STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 281 By: Leftwich of the Senate

and

Roberts of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma State Bureau of Investigation; amending 47 O.S. 2001, Section 2-300, as amended by Section 1, Chapter 399, O.S.L. 2002 (47 O.S. Supp. 2002, Section 2-300), which relates to the Oklahoma Law Enforcement Retirement System; including criminalist in definition; amending definitions; amending 47 O.S. 2001, Section 2-305.2, which relates to the Oklahoma Law Enforcement Retirement System; clarifying language; amending 47 O.S. 2001, Section 156.1, as amended by Section 1, Chapter 184, O.S.L. 2002 (47 O.S. Supp 2002, Section 156.1), which relates to use of state-owned motor vehicles; clarifying language; expanding exception; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 2-300, as amended by Section 1, Chapter 399, O.S.L. 2002 (47 O.S. Supp. 2002, Section 2-300), is amended to read as follows:

Section 2-300. As used in this act:

1. "System" means the Oklahoma Law Enforcement Retirement System;

2. "Act" means Sections 2-300 through 2-313 of this title;

3. "Board" means the Oklahoma Law Enforcement Retirement Board of the System;

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

5. "Fund" means the Oklahoma Law Enforcement Retirement Fund;

6. "Member" means all law enforcement officers of the Oklahoma Highway Patrol and the State Capitol Division of the Department of Public Safety who have obtained certification from the Council on Law Enforcement Education and Training, law enforcement officers and criminalists of the Oklahoma State Bureau of Investigation, law enforcement officers of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control and the Oklahoma Alcoholic Beverage Laws Enforcement Commission designated to perform duties in the investigation and prevention of crime and the enforcement of the criminal laws of this state, and members of the Communications Division to include radio technicians, tower technicians and commissioned officers of the Lake Patrol Division of the Oklahoma Department of Public Safety, park rangers of the Oklahoma Tourism and Recreation Department and inspectors of the Oklahoma State Board of Pharmacy, and any park manager or park supervisor of the Oklahoma Tourism and Recreation Department who was employed in such a position prior to July 1, 1985, and who elects on or before September 1, 1996, to participate in the System. Effective July 1, 1987, a member does not include a "leased employee" as defined under Section 414(n)(2) of the Internal Revenue Code of 1986, as amended. Effective July 1, 1999, any individual who agrees with the participating employer 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, provided that all persons who shall be offered a position of a law enforcement officer shall participate in the System upon the person meeting the requisite post-offer-pre-employment physical examination standards which shall be subject to the following requirements:

a. all such persons shall be of good moral character, free from deformities, mental or physical conditions,

or disease and alcohol or drug addiction which would prohibit the person from performing the duties of a law enforcement officer,

b. said physical-medical examination shall pertain to age, sight, hearing, agility and other conditions the requirements of which shall be established by the Board,

c. the person shall be required to meet the conditions of this subsection prior to the beginning of actual employment but after an offer of employment has been tendered by a participating employer,

d. the Board shall have authority to deny or revoke membership of any person submitting false information in such person's membership application, and

e. the Board shall have final authority in determining eligibility for membership in the System, pursuant to the provisions of this subsection;

7. "Normal retirement date" means the date at which the member is eligible to receive the unreduced payments of the member's accrued retirement benefit. Such date shall be the first day of the month coinciding with or following the date the member:

a. completes twenty (20) years of vesting service; or

b. attains sixty-two (62) years of age with ten (10) years of vesting service; or

c. attains sixty-two (62) years of age, if:

(1) the member has been transferred to this System from the Oklahoma Public Employees Retirement System on or after July 1, 1981; and

(2) the member would have been vested had the member continued to be a member of the Oklahoma Public Employees Retirement System;

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. The preceding sentence does not allow deferral of benefit commencement beyond the age of sixty-five (65).

A member who was required to join the System effective July 1, 1980, because of the transfer of the employing agency from the Oklahoma Public Employees Retirement System to the System, and was not a member of the Oklahoma Public Employees Retirement System on the date of such transfer shall be allowed to receive credit for prior law enforcement service rendered to this state, if the member is not receiving or eligible to receive retirement credit or benefits for such service in any other public retirement system, upon payment to the System of the employee contribution the member would have been subject to had the member been a member of the System at the time, plus five percent (5%) interest. Service credit received pursuant to this paragraph shall be used in determining the member's retirement benefit, and shall be used in determining years of service for retirement or vesting purposes;

8. "Actual paid base salary" means the salary received by a member, excluding payment for any accumulated leave or uniform allowance. Salary shall include any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986;

9. "Final average salary" means the average of the highest thirty (30) consecutive complete months of actual paid gross salary. Gross salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986, 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, 1992, gross salary shall include any amount of elective salary reduction under Section 125 of the Internal Revenue Code of 1986, as amended. Only salary on which required contributions have been made may be used in computing the 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 section, 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 in the System 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 provision.

