ENROLLED SENATE
BILL NO. 1434

By: Hobson of the Senate

and

Adair, Ferguson and Nance
of the House

An Act relating to retirement; amending 11 O.S. 2001, Section 49-138, as amended by Section 1, Chapter 406, O.S.L. 2003 (11 O.S. Supp. 2003, Section 49-138), which relates to the Oklahoma Firefighters Pension and Retirement System; deleting obsolete references; clarifying language; clarifying applicable military service limitation; clarifying eligible service for postemployment military service credit; clarifying military service eligibility periods; clarifying type of military service eligible for credit; requiring certain proof of military service; amending 11 O.S. 2001, Section 50-128, as last amended by Section 2, Chapter 406, O.S.L. 2003 (11 O.S. Supp. 2003, Section 50-128), which relates to the Oklahoma Police Pension and Retirement System; clarifying entitlement to prior military service credit; providing military service limitation on certain rehired members; clarifying military service eligibility periods; clarifying type of military service eligible for credit; requiring certain proof of military service; amending 47 O.S. 2001, Section 2-307.4, as amended by Section 11, Chapter 406, O.S.L. 2003 (47 O.S. Supp. 2003, Section 2-307.4), which relates to the Oklahoma Law Enforcement Retirement System; clarifying entitlement to prior military service credit; clarifying military service eligibility periods; clarifying type of military service eligible for credit; requiring certain proof of military service; amending 72 O.S. 2001, Section 67.13a, which relates to war veterans; clarifying definition of "war veteran"; requiring certain proof of military service; amending 74 O.S. 2001, Sections 902, as last amended by Section 93, Chapter 3, O.S.L. 2003, and 932 (74 O.S. Supp. 2003, Section 902), which relate to the Oklahoma Public Employees Retirement System; clarifying definition of "military service"; requiring certain proof of military service; providing an exception to confidentiality; stating legislative intent; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 49-138, as amended by Section 1, Chapter 406, O.S.L. 2003 (11 O.S. Supp. 2003, Section 49-138), is amended to read as follows:

Section 49-138. A. Any member of a regularly constituted fire department of any municipality who is now serving or may hereafter serve in the ~~land or naval forces of the United States under the Act of Congress of September 16, 1940 (50 U.S.C.A. Sections 301-318), known as the Selective Training and Service Act of 1940, and/or Public Law No. 759, 80th Congress, known as the Selective Service Act of 1948, and amendments thereto,~~ Armed Forces of the United States whether such service is voluntary or involuntary, who shall have been a member of such fire department at the time of entering such service, shall be entitled to have the whole of the time of such service applied under the provisions of Section 49-106 of this title, so far as the same applies to a service pension; provided further, that the municipality shall continue its payment into said pension fund, to the same force and effect as though the member were in the actual service of such fire department; provided, that any person who is eligible for such service ~~under said Acts of Congress~~ but who shall have volunteered for military or naval service for a ~~greater~~ period ~~than is provided by said Acts~~ not to exceed five (5) years shall likewise be entitled to all of the benefits of Sections 49-138 through 49-142 of this title for the full period of such service or enlistment; provided further, that only one such period of voluntary service shall be considered hereunder. If such person shall reenlist, unless he is required to do so by law, he shall not thereafter be entitled to the provisions of this ~~act~~ subsection. The provisions of this ~~act~~ subsection shall not apply where any such person dies during the period of said service or enlistment, and shall not entitle the surviving spouse or children to any benefits, and shall not apply to any member who shall have served on active duty (including initial active duty) for training purposes only and/or inactive duty training.

B. Effective February 1, 1997, credited service received pursuant to this section or credited service for wartime military service received as otherwise provided by law shall be used in determining the member's retirement benefit but shall not be used in determining years of service for retirement, vesting purposes or eligibility for participation in the Oklahoma Firefighters Deferred Option Plan. For a member of the System hired on or after July 1, 2003, if the military service credit authorized by this section is used to compute the retirement benefit of the member and the member retires from the System, such military service credit shall not be used to compute the retirement benefit in any other retirement system created pursuant to the Oklahoma Statutes and the member may receive credit for such service only in the retirement system from which the member first retires.

C. A member who retires or elects to participate in the Oklahoma Firefighters Deferred Option Plan on or after July 1, 1998, shall ~~receive maximum benefits available for each year of creditable~~ be entitled to prior service credit, not to exceed five (5) years, for ~~active military service for retirement benefits for service rendered prior to being hired by a regularly constituted fire~~

~~department~~ those periods of military service on active duty prior to membership in the Oklahoma Firefighters Pension and Retirement System.

