STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2598

By: Ellis and Adkins of the House

and

Rozell of the Senate

COMMITTEE SUBSTITUTE

[firefighting personnel - amending 74 O.S., Sections 902, 915, 916.3 and 919.1 - Public Employees Retirement System - effective date - emergency]

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 902, as last amended by Section 93, Chapter 3, O.S.L. 2003 (74 O.S. Supp. 2003, Section 902), is amended to read as follows:

Section 902. As used in Section 901 et seq. of this title:

(1) "System" means the Oklahoma Public Employees Retirement System as established by this act and as it may hereafter be amended;

(2) "Accumulated contributions" means the sum of all contributions by a member to the System which shall be credited to the member's account;

(3) "Act" means Sections 901 to 932, inclusive, of this title;

(4) "Actuarial equivalent" means a deferred income benefit of equal value to the accumulated deposits or benefits when computed upon the basis of the actuarial tables in use by the System;

(5) "Actuarial tables" means the actuarial tables approved and in use by the Board at any given time;

(6) "Actuary" means the actuary or firm of actuaries employed by the Board at any given time;

(7) "Beneficiary" means any person named by a member to receive any benefits as provided for by Section 901 et seq. of this title. If there is no beneficiary living at time of member employee's death, the member's estate shall be the beneficiary;

(8) "Board" means the Oklahoma Public Employees Retirement System Board of Trustees;

(9) "Compensation" means all salary and wages, as defined by the Board of Trustees, including amounts deferred under deferred compensation agreements entered into between a member and a participating employer, but exclusive of payment for overtime, payable to a member of the System for personal services performed for a participating employer but shall not include compensation or reimbursement for traveling, or moving expenses, or any compensation in excess of the maximum compensation level, provided:

(a) For compensation for service prior to January 1, 1988, the maximum compensation level shall be Twenty-five Thousand Dollars ($25,000.00) per annum.

For compensation for service on or after January 1, 1988, through June 30, 1994, the maximum compensation level shall be Forty Thousand Dollars ($40,000.00) per annum.

For compensation for service on or after July 1, 1994, through June 30, 1995, the maximum compensation level shall be Fifty Thousand Dollars ($50,000.00) per annum; for compensation for service on or after July 1, 1995, through June 30, 1996, the maximum compensation level shall be Sixty Thousand Dollars ($60,000.00) per annum; for compensation for service on or after July 1, 1996, through June 30, 1997, the maximum compensation level shall be Seventy Thousand

Dollars ($70,000.00) per annum; and for compensation for service on or after July 1, 1997, through June 30, 1998, the maximum compensation level shall be Eighty Thousand Dollars ($80,000.00) per annum. For compensation for services on or after July 1, 1998, there shall be no maximum compensation level for retirement purposes.

(b) Compensation for retirement purposes shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986 and any amount of ~~non-elective~~ nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986.

(c) Notwithstanding any provision to the contrary, the compensation taken into account for any employee in determining the contribution or benefit accruals for any plan year is limited to the annual compensation limit under Section 401(a)(17) of the federal Internal Revenue Code.

(d) Current appointed members of the Oklahoma Tax Commission whose salary is constitutionally limited and is less than the highest salary allowed by law for his or her position shall be allowed, within ninety (90) days from the effective date of this act, to make an election to use the highest salary allowed by law for the position to which the member was appointed for the purposes of making contributions and determination of retirement benefits. Such election shall be irrevocable and be in writing. ~~Re-appointment~~ Reappointment to the same office shall not permit a new election. Members appointed to the ~~Oklahoma~~ Tax Commission after the effective date of this act shall

make such election, pursuant to this subparagraph, within ninety (90) days of taking office;

(10) "Credited service" means the sum of participating service, prior service and elected service;

(11) "Dependent" means a parent, child, or spouse of a member who is dependent upon the member for at least one-half (1/2) of the member's support;

(12) "Effective date" means the date upon which the System becomes effective by operation of law;

(13) "Eligible employer" means the state and any county, county hospital, city or town, conservation districts, and any public or private trust in which a county, city or town participates and is the primary beneficiary is to be an eligible employer for the purpose of this act only, whose employees are covered by Social Security and are not covered by or eligible for another retirement plan authorized under the laws of this state which is in operation on the initial entry date. Emergency medical service districts may join the System upon proper application to the Board. Provided affiliation by a county hospital shall be in the form of a resolution adopted by the board of control.

(a) If a class or several classes of employees of any above-defined employers are covered by Social Security and are not covered by or eligible for and will not become eligible for another retirement plan authorized under the laws of this state, which is in operation on the effective date, such employer shall be deemed an eligible employer, but only with respect to that class or those classes of employees as defined in this section.