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) 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 section prior to the application of this limitation;

10. "Credited service" means the period of service used to determine the amount of benefits payable to a member. Credited service shall consist of the period during which the member participated in the System or the predecessor Plan as an active employee in an eligible membership classification, plus any service prior to the establishment of the predecessor Plan which was credited under the predecessor Plan and for law enforcement officers and criminalists of the Oklahoma State Bureau of Investigation and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control who became members of the System on July 1, 1980, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1980, and for members of the Communications and Lake Patrol Divisions of the Oklahoma Department of Public Safety, who became members of the System on July 1, 1981, any service credited under the predecessor Plan or the Oklahoma Public Employees Retirement System as of June 30, 1981, and for law enforcement officers of the ~~Oklahoma~~ Alcoholic Beverage ~~Control Board~~ Laws Enforcement

Commission who became members of the System on July 1, 1982, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1982, and for park rangers of the Oklahoma Tourism and Recreation Department who became members of the System on July 1, 1985, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1985, and for inspectors of the Oklahoma State Board of Pharmacy who became members of the System on July 1, 1986, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1986, for law enforcement officers of the ~~State~~ Oklahoma Capitol Patrol Division of the Department of Public Safety who became members of the System effective July 1, 1993, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1993, and for all commissioned officers in the Gunsmith/Ammunition Reloader Division of the Department of Public Safety who became members of the System effective July 1, 1994, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1994, and for the park managers or park supervisors of the Oklahoma Tourism and Recreation Department who were employed in such a position prior to July 1, 1985, and who elect to become members of the System effective September 1, 1996, any service transferred pursuant to subsection C of Section 2-309.6 of this title. Effective August 5, 1993, an authorized leave of absence shall include a period of absence pursuant to the Family and Medical Leave Act of 1993;

11. "Disability" means a physical or mental condition which, in the judgment of the Board, totally and presumably permanently prevents the member from engaging in the usual and customary duties of the occupation of the member and thereafter prevents the member from performing the duties of any occupation or service for which the member is qualified by reason of training, education or experience. A person is not under a disability when capable of

performing a service to the employer, regardless of occupation, providing the salary of the employee is not diminished thereby;

12. "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;

13. "Line of duty" means any action which a member whose primary function is crime control or reduction or enforcement of the criminal law is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the member is assigned, or for which the member is compensated, by the agency the member serves;

14. "Personal injury" or "injury" means any traumatic injury as well as diseases which are caused by or result from such an injury, but not occupational diseases;

15. "Catastrophic nature" means consequences of an injury that permanently prevent an individual from performing any gainful work; and

16. "Traumatic injury" means a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

SECTION 2. AMENDATORY 47 O.S. 2001, Section 2-305.2, is amended to read as follows:

Section 2-305.2 A. In lieu of terminating employment and accepting a service retirement pension pursuant to Section 2-305 of ~~Title 47 of the Oklahoma Statutes~~ this title, any member of the Oklahoma Law Enforcement Retirement System who has not less than twenty (20) years of creditable service and who is eligible to receive a service retirement pension may elect to participate in the

Oklahoma Law Enforcement Deferred Option Plan and defer the receipts of benefits in accordance with the provisions of this section.

B. For purposes of this section, creditable service shall include service credit reciprocally recognized pursuant to Sections 2-300 through 2-305.1 of ~~Title 47 of the Oklahoma Statutes~~ this title but for eligibility purposes only.

C. The duration of participation in the Oklahoma Law Enforcement Deferred Option Plan for a member shall not exceed five (5) years. At the conclusion of a member's participation in the Oklahoma Law Enforcement Deferred Option Plan, the member shall terminate employment with all state law enforcement agencies as ~~an officer~~ a member of the Oklahoma Law Enforcement Retirement System, and shall start receiving the member's accrued monthly retirement benefit from the System.

D. When a member begins participation in the Oklahoma Law Enforcement Deferred Option Plan, the contribution of the employee shall cease. The employer contributions shall continue to be paid in accordance with Section 2-304 of ~~Title 47 of the Oklahoma Statutes~~ this title. Employer contributions for employees who elect the Oklahoma Law Enforcement Deferred Option Plan shall be credited equally to the Oklahoma Law Enforcement Retirement System and to the Oklahoma Law Enforcement Deferred Option Plan. The monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the Oklahoma Law Enforcement Deferred Option Plan account.

E. 1. A member who participates in this plan shall be eligible to receive cost of living increases.

2. A member who participates in this plan shall earn interest at a rate of two percentage points below the rate of return of the investment portfolio of the System, but no less than the actuarial assumed interest rate as certified by the actuary in the yearly

evaluation report of the actuary. The interest shall be credited to the individual account balance of the member on an annual basis.

