

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2309

By: Stites (J.T.) and Braddock
of the House

and

Morgan of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Firefighters Pension and Retirement System; amending 11 O.S. 2001, Sections 49-100.1, 49-100.2, 49-106, 49-110, 49-116, 49-117.1 and 49-117.3, which relate to administration of the System; modifying definitions; establishing qualifications pursuant to Internal Revenue Code of 1986, as amended; requiring Board to administer Retirement System according to certain provisions; providing for compliance with minimum distribution requirements; providing for continuing effect of certain provisions; providing for applicability of certain disability determination; modifying provisions related to physical examinations; modifying terminology; prescribing duties for Executive Director with respect to entrance dates; modifying provisions related to final authority for membership eligibility; providing for transfers of amounts from certain plans pursuant to the Internal Revenue Code of 1986, as amended; authorizing payment of purchase price for certain service credit using certain amounts from plans pursuant to the Internal Revenue Code of 1986, as amended; 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. 2001, 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. Effective July 1, 1987, a member does not include a "leased employee". The term "leased employee" means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Internal Revenue Code of 1986, as amended) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. A leased employee shall not be considered an employee of the recipient if the requirements of the safe harbor provisions of Section 414(n)(5) of the Internal Revenue Code of 1986, as amended, are satisfied. Effective July 1, 1999, any individual who agrees with the

participating municipality that the individual's services are to be performed as a leased employee or an independent contractor shall not be a member regardless of any classification as a common law employee by the Internal Revenue Service or any other governmental agency, or any court of competent jurisdiction;

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. Effective January 1, 1988, gross salary shall include any amount of elective salary reduction under Section 125 of the Internal Revenue Code of 1986, as amended. Gross salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986, as amended, and any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986, as amended. Effective July 1, 1998, for purposes of determining a member's compensation, any contribution by the member to reduce his regular cash remuneration under 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be treated as if the member did not make such an election. 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;

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. 2001, Section 49-100.2, is amended to read as follows:

Section 49-100.2 There is created the Oklahoma Firefighters Pension and Retirement System which shall be a body corporate and an instrumentality of this state. The System shall be vested with the powers and duties specified in this article and such other powers as may be necessary to enable it and its officers and employees to carry out fully and effectively the purposes and intent of this article. All assets of the System shall be held in trust for the exclusive purpose of providing benefits for the members and beneficiaries of the System or defraying reasonable expenses of administering the System, and shall not be encumbered for or diverted to any other purpose or purposes. This System shall be the responsibility of the state and not that of the participating municipalities. The System is a qualified governmental retirement plan under Sections 401(a) and 414(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C.A. §§ 401, 414) and Section 3(32) of

the Employee Retirement Income Security Act of 1974 (29 U.S.C.A. §1002(32)). The Board shall administer the System in order to comply with the applicable provisions of the Internal Revenue Code of 1986, as amended.

SECTION 3. AMENDATORY 11 O.S. 2001, 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. With respect to distributions under the System made for calendar years beginning on or after January 1, 2001, the System will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, that were proposed in January 2001, notwithstanding any provision of the System to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, or such other date as may be specified in guidance published by the Internal Revenue Service. Furthermore, to the extent applicable, distributions shall be made in accordance with the Proposed Income Tax Regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the minimum distribution incidental benefit requirements of the Proposed Income Tax Regulations. 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 4. AMENDATORY 11 O.S. 2001, Section 49-110, is amended to read as follows:

Section 49-110. A. No firefighter shall be retired, as provided in Section 49-109 of this title, or receive any pension from the System, unless there shall be filed with the State Board certificates of the firefighter's disability. Any member of the fire department of any municipality who is disabled as a result of heart disease, injury to the respiratory system, infectious disease, or the existence of any cancer which heart disease, injury to the respiratory system, infectious disease, or cancer was not revealed by the physical examination passed by the member upon entry into the department, shall be presumed to have incurred the heart disease, injury to the respiratory system, infectious disease, or cancer while performing the firefighter's duties as a member of such department unless the contrary is shown by competent evidence. As used in this section, "infectious disease" means hepatitis, human immunodeficiency virus, meningitis and tuberculosis. Effective November 10, 1999, the provisions of this subsection relating to infectious disease shall apply.