(b) A class or several classes of employees who are covered by Social Security and are not covered by or eligible for and will not become eligible for another

retirement plan authorized under the laws of this state, which is in operation on the effective date, and when the qualifications for employment in such class or classes are set by state law; and when such class or classes of employees are employed by a county or municipal government pursuant to such qualifications; and when the services provided by such employees are of such nature that they qualify for matching by or contributions from state or federal funds administered by an agency of state government which qualifies as a participating employer, then the agency of state government administering the state or federal funds shall be deemed an eligible employer, but only with respect to that class or those classes of employees as defined in this subsection; provided, that the required contributions to the retirement plan may be withheld from the contributions of state or federal funds administered by the state agency and transmitted to the System on the same basis as the employee and employer contributions are transmitted for the direct employees of the state agency. The retirement or eligibility for retirement under the provisions of law providing pensions for service as a volunteer ~~fire fighter~~ firefighter shall not render any person ineligible for participation in the benefits provided for in Section 901 et seq. of this title. An employee of any public or private trust in which a county, city or town participates and is the primary beneficiary shall be deemed to be an eligible employee for the purpose of this act only.

(c) All employees of the George Nigh Rehabilitation Institute who elected to retain membership in the

System, pursuant to Section 913.7 of this title, shall continue to be eligible employees for the purposes of this act. The George Nigh Rehabilitation Institute shall be considered a participating employer only for such employees.

(d) A participating employer of the Teachers' Retirement System of Oklahoma, who has one or more employees who have made an election pursuant to enabling legislation to retain membership in the System as a result of change in administration, shall be considered a participating employer of the Oklahoma Public Employees Retirement System only for such employees;

(14) "Employee" means any officer or employee of a participating employer, whose employment is not seasonal or temporary and whose employment requires at least one thousand (1,000) hours of work per year and whose salary or wage is equal to the hourly rate of the monthly minimum wage for state employees. For those eligible employers outlined in Section 910 of this title, the rate shall be equal to the hourly rate of the monthly minimum wage for that employer. Each employer, whose minimum wage is less than the state's minimum wage, shall inform the System of the minimum wage for that employer. This notification shall be by resolution of the governing body.

(a) Any employee of the county extension agents who is not currently participating in the Teachers' Retirement System of Oklahoma shall be a member of this System.

(b) Eligibility shall not include any employee who is a contributing member of the United States Civil Service Retirement System.

(c) It shall be mandatory for an officer, appointee or employee of the office of district attorney to become a member of this System if he or she is not currently

participating in a county retirement system. Provided further, that if an officer, appointee or employee of the office of district attorney is currently participating in such county retirement system, he or she is ineligible for this System as long as he or she is eligible for such county retirement system. Any eligible officer, appointee or employee of the office of district attorney shall be given credit for prior service as defined in this section. The provisions outlined in Section 917 of this title shall apply to those employees who have previously withdrawn their contributions.

(d) Eligibility shall also not include any officer or employee of the Oklahoma Employment Security Commission, except for those officers and employees of the Commission electing to transfer to this System pursuant to the provisions of Section 910.1 of this title or any other class of officers or employees specifically exempted by the laws of this state, unless there be a consolidation as provided by Section 912 of this title. Employees of the Oklahoma Employment Security Commission who are ineligible for enrollment in the Employment Security Commission Retirement Plan, that was in effect on January 1, 1964, shall become members of this System.

(e) Any employee employed by the Legislative Service Bureau, State Senate or House of Representatives for the full duration of a regular legislative session shall be eligible for membership in the System regardless of classification as a temporary employee and may participate in the System during the regular legislative session at the option of the employee.

For purposes of this subparagraph, the determination of whether an employee is employed for the full duration of a regular legislative session shall be made by the Legislative Service Bureau if such employee is employed by the Legislative Service Bureau, the State Senate if such employee is employed by the State Senate, or by the House of Representatives if such employee is employed by the House of Representatives. Each regular legislative session during which the legislative employee or an employee of the Legislative Service Bureau participates full time shall be counted as six (6) months of full-time participating service.

(i) Except as otherwise provided by this subparagraph, once a temporary session employee makes a choice to participate or not, the choice shall be binding for all future legislative sessions during which the employee is employed.

(ii) Notwithstanding the provisions of division (i) of this subparagraph, any employee, who is eligible for membership in the System because of the provisions of this subparagraph and who was employed by the State Senate or House of Representatives after January 1, 1989, may file an election, in a manner specified by the Board, to participate as a member of the System prior to September 1, 1989.

(iii) Notwithstanding the provisions of division (i) of this subparagraph, a temporary legislative session employee who elected to become a member of the System may withdraw from the System effective the day said employee elected to

participate in the System upon written request to the Board. Any such request must be received by the Board prior to October 1, 1990. All employee contributions made by the temporary legislative session employee shall be returned to the employee without interest within four (4) months of receipt of the written request.

