

ENROLLED HOUSE
BILL NO. 1045

By: Roberts, Easley, Ostrander,
Gilbert and Glover of the
House

and

Monson of the Senate

An Act relating to the Oklahoma Firefighters Pension and Retirement System; amending 11 O.S. 1991, Sections 49-100.1, as last amended by Section 1, Chapter 299, O.S.L. 1998, 49-106, 49-106.2, 49-126, as last amended by Section 2, Chapter 198, O.S.L. 1998, 49-128, as amended by Section 2, Chapter 247, O.S.L. 1997 and 49-138, as last amended by Section 1, Chapter 192, O.S.L. 1998 (11 O.S. Supp. 1998, Sections 49-100.1, 49-126, 49-128 and 49-138), which relate to the Oklahoma Firefighters Pension and Retirement System; modifying definitions; requiring distribution of retirement benefits pursuant to certain dates; modifying applicability of provisions related to receipt of retirement benefits; providing for applicability of certain limitation in the event of disability or death; modifying provisions for certain adjustments; prescribing method for determination of actuarial equivalents; modifying provision related to certain election pursuant to the Internal Revenue Code; providing for payment of certain distributions to eligible retirement plans; 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.

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 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. "System" means the Oklahoma Firefighters Pension and Retirement System and all predecessor municipal firefighters 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 firefighters pension and retirement boards;

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

6. "Member" means all eligible firefighters 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. The term "member" shall include but not be limited to the person serving as fire chief of any participating municipality, provided that a person serving as fire chief of a participating municipality shall meet the age, agility, physical and other eligibility requirements required by law at the time said person becomes a member of the System;

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 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 following the date 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, county fire department organized pursuant to subsection D of Section 351 of Title 19 of the Oklahoma Statutes, or fire protection district which is making contributions to the System on behalf of its firefighters;

10. "Disability" means the complete inability of the firefighter 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 firefighter;

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 firefighter 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.

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

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

If gross salary for any prior determination period is taken into account in determining a Noneligible Member's benefits accruing in the current plan year, the gross salary for that prior determination period is subject to the OBRA '93 annual salary limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after July 1, 1996, the OBRA '93 annual salary limit is One Hundred Fifty Thousand Dollars (\$150,000.00).

Effective July 1, 1989, through June 30, 1997, in determining the gross salary of a member for purposes of this limitation, the rules of Section 414(q)(6) of the Internal Revenue Code of 1986, as amended, shall apply, except in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the member who have not attained age nineteen (19) years before the close of the year. If, as a result of the

application of such rules, the adjusted annual salary limitation is exceeded, then the limitation shall be prorated among the affected individuals in proportion to each such individual's gross salary as determined under this subsection prior to the application of this limitation. The family member aggregation rules set forth in this paragraph shall apply only to plan years beginning prior to July 1, 1997;

15. "Accrued retirement benefit" means two and one-half percent (2 1/2%) of the firefighter'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 or any surviving children, including biological and adopted children, at the time of the member's death. The surviving spouse must have been married to the firefighter for the thirty (30) continuous months preceding the firefighter'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 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. Any child adopted by a member after the member's retirement shall be a beneficiary only if the child is adopted by the member for the thirty (30) continuous months preceding the member's death. Any child who is adopted by a member after the member's retirement and such member dies accidentally or as a consequence of the performance of the member's duty as a firefighter shall not be subject to the thirty-month adoption requirement. 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 49-106, is amended to read as follows:

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

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

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

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

2. The actual retirement date of the member.

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

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

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

~~a.~~

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

~~b.~~

2. For limitation years beginning prior to January 1, 1995, one hundred percent (100%) of the average earnings of the member for the three (3) consecutive calendar years, while a member in the System, in which the member's earnings were the highest. For purposes of this ~~subparagraph~~ paragraph, earnings for any limitation year shall be the earned income of the member, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with a participating municipality, provided such amounts are actually paid or includable in gross income during such year. Earnings shall exclude the following:

~~(1)~~

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

~~(2)~~

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

~~e. except~~

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

~~d. if~~

4. If a member has less than ten (10) years of participation in the System and all predecessor municipal firefighter pension and retirement systems, the dollar limitation otherwise applicable under subparagraph a paragraph 1 of this paragraph subsection shall be reduced by multiplying such limitation by a fraction, the numerator of which is the number of the years of participation in the System of the member, but never less than one (1), and the denominator of which is ten (10). This subparagraph paragraph, to the extent required by the Secretary of the Treasury, shall be applied separately to each change in benefit structure hereunder. For limitation years beginning on or after January 1, 1995, this paragraph shall apply to a benefit paid under the System as a result of the member becoming disabled by reason of personal injuries or sickness, or amounts received by the beneficiaries, survivors or estate of the member as a result of the death of the member;

~~e. if~~

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

~~f. the~~

6. The limitations specified in this section shall apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity, provided payment begins between attainment of age sixty-two (62) and age sixty-five (65) by the member. If payment is in a different form, the amount thereof shall be adjusted to be the actuarial equivalent of a single life annuity and the limitations shall be applied to such adjusted amount. Such adjustment shall be based on the actuarial mortality tables adopted by the State Board and interest rates described in divisions (1) and (2) of subparagraph a of this paragraph.

a. If payment begins before the member reaches sixty-two (62) years of age, the limitation in subparagraph a paragraph 1 of this paragraph subsection shall be

reduced on an actuarially equivalent basis ~~determined in accordance with the actuarial tables adopted by the State Board~~; provided however, if such payment begins after the member reaches fifty-five (55) years of age, the reduced limit shall not be less than Seventy-five Thousand Dollars (\$75,000.00) and, if payment begins prior to the member reaching fifty-five (55) years of age, the reduced limit shall not be less than the actuarial equivalent of the Seventy-five Thousand Dollar (\$75,000.00) limit for age fifty-five (55) ~~based on actuarial tables adopted by the State Board~~; provided, further, that in no event shall such amount be reduced below Fifty Thousand Dollars (\$50,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of Treasury, or his delegate.

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

(2) Effective for limitation years beginning on or after January 1, 1999, the actuarial equivalent adjustments in this subparagraph shall be determined using the prevailing Commissioner's standard table (described in Section 807(d)(5)(A) of the Internal Revenue Code of 1986), without regard to any other subparagraph of Section 807(d)(5) of the Internal Revenue Code of 1986, used to determine reserves for group annuity contracts issued on the date as of which the payment is being determined. (The current table is set forth in Revenue Ruling 95-6 and is based upon a fixed blend of fifty percent (50%) of the male mortality rates and fifty percent (50%) of the female mortality rates from the 1983 Group Annuity Mortality Table.) The interest rate shall be five percent (5%).

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

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

(1) For limitation years beginning before January 1, 1999, the interest rate to be used ~~in~~ to determine such actuarial equivalent amount in this subparagraph shall be the rate specified in the actuarial tables adopted by the State Board; however, ~~the interest rate used in determining an actuarially equivalent single life amount or pre-age sixty-two (62) amount shall not be less than five percent (5%) and the interest rate used in determining an actuarially equivalent post-age sixty-five (65) amount shall not be greater than five percent (5%)~~.

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

~~g. in~~

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

~~2. If C.~~ For distributions made in limitation years beginning prior to January 1, 2000, if a member also participates, or has participated, in one or more defined contribution plans, within the meaning of Section 415(k) of the Internal Revenue Code of 1986, maintained by a participating municipality, the sum of the defined benefit plan fraction and defined contribution plan fraction, as defined in (1) and (2) below paragraphs 1 and 2 of this subsection, shall not exceed one. If, in any limitation year, the sum of the defined benefit plan fraction and the defined contribution plan fraction for a member would exceed one without adjustment of the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to ~~paragraph 1~~ subsection B of this section, the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to ~~paragraph 1~~ subsection B of this section shall be reduced to the extent necessary to reduce the sum of the defined benefit plan fraction and the defined contribution plan fraction for the member to one, or the State Board may take such other action as will cause the sum to equal one or less. As used in this ~~paragraph~~ subsection:

~~a.~~

1. "Defined benefit fraction" means a fraction:

~~(1)~~

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

~~(2)~~

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

~~b.~~

2. "Defined contribution fraction" means a fraction:

~~(1)~~

a. the numerator of which is the sum of the annual additions, as defined in Section 415(c)(2) of the Internal Revenue Code of 1986, to the accounts of the member under all defined contribution plans maintained by the participating municipalities as of the close of the limitation year, subject to reduction to the extent permitted under the transition rule in Section 235(g)(3) of the Tax Equity and Fiscal Responsibility Act of 1982, and

