

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 1045

6 By: Roberts, Easley, Ostrander
7 and Gilbert of the House

8 and

9 Monson of the Senate

10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to the Oklahoma Firefighters Pension
12 and Retirement System; amending 11 O.S. 1991,
13 Sections 49-100.1, as last amended by Section 1,
14 Chapter 299, O.S.L. 1998, 49-106, 49-106.2, 49-126,
15 as last amended by Section 2, Chapter 198, O.S.L.
16 1998, 49-128, as amended by Section 2, Chapter 247,
17 O.S.L. 1997 and 49-138, as last amended by Section 1,
18 Chapter 192, O.S.L. 1998 (11 O.S. Supp. 1998,
19 Sections 49-100.1, 49-126, 49-128 and 49-138), which
20 relate to the Oklahoma Firefighters Pension and
21 Retirement System; modifying definitions; requiring
22 distribution of retirement benefits pursuant to
23 certain dates; modifying applicability of provisions
24 related to receipt of retirement benefits; providing
25 for applicability of certain limitation in the event
26 of disability or death; modifying provisions for
27 certain adjustments; prescribing method for
28 determination of actuarial equivalents; modifying
29 provision related to certain election pursuant to the
30 Internal Revenue Code; providing for payment of
31 certain distributions to eligible retirement plans;
32 defining terms; requiring certain notice; authorizing
distribution within certain time period; authorizing
offset of benefits; specifying requirements for
offset; modifying provision related to appeals from
decision of State Board; prescribing procedure for
crediting of qualified military service; providing
for codification; providing an effective date; and
declaring an emergency.

SECTION 1. AMENDATORY 11 O.S. 1991, Section 49-100.1, as
last amended by Section 1, Chapter 299, O.S.L. 1998 (11 O.S. Supp.
1998, Section 49-100.1), is amended to read as follows:

Section 49-100.1 As used in this article:

- 1 1. "System" means the Oklahoma Firefighters Pension and
2 Retirement System and all predecessor municipal firefighters pension
3 and retirement systems;
- 4 2. "Article" means Article 49 of this title;
- 5 3. "State Board" means the Oklahoma Firefighters Pension and
6 Retirement Board;
- 7 4. "Local board" means the local firefighters pension and
8 retirement boards;
- 9 5. "Fund" means the Oklahoma Firefighters Pension and
10 Retirement Fund;
- 11 6. "Member" means all eligible firefighters of a participating
12 municipality or a fire protection district who perform the essential
13 functions of fire suppression, prevention, and life safety duties in
14 a fire department. The term "member" shall include but not be
15 limited to the person serving as fire chief of any participating
16 municipality, provided that a person serving as fire chief of a
17 participating municipality shall meet the age, agility, physical and
18 other eligibility requirements required by law at the time said
19 person becomes a member of the System;
- 20 7. "Normal retirement date" means the date at which the member
21 is eligible to receive the unreduced payments of the member's
22 accrued retirement benefit. Such date shall be the first day
23 following the date the member completes twenty (20) years of
24 credited service. If the member's employment continues past the
25 normal retirement date of the member, the actual retirement date of
26 the member shall be the first day following the date the member
27 terminates employment with more than twenty (20) years of credited
28 service;
- 29 8. "Credited service" means the period of service used to
30 determine the eligibility for and the amount of benefits payable to
31 a member. Credited service shall consist of the period during which
32 the member participated in the System or the predecessor municipal

1 systems as an active employee in an eligible membership
2 classification, plus any service prior to the establishment of the
3 predecessor municipal systems which was credited under the
4 predecessor municipal systems; provided however, "credited service"
5 for members from a fire protection district shall not begin accruing
6 before July 1, 1982;

7 9. "Participating municipality" means a municipality, county
8 fire department organized pursuant to subsection D of Section 351 of
9 Title 19 of the Oklahoma Statutes, or fire protection district which
10 is making contributions to the System on behalf of its firefighters;

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

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

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

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

24 14. "Final average salary" means the average paid gross salary
25 of the firefighter for normally scheduled hours over the highest
26 salaried thirty (30) consecutive months of the last sixty (60)
27 months of credited service. Gross salary shall not include payment
28 for accumulated sick or annual leave upon termination of employment,
29 any uniform allowances or any other compensation for reimbursement
30 of out-of-pocket expenses. Only salary on which the required
31 contributions have been made may be used in computing the final
32 average salary. Gross salary shall include any amount of elective

1 salary reduction under Section 457 of the Internal Revenue Code of
2 1986 and any amount of nonelective salary reduction under Section
3 414(h) of the Internal Revenue Code of 1986. Only salary on which
4 required contributions have been made may be used in computing final
5 average salary.

