ENROLLED SENATE
BILL NO. 773

By: Fisher and Brown of the Senate

and

Roberts, Cox, Toure and Isaac of the House

An Act relating to cities and towns and law enforcement; amending 11 O.S. 1991, Sections 49-100.1, as last amended by Section 1, Chapter 126, O.S.L. 1993, 49-113, as last amended by Section 1, Chapter 322, O.S.L. 1993, 50-101, as amended by Section 5, Chapter 126, O.S.L. 1993 and 50-117 (11 O.S. Supp. 1993, Sections 49-100.1, 49-113 and 50-101), which relate to the Oklahoma Firefighters Pension and Retirement System and the Oklahoma Police Pension and Retirement System; expanding the definition of a beneficiary; amending 47 O.S. 1991, Section 2-306, as last amended by Section 14, Chapter 322, O.S.L. 1993 (47 O.S. Supp. 1993, Section 2-306), which relates to the Oklahoma Law Enforcement Retirement System; modifying treatment of children under twenty-two years of age if the child is a full-time student; reestablishing support for children in cases in which the surviving spouse remarried prior to June 7, 1993; providing an effective date; 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, as last amended by Section 1, Chapter 126, O.S.L. 1993 (11 O.S. Supp. 1993, 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 who perform the essential functions of fire suppression, prevention, and life safety duties in a fire department;

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 child of a member shall be a beneficiary until reaching eighteen (18) years of age <u>or twenty-two (22) years of age if the child is enrolled full time and regularly</u>

attending a public or private school or any institution of higher education. 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 49-113, as last amended by Section 1, Chapter 322, O.S.L. 1993 (11 O.S. Supp. 1993, Section 49-113), is amended to read as follows:

Section 49-113. In the event of the death for any cause of a fire fighter who at the time of the fire fighter's death was drawing a pension, or who at the time of the fire fighter's death (whether death occurred while on duty but not in or in consequence of the performance of duty or while on vacation or off duty) was eligible, upon written request to retire and draw a pension, the beneficiary of such person shall be paid an amount not to exceed one hundred percent (100%) of said pension. In the event of the death of the surviving spouse, the pension shall cease, and should there then be but one living child same shall receive an amount equal to one hundred percent (100%) of said pension, but if there then be more than one living child, one hundred percent (100%) of said pension shall be divided equally between the children until each child reaches the age of eighteen (18) years or until the age of twenty-two (22) years if the child is enrolled full time and regularly attending a public or private school or any institution of higher education. Upon the death of an unmarried fire fighter who has children, the children shall be entitled to have paid to a survivor trust fund that has a legally appointed administrator with power to provide benefits to the children an amount not to exceed one hundred percent (100%) of said pension. Provided, that in the event the State Board finds that such a child who has not married and who at the time the child reaches the age of eighteen (18) years ~~or reaches the age of twenty-two (22) years if the child is enrolled full-time in an accredited school of learning~~ is either physically or mentally disabled, the pension thereof shall continue so long as such disability remains; provided, further, that upon the death of the fire fighter and surviving spouse, said physically or mentally disabled child shall be entitled to have paid to the child's legally appointed guardian an amount not to exceed one hundred percent (100%) of said pension. The money so paid to the guardian shall be used solely for the benefit of the disabled child and it shall be reported annually to the State Board. The payment so provided shall be calculated after payments have been made to all eligible children as provided in this section; provided further, that beneficiaries now receiving pensions under the provisions of Sections 49-112 or 49-113 of this title shall, upon application to the State Board, thereafter be entitled to a pension equal to the amount which they would have received if this act were in effect at the time the right to said pension accrued.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 50-101, as amended by Section 5, Chapter 126, O.S.L. 1993 (11 O.S. Supp. 1993, Section 50-101), is amended to read as follows:

Section 50-101. As used in this article:

1. "System" means the Oklahoma Police Pension and Retirement System and all predecessor municipal Police Pension and Retirement Systems;

2. "Article" means Article 50 of this title;

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

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

5. "Fund" means the Oklahoma Police Pension and Retirement Fund;

6. "Officer" means any duly appointed and sworn full-time officer of the regular police department of a municipality whose duties are to preserve the public peace, protect life and property, prevent crime, serve warrants, enforce all laws and municipal ordinances of this state, and any political subdivision thereof, and who is authorized to bear arms in the execution of such duties;

7. "Member" means all eligible officers of a participating municipality;

8. "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;

9. "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 or credited service granted by the State Board;

10. "Participating municipality" means a municipality which is making contributions to the System on behalf of its officers;

11. "Permanent total disability" means incapacity due to accidental injury or occupational disease, to earn any wages in the employment for which the member is physically suited and reasonably fitted through education, training or experience. Further, the member must be declared one hundred percent (100%) impaired as defined by the "American Medical Association's Guides to the Evaluation of Permanent Impairment" on the basis of a physical medical examination by a physician licensed to practice medicine in this state, as selected by the State Board;

12. "Permanent partial disability" means permanent disability which is less than permanent total disability as defined in this section. The member officer must be declared no greater than ninety-nine percent (99%) impaired as defined by the "American Medical Association's Guides to the Evaluation of Permanent Impairment" on the basis of a physical medical examination by a physician licensed to practice medicine in this state, as selected by the State Board;

13. "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 member for the thirty (30) continuous months immediately preceding the member's death, provided a surviving spouse of a member who died while in, and as a consequence of, the performance of the member's duty for a participating municipality, shall not be subject to the thirty-month marriage requirement for survivor benefits. A surviving child of a member shall be a beneficiary until reaching eighteen (18) years of age <u>or twenty-two (22) years of age if the child is enrolled full time and regularly attending a public or private school or any institution of higher education</u>. 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;