(iv) A member of the System who did not initially elect to participate as a member of the System pursuant to subparagraph (e) of this paragraph shall be able to acquire service performed as a temporary legislative session employee for periods of service performed prior to the date upon which the person became a member of the System if:

a. the member files an election with the System not later than December 31, 2000, to purchase the prior service; and

b. the member makes payment to the System of the actuarial cost of the service credit pursuant to subsection A of Section 913.5 of this title. The provisions of Section 913.5 of this title shall be applicable to the purchase of the service credit, including the provisions for determining service credit in the event of incomplete payment due to cessation of payments, death, termination of employment or retirement, but the payment may extend for a period not to exceed ninety-six (96) months;

(15) "Entry date" means the date on which an eligible employer joins the System. The first entry date pursuant to Section 901 et seq. of this title shall be January 1, 1964;

(16) "Executive Director" means the managing officer of the System employed by the Board under Section 901 et seq. of this title;

(17) "Federal Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as amended and as applicable to a governmental plan as in effect on July 1, 1999;

(18) "Final average compensation" means the average annual compensation, including amounts deferred under deferred compensation agreements entered into between a member and a participating employer, up to, but not exceeding the maximum compensation levels as provided in paragraph (9) of this section received during the highest three (3) of the last ten (10) years of participating service immediately preceding retirement or termination of employment. Provided, no member shall retire with a final average compensation unless the member has made the required contributions on such compensation, as defined by the Board of Trustees;

(19) "Fiscal year" means the period commencing July 1 of any year and ending June 30 of the next year. The fiscal year is the plan year for purposes of the federal Internal Revenue Code; however, the calendar year is the limitation year for purposes of Section 415 of the federal Internal Revenue Code;

(20) "Fund" means the Oklahoma Public Employees Retirement Fund as created by Section 901 et seq. of this title;

(21) "Leave of absence" means a period of absence from employment without pay, authorized and approved by the employer and acknowledged to the Board, and which after the effective date does not exceed two (2) years;

(22) "Member" means an eligible employee or elected official who is in the System and is making the required employee or elected

official contributions, or any former employee or elected official who shall have made the required contributions to the System and shall have not received a refund or withdrawal;

(23) "Military service" means service in the Armed Forces of the United States in time of war or national emergency by honorably discharged, not to exceed five (5) years for combined participating and/or prior service, for persons who served as follows:

(a) 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,

(b) 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,

(c) 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,

(d) 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,

(e) 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,

(f) in the Armed Forces of the United States at any time during the period which began on:

(i) 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

(ii) 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

(g) 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.

An eligible member under this paragraph shall include only those persons who shall have served during the times or in the areas prescribed in this paragraph, 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;

(24) "Normal retirement date" means the date on which a member may retire with full retirement benefits as provided in Section 901 et seq. of this title, such date being whichever occurs first:

(a) the first day of the month coinciding with or following a member's sixty-second birthday,

(b) for any person who initially became a member prior to July 1, 1992, the first day of the month coinciding with or following the date at which the sum of a member's age and number of years of credited service total eighty (80); such a normal retirement date will also apply to any person who became a member of the sending system as defined in Section 901 et seq. of this title, prior to July 1, 1992, regardless of

whether there were breaks in service after July 1, 1992,

(c) for any person who became a member after June 30, 1992, the first day of the month coinciding with or following the date at which the sum of a member's age and number of years of credited service total ninety (90),

(d) in addition to subparagraphs (a), (b) and (c) of this paragraph, the first day of the month coinciding with or following a member's completion of at least twenty (20) years of full-time-equivalent employment as:

(i) a correctional or probation and parole officer with the Department of Corrections and at the time of retirement, the member was a correctional or probation and parole officer with the Department of Corrections, ~~or~~

(ii) a firefighter with the Oklahoma Military Department either employed for the first time on or after July 1, 2002, or who was employed prior to July 1, 2002, in such position and who makes the election authorized by division (1) of subparagraph b of paragraph (5) of subsection A of Section 915 of this title and at the time of retirement, the member was a firefighter with the Oklahoma Military Department, and such member has at least twenty (20) years of credited service upon which the two and one-half percent (2 1/2%) multiplier will be used in calculating the retirement benefit, <u>or</u>

<u>(iii) a firefighter with the Oklahoma Department of Agriculture, Food, and Forestry either employed for the first time on or after July 1, 2004, or</u>

who was employed prior to July 1, 2004, in such position and who makes the election authorized by division (1) of subparagraph c of paragraph (8) of subsection A of Section 915 of this title and at the time of retirement, the member was a firefighter with the Oklahoma Department of Agriculture, Food, and Forestry, and such member has at least twenty (20) years of credited service upon which the two and one-half percent (2 1/2%) multiplier will be used in calculating the retirement benefit,

