviving spouse of said person shall receive retirement benefits in the amount of sixty-six and two-thirds percent (66 2/3%) of whatever benefits the deceased was receiving or was entitled to receive for the remainder

of the natural life of said surviving spouse or until remarriage. This provision shall apply to anyone who has qualified for retirement, even though they may not have retired or are deceased. Said provision also shall include any employees who have retired after January 1, 1970, and later shall become deceased, then in such event the surviving spouse shall receive sixty-six and two-thirds percent (66 2/3%). This shall not apply to persons who have retired prior to January 1, 1970, or their spouses.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 902, is amended to read as follows:

Section 902. As used in ~~this act~~ Section 901 et seq. of this title:

(1) "System" means the Oklahoma Public Employees Retirement System as established by this act and as it may hereafter be amended;

(2) "Accumulated contributions" means the sum of all contributions by a member to the System which shall be credited to the member's account;

(3) "Act" means Sections 901 to 932, inclusive, of this title;

(4) "Actuarial equivalent" means a deferred income benefit of equal value to the accumulated deposits or benefits when computed upon the basis of the actuarial tables in use by the System;

(5) "Actuarial tables" means the actuarial tables approved and in use by the Board at any given time;

(6) "Actuary" means the actuary or firm of actuaries employed by the Board at any given time;

(7) "Agent" means the individual designated by each participating employer through whom System transactions and communication shall be directed;

(8) "Beneficiary" means any person named by a member to receive any benefits as provided for by this act. If there is no

beneficiary living at time of member employee's death, his estate shall be the beneficiary;

(9) "Board" means the Oklahoma Public Employees Retirement System Board of Trustees;

(10) "Compensation" means all salary and wages, including amounts deferred under deferred compensation agreements entered into between a member and a participating employer, but exclusive of payment for overtime, payable to a member of the System for personal services performed for a participating employer, including maintenance, or any allowance in lieu thereof provided a member as a part of compensation but shall not include compensation or reimbursement for traveling, or moving expenses, or except as otherwise provided in this paragraph, any compensation in excess of Twenty-five Thousand Dollars (\$25,000.00) per annum which shall be the maximum compensation level. An active member of the System may elect to have a maximum compensation level of Forty Thousand Dollars (\$40,000.00) per annum. Such an election shall be made in writing and filed with the System. Any member, who at the time the member was eligible to make an election to increase the member's maximum compensation level failed to make an election or chose not to increase the maximum compensation level of the member to Forty Thousand Dollars (\$40,000.00), may elect to increase the member's maximum compensation level if the election is made within three (3) years of the member's initial opportunity to make the election. Any such member making the election shall pay to the System the amount of contribution the member would have paid had the member made the election on January 1, 1988. Any member, who at the time the member was eligible to make an election to increase the member's maximum compensation level chose to increase the compensation level of the member to Forty Thousand Dollars (\$40,000.00), may elect to decrease the member's maximum compensation level to Twenty-five Thousand Dollars (\$25,000.00) if the election is made within three (3) years

of the initial election to increase the maximum compensation level. Upon the receipt of the election to reduce the maximum compensation level, the Board shall pay to the member the contribution made by the member in excess of the contribution required on a maximum compensation level of Twenty-five Thousand Dollars (\$25,000.00) within sixty (60) days of said election. Members whose salaries exceed Twenty-five Thousand Dollars (\$25,000.00) after the effective date of this act shall file the election when the salary exceeds Twenty-five Thousand Dollars (\$25,000.00). Any such election by a member shall be irrevocable. Salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986 and any amount of non-elective salary reduction under Section 414(h) of the Internal Revenue Code of 1986;

(11) "Credited service" means the sum of participating service, prior service and elected service;

(12) "Dependent" means a parent, child, or spouse of a member who is dependent upon the member for at least one-half (1/2) of his support;

(13) "Effective date" means the date upon which the System becomes effective by operation of law;

(14) "Eligible employer" means the state and any county, county hospital, city or town, conservation districts, and any public or private trust in which a county, city or town participates and is the primary beneficiary is to be an eligible employer for the purpose of this act only, whose employees are covered by Social Security and are not covered by or eligible for another retirement plan authorized under the laws of this state which is in operation on the initial entry date. Emergency medical service districts may join the System upon proper application to the Board. Provided affiliation by a county hospital shall be in the form of a resolution adopted by the board of control.