For purposes of this subsection, "military service" means service in the Armed Forces of the United States ~~in time of war or national emergency~~ by honorably discharged persons ~~who served~~ during the following time periods, as reflected on such person's Defense Department Form 214, as follows:

1. ~~In the Armed Forces of the United States at any time during the period~~ During the following periods, including the beginning and ending dates, and only for the periods served, from:

a. April 6, 1917, to November 11, 1918, ~~both dates inclusive;~~ commonly referred to as World War I,

~~2. In the Armed Forces of the United States as members of the 45th Division at any time during the period from~~

b. September 16, 1940, to December 7, 1941, ~~both dates inclusive;~~ for members of the 45th Division,

~~3. In the Armed Forces of the United States at any time during the period from~~

c. December 7, 1941, to December 31, 1946, ~~both dates inclusive;~~ commonly referred to as World War II,

~~4. In the Armed Forces of the United States at any time during the period from~~

d. June 27, 1950, to January 31, 1955, ~~both dates inclusive;~~ commonly referred to as the Korean Conflict or the Korean War,

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

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

~~a.~~

e. February 28, 1961, ~~and ended on~~ to May 7, 1975, ~~in the case of a veteran who served~~ commonly referred to as the Vietnam era, except that:

(1) for the period from February 28, 1961, to August 4, 1964, military service shall only include service in the Republic of Vietnam during that period, and

~~b. August 5, 1964, and ended on May 7, 1975, in all other cases,~~

~~except that such period shall be deemed to have ended on December 31, 1976, when~~

(2) for purposes of determining eligibility for education and training benefits~~;~~, such period shall end on December 31, 1976, or

~~7. In the Armed Forces of the United States on or after~~

f. August 1, 1990, ~~and ended on~~ to December 31, 1991, commonly referred to as the Gulf War, the Persian Gulf War, or Operation Desert Storm, but excluding any person who ~~shall have~~ served on active duty for training only, unless discharged from such active duty for a service-connected disability;

2. During a period of war or combat military operation other than a conflict, war or era listed in paragraph 1 of this subsection, beginning on the date of Congressional authorization, Congressional resolution, or Executive Order of the President of the United States, for the use of the Armed Forces of the United States in a war or combat military operation, if such war or combat military operation lasted for a period of ninety (90) days or more, for a person who served, and only for the period served, in the area of responsibility of the war or combat military operation, but excluding a person who served on active duty for training only, unless discharged from such active duty for a service-connected disability, and provided that the burden of proof of military service during this period shall be with the member, who must present appropriate documentation establishing such service.

D. An eligible member pursuant to subsection C of this section shall include only those persons who shall have served during the times or in the areas prescribed in subsection C of this section, and only if such person provides appropriate documentation in such time and manner as required by the System to establish such military service prescribed in this section, or for service pursuant to division (1) of subparagraph e of paragraph 1 of subsection C of this section, 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~~ for service prior to August 5, 1964. The provisions of subsection C of this section shall include military retirees, whose retirement was based only on active service, that have been rated as having twenty percent (20%) or greater service-connected disability by the Veterans Administration or the Armed Forces of the United States. The provisions of subsection C of this section shall not apply to any person who shall have served on active duty for training purposes only unless discharged from active duty for a service-connected disability.

E. Notwithstanding any provision herein to the contrary, contributions, benefits and service credit with respect to qualified

military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986.

F. Members or beneficiaries shall make application to the System for credited service related to wartime military service. Interest on additional benefits related to wartime military service owed by the System to a retired member or beneficiary as provided by law shall cease accruing one (1) year after the effective date the additional benefits are payable by the System or July 1, 2000, whichever is later, if the member has not applied to the System for credited service related to such wartime military service.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 50-128, as last amended by Section 2, Chapter 406, O.S.L. 2003 (11 O.S. Supp. 2003, Section 50-128), is amended to read as follows:

Section 50-128. A. Any member who has heretofore left the Police Department qualifying under this article to enter the military service of the United States during World War II and who returned to said department on or before July 1, 1947, or the Korean conflict and who returned to said department on or before January 1, 1956, shall receive credit for such time in military service without having made contribution to the System; and any member who has heretofore left, or hereafter may leave said department because of involuntary conscription into the military services of the United States at any time and who returns to said department within ninety (90) days after the member's release from such involuntary service shall receive credit for such time in said military service on the Police Department without having made contribution to the System only for that period that is involuntary; voluntary enlistments and voluntary extensions of military service being herewith specifically excluded for retirement credit.