(e) for those fugitive apprehension agents who retire on or after July 1, 2002, the first day of the month coinciding with or following a member’s completion of at least twenty (20) years of full-time-equivalent employment as a fugitive apprehension agent with the Department of Corrections and at the time of retirement, the member was a fugitive apprehension agent with the Department of Corrections, or

(f) for any member who was continuously employed by an entity or institution within The Oklahoma State System of Higher Education and whose initial employment with such entity or institution was prior to July 1, 1992, and who without a break in service of more than thirty (30) days became employed by an employer participating in the Oklahoma Public Employees Retirement System, the first day of the month coinciding with or following the date at which the sum of the member's age and number of years of credited service total eighty (80);

(25) "Participating employer" means an eligible employer who has agreed to make contributions to the System on behalf of its employees;

(26) "Participating service" means the period of employment after the entry date for which credit is granted a member;

(27) "Prior service" means the period of employment of a member by an eligible employer prior to the member's entry date for which credit is granted a member under Section 901 et seq. of this title;

(28) "Retirant" means a member who has retired under the System;

(29) "Retirement benefit" means a monthly income with benefits accruing from the first day of the month coinciding with or following retirement and ending on the last day of the month in which death occurs or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to Section 901 et seq. of this title or as otherwise allowed to be paid at the discretion of the Board;

(30) "Retirement coordinator" means the individual designated by each participating employer through whom System transactions and communication shall be directed;

(31) "Social Security" means the old-age survivors and disability section of the Federal Social Security Act;

(32) "Total disability" means a physical or mental disability accepted for disability benefits by the Federal Social Security System;

(33) "Service-connected disability benefits" means military service benefits which are for a service-connected disability rated at twenty percent (20%) or more by the Veterans Administration or the Armed Forces of the United States;

(34) "Elected official" means a person elected to a state office in the legislative or executive branch of state government or a person elected to a county office for a definite number of years

and shall include an individual who is appointed to fill the unexpired term of an elected state official;

(35) "Elected service" means the period of service as an elected official; and

(36) "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 74 O.S. 2001, Section 915, as last amended by Section 7, Chapter 486, O.S.L. 2003 (74 O.S. Supp. 2003, Section 915), is amended to read as follows:

Section 915. A. (1) Except as otherwise provided in this subsection and as provided for elected officials in Section 913.4 of this title, any member who shall retire on or after the member's normal retirement date shall be entitled to receive an annual retirement benefit equal to two percent (2%) of the member's final average compensation as determined pursuant to paragraph (18) of Section 902 of this title, multiplied by the number of years of credited service that has been credited to the member in accordance with the provisions of Section 913 of this title other than years credited pursuant to paragraph (2) of this section.

(2) Effective January 1, 2004, except as otherwise provided for elected officials in Section 913.4 of this title and except for those members making contributions pursuant to paragraphs (c), (d), (e) and ~~(e)~~ (f) of subsection (1) of Section 919.1 of this title, any member who shall retire on or after the member's normal retirement date shall be entitled to receive an annual retirement benefit equal to two and one-half percent (2 1/2%) of the member's final average compensation as determined pursuant to paragraph (18) of Section 902 of this title, multiplied by the number of full years of participating service after January 1, 2004, that have been credited to the member in accordance with the provisions of Section 913 of this title and only for those full years of participating

service for which contributions have been made pursuant to paragraph (f) of subsection (1) of Section 919.1 of this title. The two and one-half percent (2 1/2%) multiplier shall not apply to purchased service, purchased or granted military service or transferred service. In order to receive the two and one-half percent (2 1/2%) multiplier in computing retirement benefits, an active member shall make an irrevocable written election to pay the contributions pursuant to paragraph ~~(f)~~ (g) of subsection (1) of Section 919.1 of this title. The two and one-half percent (2 1/2%) multiplier pursuant to this paragraph shall not apply to additional years of service credit attributed to sick leave pursuant to paragraph 7 of subsection B of Section 913 of this title and fractional years pursuant to subsection C of Section 913 of this title and shall be attributable only to the participating service credited after the election of the member.

(3) The minimum final average compensation for any person who becomes a member of the System on or after July 1, 1995:

a. and who had twenty (20) or more years of credited service within the System as of the member's retirement date shall be no less than Thirteen Thousand Eight Hundred Dollars ($13,800.00) per annum,

b. and who had at least fifteen (15) but not more than nineteen (19) years of credited service within the System as of the member's retirement date shall be no less than Six Thousand Nine Hundred Dollars ($6,900.00) per annum,

c. and who had less than fifteen (15) years of credited service within the System as of the member's retirement date shall not be eligible for any minimum amount of final average compensation and the member's final average compensation shall be the final average

compensation as defined by paragraph (18) of Section 902 of this title~~,~~.