6 In addition to other applicable limitations, and notwithstanding
7 any other provision to the contrary, for plan years beginning on or
8 after July 1, 1996, the annual gross salary of each "Noneligible
9 Member" taken into account under the System shall not exceed the
10 Omnibus Budget Reconciliation Act of 1993 (OBRA '93) annual salary
11 limit. The OBRA '93 annual salary limit is One Hundred Fifty
12 Thousand Dollars (\$150,000.00), as adjusted by the Commissioner for
13 increases in the cost of living in accordance with Section
14 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
15 annual salary limit in effect for a calendar year applies to any
16 period, not exceeding twelve (12) months, over which salary is
17 determined ("determination period") beginning in such calendar year.
18 If a determination period consists of fewer than twelve (12) months,
19 the OBRA '93 salary limit will be multiplied by a fraction, the
20 numerator of which is the number of months in the determination
21 period, and the denominator of which is twelve (12). For purposes
22 of this subsection, a "Noneligible Member" is any member who first
23 became a member during a plan year commencing on or after July 1,
24 1996.

25 For plan years beginning on or after July 1, 1996, any reference
26 to the annual salary limit under Section 401(a)(17) of the Internal
27 Revenue Code of 1986, as amended, shall mean the OBRA '93 salary
28 limit set forth in this subsection.

29 If gross salary for any prior determination period is taken into
30 account in determining a Noneligible Member's benefits accruing in
31 the current plan year, the gross salary for that prior determination
32 period is subject to the OBRA '93 annual salary limit in effect for

1 that prior determination period. For this purpose, for
2 determination periods beginning before the first day of the first
3 plan year beginning on or after July 1, 1996, the OBRA '93 annual
4 salary limit is One Hundred Fifty Thousand Dollars (\$150,000.00).

5 Effective July 1, 1989, through June 30, 1997, in determining
6 the gross salary of a member for purposes of this limitation, the
7 rules of Section 414(q) (6) of the Internal Revenue Code of 1986, as
8 amended, shall apply, except in applying such rules, the term
9 "family" shall include only the spouse of the member and any lineal
10 descendants of the member who have not attained age nineteen (19)
11 years before the close of the year. If, as a result of the
12 application of such rules, the adjusted annual salary limitation is
13 exceeded, then the limitation shall be prorated among the affected
14 individuals in proportion to each such individual's gross salary as
15 determined under this subsection prior to the application of this
16 limitation. The family member aggregation rules set forth in this
17 paragraph shall apply only to plan years beginning prior to July 1,
18 1997;

19 15. "Accrued retirement benefit" means two and one-half percent
20 (2 1/2%) of the firefighter's final average salary multiplied by the
21 member's years of credited service not to exceed thirty (30) years;

22 16. "Beneficiary" means a member's surviving spouse or any
23 surviving children, including biological and adopted children, at
24 the time of the member's death. The surviving spouse must have been
25 married to the firefighter for the thirty (30) continuous months
26 preceding the firefighter's death provided a surviving spouse of a
27 member who died while in, or as a consequence of, the performance of
28 the member's duty for a participating municipality, shall not be
29 subject to the marriage limitation for survivor benefits. A
30 surviving child of a member shall be a beneficiary until reaching
31 eighteen (18) years of age or twenty-two (22) years of age if the
32 child is enrolled full time and regularly attending a public or

1 private school or any institution of higher education. Any child
2 adopted by a member after the member's retirement shall be a
3 beneficiary only if the child is adopted by the member for the
4 thirty (30) continuous months preceding the member's death. Any
5 child who is adopted by a member after the member's retirement and
6 such member dies accidentally or as a consequence of the performance
7 of the member's duty as a firefighter shall not be subject to the
8 thirty-month adoption requirement. This definition of beneficiary
9 shall be in addition to any other requirement set forth in this
10 article;

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

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

22 SECTION 2. AMENDATORY 11 O.S. 1991, Section 49-106, is
23 amended to read as follows:

24 Section 49-106. A. Any firefighter who reaches the
25 firefighter's normal retirement date shall be entitled, upon written
26 request, to retire from such service and be paid from the System a
27 monthly pension equal to the member's accrued retirement benefit;
28 provided, that the pension shall cease during any period of time the
29 member may thereafter serve for compensation in any municipal fire
30 department in the state.