- (a) If a class or several classes of employees of any above-defined employers are covered by Social Security and are not covered by or eligible for and will not become eligible for another retirement plan authorized under the laws of this state, which is in operation on the effective date, such employer shall be deemed an eligible employer, but only with respect to that class or those classes of employees as defined in this section.
- (b) A class or several classes of employees who are covered by Social Security and are not covered by or eligible for and will not become eligible for another retirement plan authorized under the laws of this state, which is in operation on the effective date, and when the qualifications for employment in such class or classes are set by state law; and when such class or classes of employees are employed by county or municipal government pursuant to such qualifications; and when the services provided by such employees are of such nature that they qualify for matching by or contributions from state or federal funds administered by an agency of state government which qualifies as a participating employer, then the agency of state government administering the state or federal funds shall be deemed an eligible employer, but only with respect to that class or those classes of employees as defined in this subsection; provided, that the required contributions to the retirement plan may be withheld from the contributions of state or federal funds administered by the state agency and transmitted to the System on the same basis as the employee and employer contributions are transmitted

for the direct employees of the state agency. The retirement or eligibility for retirement under the provisions of law providing pensions for service as a volunteer fire fighter shall not render any person ineligible for participation in the benefits provided for in this act. An employee of any public or private trust in which a county, city or town participates and is the primary beneficiary shall be deemed to be an eligible employee for the purpose of this act only;

(15) "Employee" means any officer or employee of a participating employer, whose employment is not seasonal or temporary and whose employment requires at least one thousand (1,000) hours of work per year and whose salary or wage is equal to the hourly rate of the monthly minimum wage for state employees as provided in Section 284 of this title. For those eligible employers outlined in Section 910 of this title, the rate shall be equal to the hourly rate of the monthly minimum wage for that employer. Each employer, whose minimum wage is less than the state's minimum wage, shall inform the System of the minimum wage for that employer. This notification shall be by resolution of the governing body.

- (a) Any employee of the county superintendent or the county extension agents who is not currently participating in the Teachers' Retirement System shall be a member of this System.
- (b) Eligibility shall not include any employee who is a contributing member of the United States Civil Service Retirement System.
- (c) It shall be mandatory for an officer, appointee or employee of the office of district attorney to become a member of this System if he is not currently participating in a county retirement system. Provided further, that if an officer, appointee or employee of

the office of district attorney is currently participating in such county retirement system, he is ineligible for this System as long as he is eligible for such county retirement system. Any eligible officer, appointee or employee of the office of district attorney shall be given credit for prior service as defined in this section. The provisions outlined in Section 917 of this title shall apply to those employees who have previously withdrawn their contributions.

- (d) Eligibility shall also not include any officer or employee of the Oklahoma Employment Security Commission, except for those officers and employees of the Commission electing to transfer to this System pursuant to the provisions of Section 910.1 of this title or any other class of officers or employees specifically exempted by the laws of this state, unless there be a consolidation as provided by Section 912 of this title. Employees of the Oklahoma Employment Security Commission who are ineligible for enrollment in the Employment Security Commission Retirement Plan, that was in effect on January 1, 1964, shall become members of this System.
- (e) Any employee employed by the State Senate or House of Representatives for the full duration of a regular legislative session shall be eligible for membership in the System regardless of classification as a temporary employee and may participate in the System during the regular legislative session at the option of the employee. For purposes of this subsection, the determination of whether an employee is employed for the full duration of a regular legislative session

shall be made by the State Senate if such employee is employed by the State Senate, or by the House of Representatives if such employee is employed by the House of Representatives. Once such an employee makes a choice to participate or not, the choice shall be binding for all future legislative sessions during which the employee is employed. Notwithstanding the previous sentence, any employee, who is eligible for membership in the System because of the provisions of this subsection and who was employed by the State Senate or House of Representatives after January 1, 1989, may file an election, in a manner specified by the Board, to participate as a member of the System prior to September 1, 1989. Each regular legislative session during which a legislative employee participates full time shall be counted as six (6) months of full-time participating service. Notwithstanding the provisions of this paragraph, a temporary legislative session employee who elected to become a member of the System may withdraw from the System effective the day said employee elected to participate in the System upon written request to the Board. Any such request must be received by the Board prior to October 1, 1990. All employee contributions made by the temporary legislative session employee shall be returned to the employee without interest within four (4) months of receipt of the written request;