(4) Provided, further, any member who has elected a vested benefit pursuant to Section 917 of this title shall be entitled to receive benefits as outlined in this section except the percent factor and the member's maximum compensation level in effect the date the member’s employment was terminated with a participating employer shall be applicable.

(5) Any member who is a correctional officer or a probation and parole officer employed by the Department of Corrections at the time of retirement and who retires on or before June 30, 2000, shall be entitled to receive an annual retirement benefit equal to two and one-half percent (2 1/2%) of the final average compensation of the member not to exceed Twenty-five Thousand Dollars ($25,000.00) and two percent (2%) of the final average salary in excess of Twenty-five Thousand Dollars ($25,000.00) but not exceeding the maximum compensation level as provided in paragraph (9) of Section 902 of this title, multiplied by the number of years of service as a correctional officer or a probation and parole officer, provided, any years accrued prior to July 1, 1990, as a correctional officer or a probation and parole officer by a member who is employed as a correctional officer or a probation and parole officer on July 1, 1990, shall be calculated for retirement purposes at two and one-quarter percent (2 1/4%) of the final average compensation of the member not to exceed Twenty-five Thousand Dollars ($25,000.00) and two percent (2%) of the final average salary in excess of Twenty-five Thousand Dollars ($25,000.00) but not exceeding the maximum compensation level as provided in paragraph (9) of Section 902 of this title, multiplied by the number of years of such service and any years in excess of twenty (20) years as such an officer or years credited to the member in accordance with the provisions of Section 913 of this title shall be calculated for retirement purposes at two

percent (2%) of the final average compensation of the member multiplied by the number of years of such service. Any person who contributes to the System as a correctional officer or a probation and parole officer as provided in paragraph (c) of subsection (1) of Section 919.1 of this title, on or before June 30, 2000, but who does not make such contributions after June 30, 2000, and who does not qualify for normal retirement under subparagraph (c) of paragraph (24) of Section 902 of this title shall have retirement benefits for each year of full-time-equivalent participating service as a correctional or a probation and parole officer after July 1, 1990, computed on two and one-half percent (2 1/2%) of the final average compensation based upon those years as a correctional officer or a probation and parole officer. Provided, further, any fugitive apprehension agent shall be entitled to receive benefits as outlined in this act for service as a fugitive apprehension agent prior to July 1, 2002, only upon payment to the System of the employee contributions which would have been paid if such fugitive apprehension agent had been covered by this section prior to the effective date of this act, plus interest of not to exceed ten percent (10%) as determined by the Board. The Department of Corrections may make the employee contribution and interest payment on behalf of such member.

(6) Any member who is a correctional officer, a probation and parole officer or a fugitive apprehension agent employed by the Department of Corrections at the time of retirement and who retires on or after July 1, 2002, shall be entitled to receive an annual retirement benefit equal to two and one-half percent (2 1/2%) of the final average compensation of the member, but not exceeding the maximum compensation level as provided in paragraph (18) of Section 902 of this title, multiplied by the number of years of service as a correctional officer, a probation and parole officer or a fugitive apprehension agent, and any years in excess of twenty (20) years as

such an officer or agent, or years credited to the member in accordance with the provisions of Section 913 of this title, shall be calculated for retirement purposes at two percent (2%) of the final average compensation of the member multiplied by the number of years of such service. For purposes of this paragraph, "final average compensation" shall be determined by computing the average annual salary, in the manner prescribed by paragraph (18) of Section 902 of this title, for the highest three (3) years of the last ten (10) years of participating service immediately preceding retirement or termination of employment for all years of service performed by such member, both for years of service performed as a correctional officer, probation and parole officer or fugitive apprehension agent, not in excess of twenty (20) years, and for years of service performed in excess of twenty (20) years, whether as a correctional officer, probation and parole officer, fugitive apprehension agent or other position unless the computation of benefits would result in a lower retirement benefit amount than if final average compensation were to be computed as otherwise provided by this paragraph.

