

ENROLLED HOUSE
BILL NO. 2330

By: Tyler of the House

and

Lerblance of the Senate

An Act relating to the Oklahoma Public Employees Retirement System; amending 74 O.S. 2001, Sections 902, as last amended by Section 93, Chapter 3, O.S.L. 2003, 910 and 920A, as amended by Section 10, Chapter 486, O.S.L. 2003 (74 O.S. Supp. 2003, Sections 902 and 920A), which relate to the Oklahoma Public Employees Retirement System; modifying definition; providing for participation by certain circuit engineering district employees; modifying provisions related to eligible employers; modifying provisions related to employer and employee contributions for certain local employers; providing an effective date; and declaring an 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 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 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, circuit engineering 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 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)~~ (2) of subparagraph b of paragraph ~~(5)~~ (8) 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,

- (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 910, is amended to read as follows:

Section 910. (1) An eligible employer may join the System in January of any year. Application for affiliation shall be in the form of a resolution approved by the governing or legislative body of the eligible employer or by any other body or officer authorized by the law or recognized by the Board to approve such resolution or action; provided, that no county hospital, city or town, circuit engineering district or any public or private trust in which a county, city or town participates and is the primary beneficiary shall become a participating employer except by the adoption of a resolution therefor, unless otherwise provided in this act. Upon the filing of a certified copy of such resolution with the Board, the employer shall become a participating employer on January 1 of the year immediately following the filing of such election with the Board. Such election shall be final and irrevocable and any employer now or hereafter participating in the System shall not be permitted to withdraw from the System under any circumstances, including a change in legal identity of such employer, where the purpose and functions of such employer remain essentially the same as at the time of filing of entry into the System. Provided, however, any hospital joining the System during the period commencing December 1, 1989, and ending January 31, 1990, or during the period commencing December 1, 1971, and ending January 31, 1972, shall be permitted to withdraw from the System by the adoption of resolution therefor by the hospital board of control. However, no member hospital of the System shall be allowed to withdraw from the System until such hospital has satisfied all current obligations to the System. Upon the filing of a certified copy of such resolution with the Board and upon the Board's determining that arrangements have been made for the payment of all financial obligations, if any, due the System by such withdrawing hospital, such hospital shall cease to be a participating employer on the first day of the month immediately following such determination and the filing of such resolution with the Board. The employees of any such hospital withdrawing from the System shall have such rights as are provided by Section 912.1 of this title. Any hospital that withdraws under

the provisions of this act shall be responsible for the payment of any actuarial cost required as a result of such withdrawal. Provided, however, any county having a population of less than four hundred thousand (400,000), according to the latest Federal Decennial Census, shall become a participating employer on January 1, 1974, notwithstanding any other provision of statute.

(2) The State of Oklahoma, in its capacity as an eligible employer shall become a participating employer on the first entry date and thereafter on the entry date immediately following the creation of any state agency not now in existence.

(3) From and after the passage of this act no county hospital, or county or state governmental agency, shall institute a retirement system other than as provided for in this act, except as to any other supplemental retirement plans otherwise expressly provided for by law.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 920A, as amended by Section 10, Chapter 486, O.S.L. 2003 (74 O.S. Supp. 2003, Section 920A), is amended to read as follows:

Section 920A. A. Any county, county hospital, city or town, conservation district, circuit engineering district or any public or private trust in which a county, city or town participates and is the primary beneficiary, which is a participating employer and any eligible employee shall contribute to the System. The total employer and employee contributions shall be based on the allowable annual compensation as defined in subsection (9) of Section 902 of this title. Except as provided for in this section, the employer shall not pay for the employee any of the employee contribution to the System.

B. For the fiscal years ending June 30, 2004, June 30, 2005, and June 30, 2006, the total employer and employee contributions shall equal thirteen and one-half percent (13 1/2%) of the allowable monthly compensation of each member; provided, however, each participating employer listed in this section may set the amount of the employer and employee contribution to equal thirteen and one-half percent (13 1/2%) of the allowable monthly compensation of each member for compensation as provided in subsection (9) of Section 902 of this title; provided, the employer contribution shall not exceed ten percent (10%) and the employee contribution shall not exceed eight and one-half percent (8 1/2%).

C. The total employer and employee contributions for fiscal years following the fiscal year ending June 30, 2006, shall be as follows:

fiscal year ending	amount
June 30, 2007	14 1/2%
June 30, 2008	15 1/2%
June 30, 2009	16 1/2%
June 30, 2010	17 1/2%
June 30, 2011	18 1/2%

June 30, 2012 and each fiscal
year thereafter

19 1/2%

Such employee and employer contributions shall be based upon the allowable monthly compensation of each member for compensation as provided in subsection (9) of Section 902 of this title. For such years, the employee contribution shall not exceed eight and one-half percent (8 1/2%).

D. For members who make the election pursuant to paragraph (2) of subsection A of Section 915 of this title, the employee contribution shall increase by two and ninety-one one-hundredths percent (2.91%). Such employee contribution increase shall be paid by the employee.

E. Each participating employer pursuant to the provisions of this section may 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, 1989. 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.

F. 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.

G. 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.

SECTION 4. This act shall become effective July 1, 2004.

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

Passed the House of Representatives the 10th day of May, 2004.

Presiding Officer of the House of
Representatives

Passed the Senate the 17th day of May, 2004.

Presiding Officer of the Senate