B. A member who began participation in the System prior to July 1, 2003, and who retires on or after July 1, 1998, shall ~~receive maximum benefits available for each year of creditable~~ be entitled to prior service credit, not to exceed five (5) years, for ~~active military service for retirement benefits for service rendered prior to being hired by a Police Department~~ those periods of military service on active duty prior to membership in the Oklahoma Police Pension and Retirement System. All members who initially begin participation with the System after June 30, 2003, may acquire prior military service credit for a maximum of five (5) years of such service credit upon payment of the actuarial cost of such service in the manner prescribed by and subject to all of the requirements of Section 50-111.4 of ~~Title 11 of the Oklahoma Statutes~~ this title. For members of the System hired or rehired on or after July 1, 2003, if the military service credit authorized by this subsection is used to compute the retirement benefit of the member and the member retires from the System, such military service credit shall not be used to compute the retirement benefit in any other retirement system created pursuant to the Oklahoma Statutes and the member may receive credit for such service only in the retirement system from which the member first retires.

For purposes of this subsection, "military service" means service in the Armed Forces of the United States ~~in time of war or~~

~~national emergency~~ by honorably discharged persons ~~who served~~ during the following time periods, as reflected on such person's Defense Department Form 214, as follows:

1. ~~In the Armed Forces of the United States at any time during the period~~ During the following periods, including the beginning and ending dates, and only for the periods served, from:

a. April 6, 1917, to November 11, 1918, ~~both dates inclusive;~~ commonly referred to as World War I,

~~2. In the Armed Forces of the United States as members of the 45th Division at any time during the period from~~

b. September 16, 1940, to December 7, 1941, ~~both dates inclusive;~~ as a member of the 45th Division,

~~3. In the Armed Forces of the United States at any time during the period from~~

c. December 7, 1941, to December 31, 1946, ~~both dates inclusive;~~ commonly referred to as World War II,

~~4. In the Armed Forces of the United States at any time during the period from~~

d. June 27, 1950, to January 31, 1955, ~~both dates inclusive;~~ commonly referred to as the Korean Conflict or the Korean War,

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

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

~~a.~~

e. February 28, 1961, ~~and ended on~~ to May 7, 1975, ~~in the case of a veteran who served~~ commonly referred to as the Vietnam era, except that:

(1) for the period from February 28, 1961, to August 4, 1964, military service shall only include service in the Republic of Vietnam during that period, and

~~b. August 5, 1964, and ended on May 7, 1975, in all other cases,~~

~~except that such period shall be deemed to have ended on December 31, 1976, when~~

(2) for purposes of determining eligibility for education and training benefits~~;~~, such period shall end on December 31, 1976, or

~~7. In the Armed Forces of the United States on or after~~

f. August 1, 1990, ~~and ended on~~ to December 31, 1991, commonly referred to as the Gulf War, the Persian Gulf War, or Operation Desert Storm, but excluding any person who ~~shall have~~ served on active duty for training only, unless discharged from such active duty for a service-connected disability~~.~~;

2. During a period of war or combat military operation other than a conflict, war or era listed in paragraph 1 of this subsection, beginning on the date of Congressional authorization, Congressional resolution, or Executive Order of the President of the United States, for the use of the Armed Forces of the United States in a war or combat military operation, if such war or combat military operation lasted for a period of ninety (90) days or more, for a person who served, and only for the period served, in the area of responsibility of the war or combat military operation, but excluding a person who served on active duty for training only, unless discharged from such active duty for a service-connected disability, and provided that the burden of proof of military service during this period shall be with the member, who must present appropriate documentation establishing such service.

C. An eligible member pursuant to subsection B of this section shall include only those persons who shall have served during the times or in the areas prescribed thereunder and only if such person provides appropriate documentation in such time and manner as required by the System to establish such military service prescribed in this section, ~~and~~ or for service pursuant to division (1) of subparagraph e of paragraph 1 of subsection B of this section, 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~~ for service prior to August 5, 1964. The provisions of subsection B of this section shall include military retirees, whose retirement was based only on active service, that have been rated as having twenty percent (20%) or greater service-connected disability by the Veterans Administration or the Armed Forces of the United States.