B. Medical treatment based on the presumptions prescribed by subsection A of this section shall be provided by the municipality as a job-related illness until a court of competent jurisdiction determines that the presumption does not apply. If it is subsequently determined that the illness is not job-related, the workers' compensation provider shall be reimbursed for expenditures made for health care services by the medical plan or benefit provided by the municipality for the employee.

C. If any such member fails to submit evidence of a physical examination prior to entry into the fire department, there shall be no presumption the heart disease, injury to the respiratory system, infectious disease, or cancer was incurred while performing the firefighter's official duties and it shall be the duty of the State Board to determine if the heart disease, injury to the respiratory system, infectious disease, or cancer was incurred while performing the member's official duties.

D. Whenever a participating municipality on behalf of a member or a member applies for a disability benefit, the application shall be accompanied by proof of injury unless otherwise provided and medical evidence supporting the existence of a disability, certified by the member's or municipality's physician, that the member is unable to perform the duties of a firefighter. Should the application be made by a municipality, the member may submit medical evidence or reports from the member's physician to the local board. If both the municipality's physician and the member's physician certify to the disability, the local board shall act upon the application.

E. In regards to applications made by either an individual member or a municipality, should the physicians disagree, or if there is only one physician statement, the local board shall be required to have all the medical records concerning the applicant's disability reviewed by a physician selected by the local board and, if required by the reviewing physician, the local board shall have the member examined. The local board shall act upon all the physician's statements. Local board physician examinations and certifications shall be paid by the State Board and shall be limited to only those conditions upon which the member or the municipality on behalf of the member is requesting a disability.

F. If the State Board deems appropriate, an independent physician may be selected by the State Board to review medical

records and examine the member. The physicians selected by the State Board shall submit a report and recommendation to the State Board. The local board may request assistance from the State Board in selecting a physician. Final determination on all disability applications shall rest solely with the State Board.

SECTION 5. AMENDATORY 11 O.S. 2001, Section 49-116, is amended to read as follows:

Section 49-116. A. All ~~persons~~ candidates being considered for a position of a paid ~~fire-fighter~~ firefighter shall pass the required pre-employment offer physical performance/agility test based on standards established by the State Board; provided that the time between the administration of the physical performance/agility test ~~and application~~ approval for membership in the System by the Executive Director and the candidate's actual hire date by the participating municipality is less than twelve (12) months, provided further that a volunteer firefighter who passes an agility test at the time he or she is enrolled as a firefighter in a combination paid and volunteer fire department shall not be required to take a second agility test at the time of appointment as a paid firefighter in the same fire department.

B. The State Board shall require that any ~~person~~ candidate applying for entrance as a member of the System, who has been offered a position of a paid ~~fire-fighter~~ firefighter and before entering the employment of a participating municipality as a paid ~~fire-fighter~~ firefighter, must successfully complete a physical examination, as promulgated by the administrative rules ~~of~~ established by the State Board, in order to participate and qualify to receive any benefits from the System; provided that when the System receives all the information necessary for entrance into the System, including written notice from the System's physician that the candidate has met the minimum medical requirements for entrance, the Executive Director shall have the authority to approve an

entrance date for the candidate no earlier than the date all the necessary information for entrance is received or the actual hire date whichever is later; provided that the time between the administration of the physical examination ~~and application~~ approval for membership in the System by the Executive Director and the candidate's actual hire date by the participating municipality is less than six (6) months. All candidates shall be of good moral character, free from deformities, mental or physical conditions, disease and alcohol or drug addiction, which would prohibit a candidate from performing duties as a ~~fire fighter~~ firefighter. The State Board shall have the ~~final determination upon all applications for membership in the System~~ authority to deny or revoke the membership of a candidate submitting false information in such candidate's membership application and shall have final authority in determining eligibility for membership pursuant to the provisions of this article. This subsection shall not apply to any person who terminates employment with a participating municipality as a paid ~~fire fighter~~ firefighter and is reemployed by the participating municipality or employed by another participating municipality within six (6) months of such termination, unless such person was terminated for medical reasons.