31 B. Effective July 1, 1989, notwithstanding any other provision
32 contained herein to the contrary, in no event shall commencement of

1 distribution of the accrued retirement benefit of a member be
2 delayed beyond April 1 of the calendar year following the later of:

3 1. The calendar year in which the member reaches seventy and
4 one-half (70 1/2) years of age; or

5 2. The actual retirement date of the member.

6 SECTION 3. AMENDATORY 11 O.S. 1991, Section 49-106.2, is
7 amended to read as follows:

8 Section 49-106.2 A. Notwithstanding any other provision
9 contained herein to the contrary, the benefits payable to a member
10 in the System shall be subject to the limitations of Section 415 of
11 the Internal Revenue Code of 1986 in accordance with the provisions
12 of ~~paragraphs 1~~ subsections B and 2 C of this section.

13 ~~1. B.~~ Except as provided in ~~subparagraphs e~~ paragraphs 3
14 ~~through 7~~ of this paragraph subsection, any accrued retirement
15 benefit payable to a member shall not exceed the lesser of:

16 a.

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

22 b.

23 2. For limitation years beginning prior to January 1, 1995, one
24 hundred percent (100%) of the average earnings of the member for the
25 three (3) consecutive calendar years, while a member in the System,
26 in which the member's earnings were the highest. For purposes of
27 this ~~subparagraph~~ paragraph, earnings for any limitation year shall
28 be the earned income of the member, wages, salaries, and fees for
29 professional services, and other amounts received for personal
30 services actually rendered in the course of employment with a
31 participating municipality, provided such amounts are actually paid
32

1 or includable in gross income during such year. Earnings shall
2 exclude the following:

3 ~~(1)~~

4 a. contributions by a participating municipality to a
5 plan of deferred compensation which are not included
6 in the gross income of the member for the taxable year
7 in which contributed or any distributions from a
8 funded plan of deferred compensation, and

9 ~~(2)~~

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

17 ~~e. except~~

18 3. Except as provided in ~~subparagraph e~~ paragraph 5 of this
19 paragraph subsection, the limitations specified in ~~subparagraphs a~~
20 paragraphs 1 and 2 of this ~~paragraph subsection~~ shall not be
21 applicable with respect to any member whose total annual accrued
22 retirement benefit payable from the System is less than Ten Thousand
23 Dollars (\$10,000.00) and who has not at any time participated in any
24 contribution plan, within the meaning of Section 415(k) of the
25 Internal Revenue Code of 1986, maintained by a participating
26 municipality ;

27 ~~d. if~~

28 4. If a member has less than ten (10) years of participation in
29 the System and all predecessor municipal firefighter pension and
30 retirement systems, the dollar limitation otherwise applicable under
31 ~~subparagraph a~~ paragraph 1 of this ~~paragraph subsection~~ shall be
32 reduced by multiplying such limitation by a fraction, the numerator

1 of which is the number of the years of participation in the System
2 of the member, but never less than one (1), and the denominator of
3 which is ten (10). This ~~subparagraph~~ paragraph, to the extent
4 required by the Secretary of the Treasury, shall be applied
5 separately to each change in benefit structure hereunder. For
6 limitation years beginning on or after January 1, 1995, this
7 paragraph shall apply to a benefit paid under the System as a result
8 of the member becoming disabled by reason of personal injuries or
9 sickness, or amounts received by the beneficiaries, survivors or
10 estate of the member as a result of the death of the member;

11 ~~e. if~~

12 5. The limitations of this paragraph shall apply only to
13 limitation years beginning prior to January 1, 1995. If a member
14 has been credited with less than ten (10) years of credited service,
15 the percentage-of-average-earnings limitation otherwise applicable
16 under ~~subparagraph b~~ paragraph 2 of this ~~paragraph~~ subsection and
17 the dollar amount otherwise applicable under ~~subparagraph e~~
18 paragraph 3 of this ~~paragraph~~ subsection shall be reduced by
19 multiplying each by a fraction, the numerator of which is the number
20 of the years of credited service of the member, but never less than
21 one (1), and the denominator of which is ten (10).~~i~~

22 ~~f. the~~

23 6. The limitations specified in this section shall apply to a
24 straight life annuity with no ancillary benefits and to an annuity
25 that constitutes a qualified joint and survivor annuity, ~~provided~~
26 ~~payment begins between attainment of age sixty-two (62) and age~~
27 ~~sixty-five (65) by the member.~~ If payment is in a different form,
28 the amount thereof shall be adjusted to be the actuarial equivalent
29 of a single life annuity and the limitations shall be applied to
30 such adjusted amount. Such adjustment shall be based on the
31 actuarial mortality tables ~~adopted by the State Board~~ and interest

32

1 rates described in divisions (1) and (2) of subparagraph a of this
2 paragraph.