(7) Any person who contributed to the System as a correctional officer, a probation and parole officer or a fugitive apprehension agent as provided in paragraphs (c) or (d) of subsection (1) of Section 919.1 of this title, and who retires under normal retirement or early retirement on or after January 1, 2004, under paragraph (24) of Section 902 of this title shall have retirement benefits for each year of full-time-equivalent participating service as a correctional officer, a probation and parole officer or a fugitive apprehension agent, computed on two and one-half percent (2 1/2%) of the final average compensation based upon those years as a correctional officer, a probation and parole officer or a fugitive apprehension agent. For purposes of this paragraph, "final average compensation" shall be determined by computing the average annual salary, in the manner prescribed by paragraph (18) of Section 902 of

this title, for the highest three (3) years of the last ten (10) years of participating service immediately preceding retirement or termination of employment for all years of service performed by such member, both for years of service performed as a correctional officer, probation and parole officer or fugitive apprehension agent, not in excess of twenty (20) years, and for years of service performed in excess of twenty (20) years, whether as a correctional officer, probation and parole officer, fugitive apprehension agent or other position unless the computation of benefits would result in a lower retirement benefit amount than if final average compensation were to be computed as otherwise provided by this paragraph.

(8) Any member who is:

a. initially on or after July 1, 2002, employed as a firefighter for the Oklahoma Military Department and who retires on or after the member's normal retirement date shall be entitled to receive an annual retirement benefit equal to two and one-half percent (2 1/2%) of the final average compensation of the member multiplied by the number of years of service in such service,

b. (1) a firefighter who performs firefighting services for the Oklahoma Military Department prior to July 1, 2002, and who makes an election in writing on a form prescribed for this purpose by the System not later than December 31, 2002, shall be entitled to receive a retirement benefit based upon two and one-half percent (2 1/2%) of the final average compensation of the member multiplied by the number of years of service as a firefighter with the Oklahoma Military Department on or after July 1, 2002. The election authorized by this subdivision shall be

irrevocable once the election is filed with the System,

(2) a firefighter who performs firefighting services for the Oklahoma Military Department prior to July 1, 2002, and who makes the election in division (1) of this subparagraph may also make an election in writing on a form prescribed for this purpose by the System not later than December 31, 2002, to receive a retirement benefit based upon two and one-half percent (2 1/2%) of the final average compensation of the member multiplied by the number of years of service as a firefighter with the Oklahoma Military Department prior to July 1, 2002. The election authorized by this subdivision shall be irrevocable once the election is filed with the System. Retirement benefits shall be calculated based upon the two and one-half percent (2 1/2%) multiplier upon payment being made pursuant to Section 913.5 of this title,

c. (1) a firefighter who performs firefighting services for the Oklahoma Department of Agriculture, Food, and Forestry prior to July 1, 2004, and who makes an election in writing on a form prescribed for this purpose by the System not later than December 31, 2004, shall be entitled to receive a retirement benefit based upon two and one-half percent (2 1/2%) of the final average compensation of the member multiplied by the number of years of service as a firefighter with the Oklahoma Department of Agriculture, Food, and Forestry on or after July 1, 2004. The election

authorized by this subdivision shall be irrevocable once the election is filed with the System,

(2) a firefighter who performs firefighting services for the Oklahoma Department of Agriculture, Food, and Forestry prior to July 1, 2004, and who makes the election in division (1) of this subparagraph may also make an election in writing on a form prescribed for this purpose by the System not later than December 31, 2004, to receive a retirement benefit based upon two and one-half percent (2 1/2%) of the final average compensation of the member multiplied by the number of years of service as a firefighter with the Oklahoma Department of Agriculture, Food, and Forestry prior to July 1, 2004. The election authorized by this subdivision shall be irrevocable once the election is filed with the System. Retirement benefits shall be calculated based upon the two and one-half percent (2 1/2%) multiplier upon payment being made pursuant to Section 913.5 of this title,

(3) a firefighter who is first employed to perform firefighting services for the Oklahoma Department of Agriculture, Food, and Forestry on or after July 1, 2004, shall receive a retirement benefit based upon two and one-half percent (2 1/2%) of the final average compensation of the member multiplied by the number of years of service as a firefighter with the Oklahoma Department of Agriculture, Food, and Forestry on or after the

first date as of which such services are performed.

(9) Upon death of a retirant, there shall be paid to his beneficiary an amount equal to the excess, if any, of his accumulated contributions over the sum of all retirement benefit payments made.

(10) Such annual retirement benefits shall be paid in equal monthly installments, except that the Board may provide for the payment of retirement benefits which total less than Two Hundred Forty Dollars ($240.00) a year on other than a monthly basis.

(11) Pursuant to the rules established by the Board, a retiree receiving monthly benefits from the System may authorize warrant deductions for any products currently offered to active state employees through the Employees Benefits Council, provided that product is offered to state retirees as a group and has a minimum participation of five hundred state retirees. The System has no responsibility for the marketing, enrolling or administration of such products, but shall retain a processing fee of two percent (2%) of the gross deductions for the products. Retirement benefit deductions shall be made for membership dues for any statewide association for which payroll deductions are authorized pursuant to subsection B of Section 7.10 of Title 62 of the Oklahoma Statutes for retired members of any state-supported retirement system, upon proper authorization given by the member to the board from which the member or beneficiary is currently receiving retirement benefits.