~~(2)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 49-126. A. Except as otherwise provided by this section, no portion of said pension shall, either before or after its order of distribution by the State Board to such disabled members of said fire department, or the surviving spouse or guardian

of such minor child or children, to the deceased or retired member of such department, be held, seized, taken, subjected to or detained or levied on by virtue of any attachment, execution, injunction, writ interlocutory or other order or decree, or any process or proceeding, whatever, issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damages, claim, demand or judgment against such member, or his or her surviving spouse, or the guardian of said minor child or children of any deceased member, nor shall said fund or any claim thereto be directly or indirectly assigned and any attempt to assign or transfer the same shall be void; but the funds shall be held, kept, secured and distributed for the purpose of pensioning the persons named in this article, and for no other purpose whatever. Notwithstanding the foregoing, the State Board may approve any offset of a member's benefit to pay a judgment or settlement against a member for a crime involving the System, for a breach of the member's fiduciary duty to the System, or for funds or monies incorrectly paid to a member or beneficiary by mistake, provided such offset is in accordance with the requirements of Section 401(a)(13) of the Internal Revenue Code of 1986.

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

2. The term "qualified domestic order" means an order issued by a district court of this state pursuant to the domestic relation laws of the State of Oklahoma which relates to the provision of marital property rights to a spouse or former spouse of a member or provision of support for a minor child or children and which creates or recognizes the existence of the right of an alternate payee, or assigns to an alternate payee the right, to receive a portion of the benefits payable with respect to a member of the System.

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

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

5. A qualified domestic order shall clearly specify:

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

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

- a. does not require the System to provide any type or form of benefit, or any option not otherwise provided under state law as relates to the System,
- b. does not require the System to provide increased benefits, and
- c. does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic order or an order recognized by the System as a valid order prior to the effective date of this act.

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

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

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

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

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

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

Section 49-128. Any person possessing the qualifications required and provided for under this article, who deems himself aggrieved by a decision of the State Board on his or her claim for pension, either in rejecting his or her claim or in the amount allowed by the Board, or participating municipality, may appeal from such decision by filing a petition in the Oklahoma County District Court within thirty (30) days from the date of such decision.

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

Section 49-138. A. Any member of a regularly constituted fire department of any municipality who is now serving or may hereafter serve in the land or naval forces of the United States under the Act

of Congress of September 16, 1940 (50 U.S.C.A. Sections 301-318), known as the Selective Training and Service Act of 1940, and/or Public Law No. 759, 80th Congress, known as the Selective Service Act of 1948, and amendments thereto, whether such service is voluntary or involuntary, who shall have been a member of such fire department at the time of entering such service, shall be entitled to have the whole of the time of such service applied under the provisions of Section 49-106 of this title, so far as the same applies to a service pension; provided further, that the municipality shall continue its payment into said pension fund, to the same force and effect as though the member were in the actual service of such fire department; provided, that any person who is eligible for such service under said Acts of Congress but who shall have volunteered for military or naval service for a greater period than is provided by said Acts shall likewise be entitled to all of the benefits of Sections 49-138 through 49-142 of this title for the full period of such service or enlistment; provided further, that only one such period of voluntary service shall be considered hereunder. If such person shall reenlist, unless he is required to do so by law, he shall not thereafter be entitled to the provisions of this act. The provisions of this act shall not apply where any such person dies during the period of said service or enlistment, and shall not entitle the surviving spouse or children to any benefits.

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

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

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

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

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

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

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

5. For a period of ninety (90) days or more, unless discharged from active duty for a service-connected disability, in the Armed Forces of the United States during the period of time in which the United States participated in a war, campaign or battle, but excluding any person who shall have served on active duty for training only, unless discharged from active duty for service-connected disability;

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

- a. February 28, 1961, and ended on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period, and
- b. August 5, 1964, and ended on May 7, 1975, in all other cases,

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

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

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

E. Notwithstanding any provision herein to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986.

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

SECTION 9. 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 House of Representatives the 18th day of May, 1999.

Speaker of the House of
Representatives

Passed the Senate the 18th day of May, 1999.

President of the Senate