3 a. If payment begins before the member reaches sixty-two
4 (62) years of age, the limitation in ~~subparagraph a~~
5 paragraph 1 of this paragraph subsection shall be
6 reduced on an actuarially equivalent basis ~~determined~~
7 ~~in accordance with the actuarial tables adopted by the~~
8 ~~State Board;~~ provided however, if such payment begins
9 after the member reaches fifty-five (55) years of age,
10 the reduced limit shall not be less than Seventy-five
11 Thousand Dollars (\$75,000.00) and, if payment begins
12 prior to the member reaching fifty-five (55) years of
13 age, the reduced limit shall not be less than the
14 actuarial equivalent of the Seventy-five Thousand
15 Dollar (\$75,000.00) limit for age fifty-five (55)
16 ~~based on actuarial tables adopted by the State Board;~~
17 provided, further, that in no event shall such amount
18 be reduced below Fifty Thousand Dollars (\$50,000.00),
19 adjusted for increases in the cost of living, as
20 prescribed by the Secretary of Treasury, or his
21 delegate.

22 (1) For limitation years beginning before January 1,
23 1999, the interest rate to be used to determine
24 such actuarial equivalent amount in this
25 subparagraph shall be the rate specified in the
26 actuarial tables adopted by the State Board;
27 however, the interest rate used in determining an
28 actuarially equivalent pre-age-sixty-two (62)
29 amount shall not be less than five percent (5%).

30 (2) Effective for limitation years beginning on or
31 after January 1, 1999, the actuarial equivalent
32 adjustments in this subparagraph shall be

1 determined using the prevailing Commissioner's
2 standard table (described in Section 807(d)(5)(A)
3 of the Internal Revenue Code of 1986), without
4 regard to any other subparagraph of Section
5 807(d)(5) of the Internal Revenue Code of 1986,
6 used to determine reserves for group annuity
7 contracts issued on the date as of which the
8 payment is being determined. (The current table
9 is set forth in Revenue Ruling 95-6 and is based
10 upon a fixed blend of fifty percent (50%) of the
11 male mortality rates and fifty percent (50%) of
12 the female mortality rates from the 1983 Group
13 Annuity Mortality Table.) The interest rate
14 shall be five percent (5%).

15 (3) For limitation years beginning on or after
16 January 1, 1997, if payment begins before the
17 member reaches age sixty-two (62), the reductions
18 in the limitations in this subparagraph shall not
19 apply to a member who is a "qualified
20 participant" as defined in Section 415(b)(2)(H)
21 of the Internal Revenue Code of 1986.

22 b. If payment begins after the member reaches sixty-five
23 (65) years of age, the limitation in ~~subparagraph a~~
24 paragraph 1 of this paragraph subsection shall be the
25 actuarial equivalent of such amount otherwise
26 applicable at the member reaching sixty-five (65)
27 years of age, ~~based on the actuarial tables adopted by~~
28 ~~the State Board.~~ The

29 (1) For limitation years beginning before January 1,
30 1999, the interest rate to be used ~~in~~ to
31 determine such actuarial equivalent amount in
32 this subparagraph shall be the rate specified in

1 the actuarial tables adopted by the State Board;
2 however, ~~the interest rate used in determining an~~
3 ~~actuarially equivalent single life amount or pre-~~
4 ~~age sixty-two (62) amount shall not be less than~~
5 ~~five percent (5%) and the interest rate used in~~
6 determining an actuarially equivalent post-age
7 sixty-five (65) amount shall not be greater than
8 five percent (5%) ~~r.~~

9 (2) Effective for limitation years beginning on or
10 after January 1, 1999, the actuarial equivalent
11 adjustments in this subparagraph shall use the
12 mortality and interest rate basis provided in
13 division (2) of subparagraph a of this paragraph.

14 ~~g. in~~

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

25 ~~2.~~ If C. For distributions made in limitation years beginning
26 prior to January 1, 2000, if a member also participates, or has
27 participated, in one or more defined contribution plans, within the
28 meaning of Section 415(k) of the Internal Revenue Code of 1986,
29 maintained by a participating municipality, the sum of the defined
30 benefit plan fraction and defined contribution plan fraction, as
31 defined in (1) and (2) below paragraphs 1 and 2 of this subsection,
32 shall not exceed one. If, in any limitation year, the sum of the