(16) "Entry date" means the date as of which an eligible employer joins the System. The first entry date pursuant to this act shall be January 1, 1964;

(17) "Executive Director" means the managing officer of the System employed by the Board under this act;

(18) "Final average compensation" means the average annual salary, including amounts deferred under deferred compensation agreements entered into between a member and a participating employer, up to, but not exceeding the allowable amounts defined in subsection (10) of this section received during any three (3) of the last five (5) years of participating service immediately preceding retirement or termination of employment, or, if participating service is less than three (3) years, the average annual compensation up to but not exceeding the allowable amounts defined in subsection (10) of this section paid to the member during the full period of participating service. Provided, no member shall retire with a final average salary in excess of Twenty-five Thousand Dollars (\$25,000.00) unless the member has made the required election and has paid the required contributions on such salary in excess of Twenty-five Thousand Dollars (\$25,000.00);

(19) "Fiscal year" means the period commencing July 1 of any year and ending June 30 of the next year;

(20) "Fund" means the Oklahoma Public Employees Retirement Fund as created by this act;

(21) "Leave of absence" means a period of absence from employment without pay, authorized and approved by the employer and acknowledged to the Board, and which after the effective date does not exceed two (2) years;

(22) "Member" means an eligible employee or elected official who is in the System and is making the required employee or elected official contributions, or any former employee or elected official who shall have made the required contributions to the System and shall have not received a refund or withdrawal;

(23) "Military service" means service in the Armed Forces of the United States in time of war or national emergency, as defined

in Section 67.13a of Title 72, from which the member was honorably discharged;

(24) "Normal retirement date" means the date on which a member may retire with full retirement benefits as provided in this act, such date being whichever occurs first:

- (a) the first day of the month coinciding with or following a member's sixty-second birthday;
- (b) for any person who became a member prior to July 1, 1991, the first day of the month coinciding with or following the date at which the sum of a member's age and number of years of credited service total eighty (80); or
- (c) in addition to subparagraphs (a) and (b) of this paragraph, the first day of the month coinciding with or following a member's fiftieth birthday if the member has at least twenty (20) years of full-time-equivalent employment as a correctional or probation and parole officer with the Department of Corrections and at the time of retirement, the member was a correctional or probation and parole officer with the Department of Corrections;

(25) "Participating employer" means an eligible employer who has agreed to make contributions to the System on behalf of its employees;

(26) "Participating service" means the period of employment after the entry date for which credit is granted a member;

(27) "Prior service" means the period of employment of a member by an eligible employer prior to his entry date for which credit is granted a member under this act;

(28) "Retirant" means a member who has retired under the System;

(29) "Retirement benefit" means a monthly income with benefits accruing from the first day of the month coinciding with or following retirement and ending on the last day of the month in which death occurs or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to this act or as otherwise allowed to be paid at the discretion of the Board;

(30) "Social Security" means the old-age survivors and disability section of the Federal Social Security Act;

(31) "Total disability" means a physical or mental disability accepted for disability benefits by the Federal Social Security System;

(32) "Service-connected disability benefits" means military service benefits which are for a service-connected disability rated at twenty percent (20%) or more by the Veterans Administration or the Armed Forces of the United States;

(33) "Elected official" means a person elected to a state office in the legislative or executive branch of state government or, except for the county superintendent of schools, a person elected to a county office for a definite number of years and shall include an individual who is appointed to fill the unexpired term of an elected state official;

(34) "Elected service" means the period of service as an elected official; and

(35) "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 3. This act shall become effective July 1, 1992.

SECTION 4. 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.

43-2-1593

REJ