

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 980

BY: HENDRICK

AS INTRODUCED

AN ACT RELATING TO CITIES AND TOWNS, AND MOTOR
VEHICLES; AMENDING 11 O.S. 1991, SECTIONS 49-100.1,
49-114, 49-116, AND 50-112, AND 47 O.S. 1991,
SECTION 2-300, WHICH RELATE TO THE OKLAHOMA
FIREFIGHTERS PENSION AND RETIREMENT SYSTEM, THE
OKLAHOMA POLICE PENSIONS AND RETIREMENT SYSTEM, AND
THE OKLAHOMA LAW ENFORCEMENT RETIREMENT SYSTEM;
MODIFYING DEFINITIONS; MODIFYING TERMS; PROVIDING
RESPONSIBILITY FOR PAYMENT OF CERTAIN BENEFITS IN
CERTAIN SITUATIONS; MODIFYING MEMBERSHIP
REQUIREMENTS FOR CERTAIN RETIREMENT SYSTEMS;
PROVIDING CERTAIN PROCEDURES; PROVIDING FOR PRE-
EMPLOYMENT TESTS AND MEDICAL EXAMINATIONS;
EXCLUDING CERTAIN PERSONS FROM MEMBERSHIP FOR
CERTAIN REASONS; PROVIDING AUTHORITY FOR FINAL
DETERMINATION OF MEMBERSHIP; PROVIDING CERTAIN
CONDITIONS PRIOR TO ACTUAL EMPLOYMENT BUT BEFORE AN
OFFER OF EMPLOYMENT; CLARIFYING CERTAIN
DEFINITIONS; PROVIDING FOR CODIFICATION; AND
DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 11 O.S. 1991, 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~~ fire service personnel of a participating municipality or a fire protection district, who upon entry in the fire service, performs the essential functions as defined by administrative rule adopted by the State Board;

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;

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. AMENDATORY 11 O.S. 1991, Section 49-114, is amended to read as follows:

Section 49-114. Any ~~person~~ member serving in any capacity in a regularly constituted fire department of a municipality of this state who shall become physically or mentally disabled as provided in Section 49-109 of this title, or shall lose his life as provided in Section 49-112 of this title, where said disability or loss of life was occasioned in fighting or preventing fires or in carrying out any order or direction of the chief or acting chief of said department shall be entitled to all of the benefits authorized by said sections.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 49-116, is amended to read as follows:

Section 49-116. A. All persons (candidates) being considered for a position of a paid fire fighter shall pass the required pre-employment offer physical performance/agility test based on standards established by the State Board.

B. The State Board shall require that any person entering the services of a municipality as a paid fire fighter who is not presently a member of the System and who has been offered a position of a paid fire fighter and before entering the employment of a municipality as a paid fire fighter, must successfully complete a physical examination, as promulgated by the rules of the State Board, in order to participate and qualify to receive any benefits from the System. ~~The physical examination is to include, but not be limited to, a general medical history and physical examination with visual testing by Snellen Chart; a pulmonary function test, chest x-ray (posterior-anterior and lateral views); lumbosacral spine x-rays (A-P, lateral and oblique views); treadmill and twelve (12)-lead E.C.G.; urinalysis test, V.D.R.L. test; audiometric testing and "Profile 4" tests, from which liver, kidney, blood and metabolic diseases may be detected. The State Board shall have the final~~

~~determination upon all applications for membership in the System~~ All candidates shall be of good moral character, free from deformities, mental or physical conditions, disease and alcohol or drug addiction, which would prohibit a candidate from performing duties as a fire fighter. The State Board shall have the final determination upon all applications for membership in the System.

This subsection shall not apply to any person who terminates employment with a participating municipality and is reemployed by the participating municipality or employed by another participating municipality within six (6) months of such termination, unless such person was terminated for medical reasons.

C. Should the State Board find, after investigation, that a participating municipality has employed an individual who does not meet the requirements of this section, that municipality shall assume the actuarial cost of benefits payable to the nonqualifying individual.

~~B.~~ D. Any person retired for disability under this article may be summoned before the State Board herein provided for, any time hereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of the State Board with reference thereto; and all members of the fire department, who may be retired under the provisions of this article, shall report to some physician designated by the State Board when so retired, as required by the State Board.

SECTION 4. AMENDATORY 11 O.S. 1991, Section 50-112, is amended to read as follows:

Section 50-112. A. All persons employed as officers who shall be offered a position of an officer shall participate in the System upon employment with a police department of a participating municipality the person meeting the requisite post offer - pre-employment physical examination standards. Such persons shall be of good moral character, not addicted to the use of alcohol or drugs,

~~free from deformities, mental or physical defects or conditions or disease that would interfere with the performance of regular police duties, and provided further that a person employed as a police officer first pass the requirements of a physical-medical examination pertaining to age, height, weight, sight, hearing, agility and other conditions the requirements of which are established by the State Board~~ All such persons shall be of good moral character, free from deformities, mental or physical conditions, or disease and alcohol or drug addiction, which would prohibit the person from performing the duties of a police officer. Said physical-medical examination shall pertain to age, height, weight, sight, hearing, agility and other conditions the requirements of which shall be established by the State Board. A police officer shall be not less than twenty-one (21) nor more than forty-five (45) years of age when accepted for membership in the System. ~~An officer shall be required to meet the requirements of this article at the time of employment with any participating municipality~~ The person shall be required to meet the conditions of this section prior to the beginning of actual employment but after an offer of employment has been tendered with any participating municipality. The State Board shall have authority to deny or revoke membership of any person submitting false information in such person's membership application. The State Board shall have final authority in determining eligibility for membership in the System, pursuant to the provisions of this article.

B. The police chief of any participating municipality may be exempt from membership in the System or may become a member provided the requirements of this section are met at the time of employment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50-137 of Title 11, unless there is created a duplication in numbering, reads as follows:

A participating municipality shall not employ an individual who does not meet the requirements of Section 50-112 of this title except when a participating municipality is required to employ an individual due to the reasonable accommodation provisions of 42 U.S.C., Section 12101 et seq. If a participating municipality is required to employ an individual due to the reasonable accommodation provisions of 42 U.S.C., Section 12101 et seq., said participating municipality shall assume the financial liability and pay the total cost of benefits, the amounts of which shall be determined pursuant to the provisions of Section 50-101 et seq. of this title, to the individual who does not meet the requirements of Section 50-112 of this title.

SECTION 6. AMENDATORY 47 O.S. 1991, 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 to include radio technicians and commissioned officers of the 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, provided that all persons who shall be offered a

position of a law enforcement officer shall participate in the System upon the person meeting the requisite post offer - pre-employment physical examination standards which shall be subject to the following requirements:

- a. all such persons shall be of good moral character, free from deformities, mental or physical conditions, or disease and alcohol or drug addiction which would prohibit the person from performing the duties of a law enforcement officer,
- b. said physical-medical examination shall pertain to age, height, weight, sight, hearing, agility and other conditions the requirements of which shall be established by the Board,
- c. the person shall be required to meet the conditions of this subsection prior to the beginning of actual employment but after an offer of employment has been tendered by a participating employer,
- d. the Board shall have authority to deny or revoke membership of any person submitting false information in such person's membership application,
- e. the Board shall have final authority in determining eligibility for membership in the System, pursuant to the provisions of this subsection;

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 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;

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 7. 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.

43-2-1826

REJ