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

SECTION 6. AMENDATORY 11 O.S. 2001, Section 49-117.1, is amended to read as follows:

Section 49-117.1 A member who terminates service before normal retirement date, other than by death or disability shall, upon application filed with the State Board, be refunded from the Fund an amount equal to the accumulated contributions the member has made to the Fund, but excluding any interest or any amount contributed by the municipality or state. If a member has completed ten (10) years of credited service at the date of termination, the member may elect a vested benefit in lieu of receiving the member's accumulated contributions.

If the member who has completed ten (10) or more years of credited service elects the vested benefit, the member shall be entitled to a monthly retirement annuity commencing on the date the member reaches fifty (50) years of age or the date the member would have had twenty (20) years of credited service had the member's employment continued uninterrupted, whichever is later. The annual amount of such retirement annuity shall be equal to two and one-half percent (2 1/2%) of final average salary multiplied by the number of years of credited service. The death benefits provided for in this article shall not apply to any member retiring under the provisions of this section.

If a member who terminates employment and elects a vested benefit dies prior to being eligible to receive benefits, the member's beneficiary shall be entitled to the member's normal monthly retirement benefit on the date the deceased member would have been eligible to receive the benefit.

If a member terminates employment and withdraws the member's accumulated contributions and then subsequently rejoins the System, he may pay to the System the sum of the accumulated contributions he has withdrawn plus five percent (5%) annual interest from the date of withdrawal and shall receive the same benefits as if he had never withdrawn his contributions; however, effective January 1, 1991, the

rate of interest provided herein shall be ten percent (10%) per annum.

Effective January 1, 2002, lump-sum payments for repayment of any amounts received because of a member's prior termination with interest, may be repaid by a trustee-to-trustee transfer from a governmental Code Section 403(b) annuity or a governmental Code Section 457 plan.

A fire fighter shall not be permitted to withdraw from the System while employed as a fire fighter in a participating municipality.

SECTION 7. AMENDATORY 11 O.S. 2001, Section 49-117.3, is amended to read as follows:

Section 49-117.3 A. The State Board shall adopt rules for computation of the purchase price for transferred credited service. These rules shall base the purchase price for each year purchased on the actuarial cost of the incremental projected benefits to be purchased. The purchase price shall represent the present value of the incremental projected benefits discounted according to the member's age at the time of purchase. Incremental projected benefits shall be the difference between the projected benefit said member would receive without purchasing the transferred credited service and the projected benefit after purchase of the transferred credited service computed as of the earliest age at which the member would be able to retire. Said computation shall assume an unreduced benefit and be computed using interest and mortality assumptions consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation.

B. In the event that the member is unable to pay the purchase price provided for in this section by the due date, the State Board shall permit the members to amortize the purchase price over a period not to exceed sixty (60) months. Said payments shall be made by payroll deductions unless the State Board permits an alternate

payment source. The amortization shall include interest in an amount not to exceed the actuarially assumed interest rate adopted by the State Board for investment earnings each year. Any member who ceases to make payment, terminates, retires or dies before completing the payments provided for in this section shall receive prorated service credit for only those payments made, unless the unpaid balance is paid by said member, his or her estate or successor in interest within six (6) months after said member's death, termination of employment or retirement, provided no retirement benefits shall be payable until the unpaid balance is paid, unless said member or beneficiary affirmatively waives the additional six-month period in which to pay the unpaid balance. The State Board shall promulgate such rules as are necessary to implement the provisions of this subsection.

C. Effective January 1, 2002, payment of the purchase price may be made by a trustee-to-trustee transfer from a governmental Code Section 403(b) annuity or a governmental Code Section 457 plan. Members amortizing the purchase price and making payments by payroll deduction on or after January 1, 2002, shall have the option of making a lump-sum payment for the balance of the remaining payments by a trustee-to-trustee transfer from a governmental Code Section 403(b) annuity or a governmental Code Section 457 plan.

SECTION 8. This act shall become effective July 1, 2002.

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.

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