1 defined benefit plan fraction and the defined contribution plan
2 fraction for a member would exceed one without adjustment of the
3 amount of the maximum annual accrued retirement benefit that can be
4 paid to such member pursuant to ~~paragraph 1~~ subsection B of this
5 section, the amount of the maximum annual accrued retirement benefit
6 that can be paid to such member pursuant to ~~paragraph 1~~ subsection B
7 of this section shall be reduced to the extent necessary to reduce
8 the sum of the defined benefit plan fraction and the defined
9 contribution plan fraction for the member to one, or the State Board
10 may take such other action as will cause the sum to equal one or
11 less. As used in this ~~paragraph~~ subsection:

12 ~~a.~~

13 1. "Defined benefit fraction" means a fraction:

14 ~~(1)~~

15 a. the numerator of which is the projected annual accrued
16 retirement benefit of the member from the System,
17 determined as of the close of the limitation year, and

18 ~~(2)~~

19 b. the denominator of which is the lesser of one hundred
20 twenty-five percent (125%) of the dollar limitation
21 under Section 415(b)(1)(A) of the Internal Revenue
22 Code of 1986 or one hundred forty percent (140%) of
23 the percentage limitation under Section 415(b)(1)(B)
24 of the Internal Revenue Code of 1986 for the year of
25 determination, taking into account the effect of
26 Section 235(g)(4) of the Tax Equity and Fiscal
27 Responsibility Act of 1982, i

28 ~~b.~~

29 2. "Defined contribution fraction" means a fraction:

30 ~~(1)~~

31 a. the numerator of which is the sum of the annual
32 additions, as defined in Section 415(c)(2) of the

1 Internal Revenue Code of 1986, to the accounts of the
2 member under all defined contribution plans maintained
3 by the participating municipalities as of the close of
4 the limitation year, subject to reduction to the
5 extent permitted under the transition rule in Section
6 235(g) (3) of the Tax Equity and Fiscal Responsibility
7 Act of 1982, and

8 ~~(2)~~

9 b. the denominator of which is the sum of the lesser of
10 one hundred twenty-five percent (125%) of the dollar
11 limitation under Section 415(c) (1) (A) of the Internal
12 Revenue Code of 1986 or one hundred forty percent
13 (140%) of the percentage limitation under Section
14 415(c) (1) (B) of the Internal Revenue Code of 1986, for
15 such limitation year and for all prior limitation
16 years during which the member was employed by an
17 eligible employer. At the option of the State Board,
18 the denominator may be increased by using for
19 limitation years ending prior to January 1, 1983, an
20 amount equal to the denominator in effect for the
21 limitation year ending in 1982, multiplied by the
22 transition fraction provided in Section 415(e) (6) (B)
23 of the Internal Revenue Code of 1986.

24 D. The State Board is hereby authorized to ~~make~~ revoke the
25 special election previously made on June 21, 1991 under Internal
26 Revenue Code Section 415(b) (10). ~~If this~~ Under the special election
27 ~~is made,~~ the Section 415 limit for a member who joined the System
28 prior to January 1, 1990 shall be the greater of: ~~(1) the~~

29 1. The applicable Code Section 415 limit; ~~or (2) the~~

30 2. The member's benefit under the System without regard to any
31 benefit increases pursuant to a System amendment adopted after
32 October 14, 1987.

1 E. In the event that the special election is made, ~~subparagraph~~
2 ~~f of paragraph 1~~ paragraph 6 of subsection B of this section shall
3 read as follows: ~~¶.~~ "6. The limitations specified in this section
4 shall apply to a straight life annuity with no ancillary benefits
5 and to an annuity that constitutes a qualified joint and survivor
6 annuity, provided payment begins at the age at which the member
7 could receive an unreduced primary insurance amount under the
8 federal Social Security laws (i.e., "social security retirement
9 age") determined by disregarding the age increase factor thereunder
10 and as if early retirement were sixty-two (62). If payment is in a
11 different form, the amount thereof shall be adjusted to be the
12 actuarial equivalent of a single life annuity and the limitations
13 shall be applied to such adjusted amount. Such adjustment shall be
14 based on the actuarial tables adopted by the State Board. If
15 payment begins before the member's social security retirement age,
16 the limitation in ~~subparagraph a~~ paragraph 1 of this ~~paragraph~~
17 subsection shall be reduced by applying a reduction factor
18 consistent with social security reduction factors, as prescribed by
19 the Secretary of the Treasury; provided, however, that in no event
20 shall such amount be reduced below Fifty Thousand Dollars
21 (\$50,000.00), adjusted for increases in the cost of living, as
22 prescribed by the Secretary of the Treasury, or his delegate. If
23 payment begins after the participant's social security retirement
24 age, the limitation in ~~subparagraph a~~ paragraph 1 of this ~~paragraph~~
25 subsection shall be the actuarial equivalent of such amount
26 otherwise applicable at the member's social security retirement age,
27 based on the actuarial tables adopted by the State Board. The
28 interest rate to be used in determining such actuarial equivalent
29 amount shall be the rate specified in the actuarial tables adopted
30 by the State Board; however, the interest rate used in determining
31 an actuarially equivalent single life amount shall not be less than
32 five percent (5%) and the interest rate used in determining an

1 actuarially equivalent post-social-security-retirement-age amount
2 shall not be greater than five percent (5%)”.