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

15. "Eligible employer" means any municipality with a municipal police department;

16. "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;

17. "Final average salary" means the average paid gross salary of the officer 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 and annual leave upon termination of employment or any uniform allowances. Provided, for purposes of determining the normal disability benefit, final average salary shall be based on the member's total service if less than thirty (30) months. 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;

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

19. "Normal disability benefit" means two and one-half percent (2 1/2%) of the member's final average salary multiplied by twenty (20) years; and

20. "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 4. AMENDATORY 11 O.S. 1991, Section 50-117, is amended to read as follows:

Section 50-117. The State Board is authorized to pay a pension to the beneficiary of any member where requirements for eligibility for such pension are met as in this section provided. The pension shall be in an amount as the State Board shall provide not exceeding the accrued retirement benefit or normal disability benefit. Before any beneficiary of a member shall be entitled to any pension the member must have complied with any agreement as to contributions by the member and other members to the System where said agreement has been made as provided by this article, and the State Board must find that:

1. The member lost his or her life while in, and in consequence of, the performance of the member's duty and through no negligence on the member's part; and

2. That the member left a beneficiary.

If such finding is made, a pension shall be allowed, limited as provided in this article. The pension shall commence to the beneficiary of the member within one (1) year of the death of the member and, except as otherwise provided in this section, shall be payable over the life of the beneficiary. If the beneficiary is the spouse of the member, the pension payments shall cease automatically when the spouse remarries. If the beneficiary is a child of the member, the pension payments shall cease automatically when the child reaches eighteen (18) years of age or twenty-two (22) years of age if the child is enrolled full time and regularly attending a public or private school or any institution of higher education.

SECTION 5. AMENDATORY 47 O.S. 1991, Section 2-306, as last amended by Section 14, Chapter 322, O.S.L. 1993 (47 O.S. Supp. 1993, Section 2-306), is amended to read as follows:

Section 2-306. A. Upon the death of a retired member or upon the death of any member prior to retirement or other termination of covered employment, a monthly pension shall be paid which shall be in an amount as provided below:

1. If the member was not retired and death occurred as the direct result of the performance of the member's duties as an officer, an amount equal to the monthly payments which would have been received by the member under subsection B of Section 2-305 of this title, had the member been totally disabled; or

2. If the member was not retired and death occurred other than as the direct result of the performance of the member's duties as an officer, an amount equal to the monthly payments which would have been received by the member under subsection C of Section 2-305 had the member been totally disabled; or

3. If said member was retired for length of service, an amount equal to the member's monthly payments; or

4. If said member was retired for total disability, an amount equal to the member's monthly payments; or

5. If said member was retired for partial disability, an amount equal to the monthly payments which would have been received by said member had the member been totally disabled.

B. The pension provided for in subsection A of this section shall be paid:

1. ~~To~~ Except as provided in paragraph 4 of this subsection, to the surviving spouse, provided the surviving spouse was married to the member at the time of the member's death, and continuously for the thirty-six (36) months immediately preceding the member's retirement date, provided a surviving spouse of a member who died while in, or as a consequence of, the performance of the member's duty for the employer, shall not be subject to the thirty-six-month marriage requirement for survivor benefits; or

2. If there is no surviving spouse or upon the death of a spouse~~,~~:

a. to the person having the care and custody of any surviving child or children of said member for such time as such child or children are under the age of eighteen (18) years, or

b. to the surviving child or children between the age of eighteen (18) and twenty-two (22) years if the child is enrolled full time in and is regularly attending a public or private school or any institution of higher education; ~~or~~

3. If there ~~be~~ is no surviving spouse or children under the age of eighteen (18) years or under the age of twenty-two (22) years if the child is enrolled full time in and is regularly attending a

public or private school or any institution of higher education, to the dependent parent or parents of said member, for life; or

4. In the event a surviving spouse remarried prior to June 7, 1993, and at the time of the remarriage, the member has one or more children under the age of eighteen (18) years or under the age of twenty-two (22) years if the child is enrolled full time in and is regularly attending a public or private school or any institution of higher education, the pension provided for in subsection A of this section shall be paid from the fund for the support of said children in lieu of the amount provided for in subsection C of this section, and the pension payment provided in paragraph 1 of this subsection will be discontinued:

a. said pension shall be paid to the person having the care and custody of such children until each child reaches the age of eighteen (18) years, or

b. to the surviving child or children between the age of eighteen (18) years and twenty-two (22) years if the child is enrolled full time and regularly attending a public or private school or any institution of higher education.

The surviving children of remarried surviving spouses who remarried prior to June 7, 1993, who otherwise meet the requirements of this paragraph shall be entitled to receive the pension benefits provided for in this paragraph beginning from June 7, 1993 forward. Pension benefits provided in this subsection to surviving children of surviving spouses who remarried prior to June 7, 1993, shall not apply to alter any amount of pension benefits paid or due prior to June 7, 1993.

C. In addition to the pension above provided for, if said member leaves a surviving spouse and one or more children under the age of eighteen (18) years or under the age of twenty-two (22) years if the child is enrolled ~~full-time~~ full time in ~~an accredited school of learning~~ and is regularly attending a public or private school or any institution of higher education, One Hundred Dollars ($100.00) a month shall be paid from said Fund for the support of each surviving child to the person having the care and custody of such children during such time as said spouse remains alive and until each child reaches the age of eighteen (18) years or reaches the age of twenty-two (22) years if the child is enrolled ~~full-time~~ full time in ~~an accredited school of learning~~ and is regularly attending a public or private school or any institution of higher education.

SECTION 6. This act shall become effective July 1, 1994.

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.

Passed the Senate the 10th day of March, 1994.

President of the Senate

Passed the House of Representatives the 12th day of April, 1994.

Speaker of the House of Representatives