B. A member shall be considered disabled if such member qualifies for the payment of Social Security disability benefits, or the payment of benefits pursuant to the Railroad Retirement Act of 1974, Section 231 et seq. of Title 45 of the United States Code, and shall be eligible for benefits hereunder upon proof of such disability, provided such member is an active regularly scheduled employee with a participating employer at the time of injury or

inception of illness or disease resulting in subsequent certification of eligibility for Social Security disability benefits by reason of such injury, illness or disease, providing such disability is certified by the Social Security Administration within one (1) year after the last date physically on the job and after completion of at least eight (8) years of participating service or combined prior and participating service or resulting in subsequent certification of eligibility of disability by the Railroad Retirement Board providing such certification is made by the Railroad Retirement Board within one (1) year after the last date physically on the job and after completion of at least eight (8) years of participating service or combined prior and participating service. The member shall submit to the Retirement System the Social Security Award Notice or the Railroad Retirement Award Notice certifying the date of entitlement for disability benefits, as issued by the Social Security Administration, Department of Health and Human Services or the Railroad Retirement Board. Disability benefits shall become effective on the date of entitlement as established by the Social Security Administration or the Railroad Retirement Board, but not before the first day of the month following removal from the payroll, whichever is later, and final approval by the Retirement System. Benefits shall be based upon length of service and compensation as of the date of disability, without actuarial reduction because of commencement prior to the normal retirement date. The only optional form of benefit payment available for disability benefits is Option A as provided for in Section 918 of this title. Option A must be elected in accordance with the provisions of Section 918 of this title. Benefit payments shall cease upon the member's recovery from disability prior to the normal retirement date. Future benefits, if any, shall be paid based upon length of service and compensation as of the date of disability. In the event that disability ceases and the member

returns to employment within the System credited service to the date of disability shall be restored, and future benefits shall be determined accordingly.

C. A member who incurred a disability pursuant to subsection B of this section on or after July 1, 1999, and who has retired from the System with an early retirement benefit pending certification from the Social Security Administration or the Railroad Retirement Board shall receive a retirement benefit not less than the disability retirement benefit provided by subsection B of this section once the System receives a Social Security Award Notice or a Railroad Retirement Award Notice pursuant to subsection B of this section and a completed Application for Disability Benefits. In addition, such member shall receive the difference, if any, between the early retirement benefit and the disability benefit from the date the Social Security Administration or the Railroad Retirement Board establishes disability entitlement.

D. Any actively participating member of the System on or after July 1, 1998, except for those employees provided in subparagraph (e) of paragraph (14) of Section 902 of this title, whose employment is less than full-time, shall have his or her final average compensation calculated on an annualized basis using his or her hourly wage subject to the maximum compensation limits; provided, however, any such member who has at least three (3) years of full-time employment during the last ten (10) years immediately preceding termination or retirement shall not be eligible for the annualization provisions contained herein. The Board of Trustees shall promulgate such administrative rules as are necessary to implement the provisions of this subsection.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 916.3, is amended to read as follows:

Section 916.3 A. Notwithstanding the provisions of Sections 901 through 932 of Title 74 of the Oklahoma Statutes, a monthly

pension, as provided in subsection B of this section, shall be paid on behalf of any member who is a correctional officer or probation and parole officer of the Department of Corrections, or a firefighter employed by the Military Department of the State of Oklahoma or the Oklahoma Department of Agriculture, Food, and Forestry and who is killed or mortally wounded on or after ~~January 1, 2000~~ July 1, 2004, during the performance of the member's duties for the Department.

B. The monthly benefit shall be equal to:

1. Two and one-half percent (2 1/2%);

2. Multiplied by twenty (20) years of service, regardless of the actual number of years of credited service performed by the member prior to death, if the member had performed less than twenty (20) years of credited service, or the actual number of years of credited service of the member if greater than twenty (20) years;

3. Multiplied by the member's final average compensation; and

4. Divided by 12.

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

1. Except as provided in subsection D of this section, to the surviving spouse for life; or

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

a. to the surviving child or children of said member or legal guardian of such child or children for such time as such child or children are under the age of eighteen (18) years, or

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

D. No surviving spouse shall receive benefits from this section, Section 49-113 of Title 11 of the Oklahoma Statutes, Section 50-117 of Title 11 of the Oklahoma Statutes, or Section 2-306 of Title 47 of the Oklahoma Statutes as the surviving spouse of more than one member of the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the Oklahoma Law Enforcement Retirement System, or the Oklahoma Public Employees Retirement System. The surviving spouse of more than one member shall elect which member's benefits he or she will receive.