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

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 49-106.3 of Title 11, unless
10 there is created a duplication in numbering, reads as follows:

11 A. For distributions made on or after January 1, 1993, and
12 notwithstanding any provision of the System to the contrary that
13 would otherwise limit a Distributee’s election hereunder, a
14 Distributee may elect, at the time and in the manner prescribed by
15 the State Board, to have any portion of an Eligible Rollover
16 Distribution paid directly to an Eligible Retirement Plan specified
17 by the Distributee in a Direct Rollover.

18 B. For purposes of this section, the following definitions
19 shall apply:

20 1. “Eligible Rollover Distribution” means any distribution of
21 all or any portion of the balance to the credit of the Distributee,
22 except that an Eligible Rollover Distribution does not include any
23 distribution that is one of a series of substantially equal periodic
24 payments (not less frequently than annually) made for the life (or
25 life expectancy) of the Distributee or the joint lives (or life
26 expectancies) of the Distributee and the Distributee’s designated
27 beneficiary, or for a specified period of ten (10) years or more;
28 any distribution to the extent such distribution is required under
29 Section 401(a) (9) of the Internal Revenue Code of 1986; and the
30 portion of any distribution that is not includable in gross income
31 (determined without regard to the exclusion for net unrealized
32 appreciation with respect to employer securities);

1 2. "Eligible Retirement Plan" means an individual retirement
2 account described in Section 408(a) of the Internal Revenue Code of
3 1986, an individual retirement annuity described in Section 408(b)
4 of the Internal Revenue Code of 1986, an annuity plan described in
5 Section 403(a) of the Internal Revenue Code of 1986, or a qualified
6 trust described in Section 401(a) of the Internal Revenue Code of
7 1986, that accepts the Distributee's Eligible Rollover Distribution.
8 However, in the case of an Eligible Rollover Distribution to the
9 surviving spouse, an Eligible Retirement Plan is an individual
10 retirement account or individual retirement annuity. An Eligible
11 Retirement Plan does not include a Roth IRA under Section 408(a) of
12 the Internal Revenue Code of 1986;

13 3. "Distributee" means a member whether or not said member is
14 an active firefighter. In addition, the member's surviving spouse
15 and the member's spouse or former spouse who is an alternate payee
16 under a qualified domestic order, as provided in Section 49-126 of
17 this title, are Distributees with regard to the interest of the
18 spouse or former spouse; and

19 4. "Direct Rollover" means a payment by the Plan to the
20 Eligible Retirement Plan specified by the Distributee.

21 C. At least thirty (30) days and not less than ninety (90) days
22 before the date of distribution, the Distributee must be provided
23 with a notice of rights which satisfies Section 402(f) of the
24 Internal Revenue Code of 1986, as to rollover options and tax
25 effects. Such distribution may commence less than thirty (30) days
26 after the notice is given, provided that:

27 1. The State Board clearly informs the Distributee that the
28 Distributee has a right to a period of at least thirty (30) days
29 after receiving the notice to consider the decision of whether or
30 not to elect a distribution; and

31 2. The Distributee, after receiving the notice, affirmatively
32 elects a distribution.

1 SECTION 5. AMENDATORY 11 O.S. 1991, Section 49-126, as
2 last amended by Section 2, Chapter 198, O.S.L. 1998 (11 O.S. Supp.
3 1998, Section 49-126), is amended to read as follows:

4 Section 49-126. A. Except as otherwise provided by this
5 section, no portion of said pension shall, either before or after
6 its order of distribution by the State Board to such disabled
7 members of said fire department, or the surviving spouse or guardian
8 of such minor child or children, to the deceased or retired member
9 of such department, be held, seized, taken, subjected to or detained
10 or levied on by virtue of any attachment, execution, injunction,
11 writ interlocutory or other order or decree, or any process or
12 proceeding, whatever, issued out of or by any court of this state
13 for the payment or satisfaction, in whole or in part, of any debt,
14 damages, claim, demand or judgment against such member, or his or
15 her surviving spouse, or the guardian of said minor child or
16 children of any deceased member, nor shall said fund or any claim
17 thereto be directly or indirectly assigned and any attempt to assign
18 or transfer the same shall be void; but the funds shall be held,
19 kept, secured and distributed for the purpose of pensioning the
20 persons named in this article, and for no other purpose whatever.