F. A participant in the Oklahoma Law Enforcement Deferred Option Plan shall receive, at the option of the participant:

1. A lump sum payment from the account equal to the option account balance of the participant, payable to the participant;

2. A lump sum payment from the account equal to the option account balance of the participant, payable to the annuity provider which shall be selected by the participant as a result of the research and investigation of the participant; or

3. Any other method of payment if approved by the Board.

G. If the participant dies during the period of participation in the Oklahoma Law Enforcement Deferred Option Plan, a lump sum payment equal to the account balance of the participant shall be paid in accordance with Section 2-306.3 of ~~Title 47 of the Oklahoma Statutes~~ this title.

H. The Oklahoma Law Enforcement Deferred Option Plan shall not be implemented until October 1, 1990, or when the Board obtains a ruling from the Internal Revenue Service which affirmatively states that said plan shall be treated as a qualified plan for federal income tax purposes, which ever comes last.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 156.1, as amended by Section 1, Chapter 184, O.S.L. 2002 (47 O.S. Supp. 2002, Section 156.1), is amended to read as follows:

Section 156.1 A. It shall be unlawful for any state official, officer, or employee, except any essential employees approved by the Governor and those officers or employees authorized in subsection B of this section, to ride to or from the employee's place of residence in a state-owned automobile, truck, or pickup, except in the performance of the employee's official duty, or to use or permit the use of any such automobile, truck, ambulance, or pickup for other personal or private purposes. Any person convicted of

violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars ($100.00) or by imprisonment in the county jail for a period to not exceed thirty (30) days, or by both said fine and imprisonment, and in addition thereto, shall be discharged from state employment.

B. 1. Any state employee, other than the ~~law enforcement officers~~ individuals provided for in paragraph 2 of this subsection and any employee of the Department of Public Safety who is an employee in the Driver License Examining Division and the Driver Improvement Division or a wrecker inspector/auditor of the Wrecker Services Division as provided for in paragraph 3 of this subsection, who receives emergency telephone calls regularly at the employee's residence when the employee is not on duty and is regularly called upon to use a vehicle after normal work hours in response to such emergency calls, may be permitted to use a vehicle belonging to the State of Oklahoma to provide transportation between the employee's residence and the assigned place of employment, provided such distance does not exceed seventy-five (75) miles in any round trip or is within the county where the assigned place of employment is located. Provided further, an employee may be permitted to use a state-owned vehicle to provide temporary transportation between a specific work location other than the assigned place of employment and the employee's residence, if such use shall result in a monetary saving to the agency, and such authorization shall not be subject to the distance or area restrictions provided for in this paragraph. Authorization for temporary use of a state-owned vehicle for a specific project shall be in writing stating the justification for this use and the saving expected to result. Such authorization shall be valid for not to exceed sixty (60) days. Any state entity other than law enforcement that avails itself of this provision shall keep a monthly record of all participating employees, the

number of emergency calls received, and the number of times that a state vehicle was used in the performance of such emergency calls.

2. Any employee of the Department of Public Safety, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, Oklahoma State Bureau of Investigation, Alcoholic Beverage Laws Enforcement Commission, Oklahoma Horse Racing Commission, Office of the Inspector General within the Department of Human Services or Office of the State Fire Marshal, who is a law enforcement officer or criminalist, Public Information officer, Special Investigator or Assistant Director of the Oklahoma State Bureau of Investigation, or any employee of a district attorney who is a law enforcement officer, may be permitted to use a state-owned vehicle to provide transportation between the employee's residence and the assigned place of employment and between the residence and any location other than the assigned place of employment to which the employee travels in the performance of the employee's official duty.

3. Any employee of the Department of Public Safety who is an employee in the Driver License Examining Division or the Driver Improvement Division or a wrecker inspector/auditor of the Wrecker Services Division may be permitted, as determined by the Commissioner, to use a state-owned vehicle to provide transportation between the employee’s residence and the assigned place of employment and between the residence and any location other than the assigned place of employment to which the employee travels in the performance of the employee’s official duty.

4. The Director, department heads and other essential employees of the Department of Wildlife Conservation, as authorized by the Wildlife Conservation Commission, may be permitted to use a state-owned vehicle to provide transportation between the employee's residence and the assigned place of employment and between the residence and any location other than the assigned place of

employment to which the employee travels in the performance of the employee's official duty.

C. The principal administrator of the state agency with which the employee is employed shall so designate the employee's status in writing or provide a copy of the temporary authorization to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. Such employee status report shall also be provided to the State Fleet Manager of the Division of Fleet Management if the motor vehicle for emergency use is provided by said Division.

SECTION 4. 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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