E. The pension benefit provided in this section shall be made prospectively only from the effective date of this act. The benefits shall be payable beginning the later of the first day of the month following the date that such employee was killed or dies from a mortal wound, as provided in this section, or the effective date of this act.

F. The Board of the Oklahoma Public Employees Retirement System shall promulgate such rules as are necessary to implement the provisions of this section.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 919.1, as last amended by Section 8, Chapter 486, O.S.L. 2003 (74 O.S. Supp. 2003, Section 919.1), is amended to read as follows:

Section 919.1 (1) Employee contributions to the System shall be:

(a) for employees except as otherwise provided in paragraphs (b), (c), (d), (e), ~~and~~ (f) and (g) of this subsection: beginning July 1, 1998, and thereafter, three percent (3%) of allowable annual compensation not in excess of Twenty-five Thousand Dollars ($25,000.00);

(b) for all employees except as otherwise provided in paragraphs (a), (c), (d), (e) and (f) of this

subsection: beginning July 1, 1998, and thereafter, three and one-half percent (3 1/2%) of allowable annual compensation of more than Twenty-five Thousand Dollars ($25,000.00);

(c) for correctional officers and probation and parole officers employed by the Department of Corrections: beginning July 1, 1998, and thereafter, eight percent (8%) of allowable compensation as provided in paragraph (9) of Section 902 of this title;

(d) for fugitive apprehension agents who are employed with the Department of Corrections on or after July 1, 2002, eight percent (8%) of allowable compensation as provided in paragraph (9) of Section 902 of this title;

(e) for firefighters of the Oklahoma Military Department first employed beginning July 1, 2002, and thereafter, and such firefighters who performed service prior to July 1, 2002, for the Oklahoma Military Department and who make the election authorized by division (1) of subparagraph b of paragraph (8) of subsection A of Section 915 of this title who perform service on or after July 1, 2002, in such capacity, eight percent (8%) of allowable compensation as provided in subsection (9) of Section 902 of this title;

(f) <u>for firefighters of the Oklahoma Department of Agriculture, Food, and Forestry first employed beginning July 1, 2004, and thereafter, and such firefighters who performed service prior to July 1, 2004, for the Oklahoma Department of Agriculture, Food, and Forestry and who make the election authorized by division (1) of subparagraph c of paragraph (8) of subsection A of Section 915 of this</u>

title who perform service on or after July 1, 2004, in such capacity, eight percent (8%) of allowable compensation as provided in subsection (9) of Section 902 of this title,

(g) for all employees except those who make contributions pursuant to paragraphs (c), (d), ~~and~~ (e) and (f) of this subsection who make an irrevocable written election pursuant to paragraph (2) of subsection A of Section 915 of this title: five and ninety-one one-hundredths percent (5.91%) of allowable annual compensation not in excess of Twenty-five Thousand Dollars ($25,000.00) and six and forty-one one-hundredths percent (6.41%) of allowable annual compensation of more than Twenty-five Thousand Dollars ($25,000.00).

The contributions required by paragraphs (c) and (d) of this subsection shall be made by a member for not more than twenty (20) years and thereafter shall be as provided in paragraphs (a) and (b) of this subsection.

(2) Contributions shall be deducted by each state agency by the participating employer for such benefits as the Board is authorized to administer as provided for by law. Employee and employer contributions shall be remitted monthly, or as the Board may otherwise provide, to the Executive Director for deposit in the Oklahoma Public Employees Retirement Fund.

(3) Each participating employer shall pick up under the provisions of Section 414(h)(2) of the Internal Revenue Code of 1986 and pay the contribution which the member is required by law to make to the System for all compensation earned after December 31, 1988. Although the contributions so picked up are designated as member contributions, such contributions shall be treated as contributions being paid by the participating employer in lieu of contributions by

the member in determining tax treatment under the Internal Revenue Code of 1986 and such picked up contributions shall not be includable in the gross income of the member until such amounts are distributed or made available to the member or the beneficiary of the member. The member, by the terms of this System, shall not have any option to choose to receive the contributions so picked up directly and the picked up contributions must be paid by the participating employer to the System.

Member contributions which are picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date on which member contributions were picked up by the participating employer. Member contributions so picked up shall be included in gross salary for purposes of determining benefits and contributions under the System.

The participating employer shall pay the member contributions from the same source of funds used in paying salary to the member, by effecting an equal cash reduction in gross salary of the member.

(4) By September 1, 1989, the System shall refund the accumulated employee contributions of any member who elects to retain the member's membership in the Teachers' Retirement System of Oklahoma, in accordance with Section 17-104 of this title, to such member. Upon the refund of the accumulated employee contributions referred to in this subsection, all benefits and rights accrued to such member are terminated.

SECTION 5. This act shall become effective July 1, 2004.

SECTION 6. 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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