21 Notwithstanding the foregoing, the State Board may approve any
22 offset of a member's benefit to pay a judgment or settlement against
23 a member for a crime involving the System, for a breach of the
24 member's fiduciary duty to the System, or for funds or monies
25 incorrectly paid to a member or beneficiary by mistake, provided
26 such offset is in accordance with the requirements of Section
27 401(a)(13) of the Internal Revenue Code of 1986.

28 B. 1. The provisions of subsection A of this section shall not
29 apply to a qualified domestic order as provided pursuant to this
30 subsection.

31 2. The term "qualified domestic order" means an order issued by
32 a district court of this state pursuant to the domestic relation

1 laws of the State of Oklahoma which relates to the provision of
2 marital property rights to a spouse or former spouse of a member or
3 provision of support for a minor child or children and which creates
4 or recognizes the existence of the right of an alternate payee, or
5 assigns to an alternate payee the right, to receive a portion of the
6 benefits payable with respect to a member of the System.

7 3. For purposes of the payment of marital property, to qualify
8 as an alternate payee, a spouse or former spouse must have been
9 married to the related member for a period of not less than thirty
10 (30) continuous months immediately preceding the commencement of the
11 proceedings from which the qualified domestic order issues.

12 4. A qualified domestic order is valid and binding on the State
13 Board and the related member only if it meets the requirements of
14 this subsection.

15 5. A qualified domestic order shall clearly specify:

- 16 a. the name and last-known mailing address (if any) of
17 the member and the name and mailing address of the
18 alternate payee covered by the order,
- 19 b. the amount or percentage of the member's benefits to
20 be paid by the System to the alternate payee,
- 21 c. the number of payments or period to which such order
22 applies,
- 23 d. the characterization of the benefit as to marital
24 property rights or child support, and
- 25 e. each plan to which such order applies.

26 6. A qualified domestic order meets the requirements of this
27 subsection only if such order:

- 28 a. does not require the System to provide any type or
29 form of benefit, or any option not otherwise provided
30 under state law as relates to the System,
- 31 b. does not require the System to provide increased
32 benefits, and

1 c. does not require the payment of benefits to an
2 alternate payee which are required to be paid to
3 another alternate payee pursuant to another order
4 previously determined to be a qualified domestic order
5 or an order recognized by the System as a valid order
6 prior to the effective date of this act.

7 7. A qualified domestic order shall not require payment of
8 benefits to an alternate payee prior to the actual retirement date
9 of the related member.

10 8. The obligation of the System to pay an alternate payee
11 pursuant to a qualified domestic order shall cease upon the death of
12 the related member.

13 9. This subsection shall not be subject to the provisions of
14 the Employee Retirement Income Security Act of 1974 (ERISA), 29
15 U.S.C.A. Section 1001, et seq., as amended from time to time, or
16 rules and regulations promulgated thereunder, and court cases
17 interpreting said act.

18 10. The Oklahoma Firefighters Pension and Retirement Board
19 shall promulgate such rules as are necessary to implement the
20 provisions of this subsection.

21 11. An alternate payee who has acquired beneficiary rights
22 pursuant to a valid qualified domestic order must fully comply with
23 all provisions of the rules promulgated by the State Board pursuant
24 to this subsection in order to continue receiving his or her
25 benefit.

26 SECTION 6. AMENDATORY 11 O.S. 1991, Section 49-128, as
27 amended by Section 2, Chapter 247, O.S.L. 1997 (11 O.S. Supp. 1998,
28 Section 49-128), is amended to read as follows:

29 Section 49-128. Any person possessing the qualifications
30 required and provided for under this article, who deems himself
31 aggrieved by a decision of the State Board on his or her claim for
32 pension, either in rejecting his or her claim or in the amount

1 allowed by the Board, or participating municipality, may appeal from
2 such decision by filing a petition in the Oklahoma County District
3 Court within thirty (30) days from the date of such decision.

4 SECTION 7. AMENDATORY 11 O.S. 1991, Section 49-138, as
5 last amended by Section 1, Chapter 192, O.S.L. 1998 (11 O.S. Supp.
6 1998, Section 49-138), is amended to read as follows:

7 Section 49-138. A. Any member of a regularly constituted fire
8 department of any municipality who is now serving or may hereafter
9 serve in the land or naval forces of the United States under the Act
10 of Congress of September 16, 1940 (50 U.S.C.A. Sections 301-318),
11 known as the Selective Training and Service Act of 1940, and/or
12 Public Law No. 759, 80th Congress, known as the Selective Service
13 Act of 1948, and amendments thereto, whether such service is
14 voluntary or involuntary, who shall have been a member of such fire
15 department at the time of entering such service, shall be entitled
16 to have the whole of the time of such service applied under the
17 provisions of Section 49-106 of this title, so far as the same
18 applies to a service pension; and provided further, that the
19 municipality shall continue its payment into said pension fund, to
20 the same force and effect as though the member were in the actual
21 service of such fire department; provided, that any person who is
22 eligible for such service under said Acts of Congress but who shall
23 have volunteered for military or naval service for a greater period
24 than is provided by said Acts shall likewise be entitled to all of
25 the benefits of Sections 49-138 through 49-142 of this title for the
26 full period of such service or enlistment; provided further, that
27 only one such period of voluntary service shall be considered
28 hereunder. If such person shall reenlist, unless he is required to
29 do so by law, he shall not thereafter be entitled to the provisions
30 of this act. The provisions of this act shall not apply where any
31 such person dies during the period of said service or enlistment,
32

1 and shall not entitle the surviving spouse or children to any
2 benefits.

3 B. Effective February 1, 1997, credited service received
4 pursuant to this section or credited service for wartime military
5 service received as otherwise provided by law shall be used in
6 determining the member's retirement benefit but shall not be used in
7 determining years of service for retirement, vesting purposes or
8 eligibility for participation in the Oklahoma Firefighters Deferred
9 Option Plan.

10 C. A member who retires on or after July 1, 1998, shall receive
11 maximum benefits available for each year of creditable service, not
12 to exceed five (5) years, for active military service for retirement
13 benefits for service rendered prior to being hired by a regularly
14 constituted fire department.

15 For purposes of this subsection, "military service" means
16 service in the Armed Forces of the United States in time of war or
17 national emergency by honorably discharged persons who served as
18 follows:

19 1. In the Armed Forces of the United States at any time during
20 the period from April 6, 1917, to November 11, 1918, both dates
21 inclusive;

22 2. In the Armed Forces of the United States as members of the
23 45th Division at any time during the period from September 16, 1940,
24 to December 7, 1941, both dates inclusive;

25 3. In the Armed Forces of the United States at any time during
26 the period from December 7, 1941, to December 31, 1946, both dates
27 inclusive;

28 4. In the Armed Forces of the United States at any time during
29 the period from June 27, 1950, to January 31, 1955, both dates
30 inclusive;

31 5. For a period of ninety (90) days or more, unless discharged
32 from active duty for a service-connected disability, in the Armed

1 Forces of the United States during the period of time in which the
2 United States participated in a war, campaign or battle, but
3 excluding any person who shall have served on active duty for
4 training only, unless discharged from active duty for service-
5 connected disability;

6 6. In the Armed Forces of the United States at any time during
7 the period which began on:

8 a. February 28, 1961, and ended on May 7, 1975, in the
9 case of a veteran who served in the Republic of
10 Vietnam during that period, and

11 b. August 5, 1964, and ended on May 7, 1975, in all other
12 cases,

13 except that such period shall be deemed to have ended on December
14 31, 1976, when determining eligibility for education and training
15 benefits; or

16 7. In the Armed Forces of the United States on or after August
17 1, 1990, and ended on December 31, 1991, excluding any person who
18 shall have served on active duty for training only, unless
19 discharged from active duty for service-connected disability.

20 D. An eligible member pursuant to subsection C of this section
21 shall include only those persons who shall have served during the
22 times or in the areas prescribed in this section, and those persons
23 who were awarded service medals, as authorized by the United States
24 Department of Defense as reflected in the veteran's Defense
25 Department Form 214, related to the Vietnam Conflict who served
26 prior to August 5, 1964. The provisions of subsection B of this
27 section shall include military retirees, whose retirement was based
28 only on active service, that have been rated as having twenty
29 percent (20%) or greater service-connected disability by the
30 Veterans Administration or the Armed Forces of the United States.

31 E. Notwithstanding any provision herein to the contrary,
32 contributions, benefits and service credit with respect to qualified

1 military service shall be provided in accordance with Section 414(u)
2 of the Internal Revenue Code of 1986.

3 SECTION 8. This act shall become effective July 1, 1999.

4 SECTION 9. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

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