D. Effective December 12, 1994, a leave of absence on account of a period of "qualified military service" in the uniformed services of the United States (within the meaning of Section 414(u)(5) of the Internal Revenue Code of 1986), followed by a return to the service of the participating municipality within ninety (90) days after the completion of the period of service, shall constitute credited service. Notwithstanding any provision herein to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 2-307.4, as amended by Section 11, Chapter 406, O.S.L. 2003 (47 O.S. Supp. 2003, Section 2-307.4), is amended to read as follows:

Section 2-307.4 A. Any member of the Oklahoma Law Enforcement Retirement System ~~with military service prior to membership in the Oklahoma Law Enforcement Retirement System shall be granted~~ shall be entitled to prior service credit, not to exceed five (5) years, for those periods of ~~active~~ military service ~~during which the member was a war veteran~~ on active duty prior to membership in the Oklahoma Law Enforcement Retirement System. Any active member of the Oklahoma Law Enforcement Retirement System whose initial membership in the System began on or after July 1, 2000, may receive up to five (5) years of prior military service credit as otherwise provided in this section, only upon payment of the amount determined by the Board in the manner as provided in Section 2-307.5 of this title. For members of the System hired on or after July 1, 2003, if the military service credit authorized by this subsection is used to compute the retirement benefit of the member and the member retires from the System, such military service credit shall not be used to compute the retirement benefit in any other retirement system created pursuant to the Oklahoma Statutes and the member may receive credit for such service only in the retirement system from which the member first retires.

B. ~~As used in~~ For purposes of this section, "military service" means service in the Armed Forces of the United States ~~in time of war or national emergency~~ by honorably discharged persons ~~who served~~ during the following time periods, as reflected on such person's Defense Department Form 214, as follows:

1. ~~In the Armed Forces of the United States at any time during the period~~ During the following periods, including the beginning and ending dates, and only for the periods served, from:

a. April 6, 1917, to November 11, 1918, ~~both dates inclusive;~~ commonly referred to as World War I,

~~2. In the Armed Forces of the United States as members of the 45th Division at any time during the period from~~

b. September 16, 1940, to December 7, 1941, ~~both dates inclusive;~~ as a member of the 45th Division,

~~3. In the Armed Forces of the United States at any time during the period from~~

c. December 7, 1941, to December 31, 1946, ~~both dates inclusive;~~ commonly referred to as World War II,

~~4. In the Armed Forces of the United States at any time during the period from~~

d. June 27, 1950, to January 31, 1955, ~~both dates inclusive;~~ commonly referred to as the Korean Conflict or the Korean War,

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

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

~~a.~~

e. February 28, 1961, ~~and ended on~~ to May 7, 1975, ~~in the case of a veteran who served~~ commonly referred to as the Vietnam era, except that:

(1) for the period from February 28, 1961, to August 4, 1964, military service shall only include service in the Republic of Vietnam during that period, and

~~b. August 5, 1964, and ended on May 7, 1975, in all other cases,~~

~~except that such period shall be deemed to have ended on December 31, 1976, when~~

(2) for purposes of determining eligibility for education and training benefits~~;~~, such period shall end on December 31, 1976, or

~~7. In the Armed Forces of the United States on or after~~

f. August 1, 1990, ~~and ended on~~ to December 31, 1991, commonly referred to as the Gulf War, the Persian Gulf War, or Operation Desert Storm, but excluding any person who ~~shall have~~ served on active duty for training only, unless discharged from such active duty for a service-connected disability;

2. During a period of war or combat military operation other than a conflict, war or era listed in paragraph 1 of this subsection, beginning on the date of Congressional authorization, Congressional resolution, or Executive Order of the President of the United States, for the use of the Armed Forces of the United States in a war or combat military operation, if such war or combat military operation lasted for a period of ninety (90) days or more, for a person who served, and only for the period served, in the area of responsibility of the war or combat military operation, but excluding a person who served on active duty for training only, unless discharged from such active duty for a service-connected disability, and provided that the burden of proof of military service during this period shall be with the member, who must present appropriate documentation establishing such service.

C. An eligible member ~~pursuant to~~ under subsection B of this section shall include only those persons who shall have served during the times or in the areas prescribed in subsection B of this section, and only if such person provides appropriate documentation in such time and manner as required by the System to establish such military service prescribed in this section, or for service pursuant to division (1) of subparagraph e of paragraph 1 of subsection B of this section, 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~~ for service prior to August 5, 1964.

D. Service credit received pursuant to this section shall be used in determining the member's retirement benefit but shall not be used in determining years of service for retirement or vesting purposes.

E. Effective January 1, 2002, such service credit may be paid for through trustee-to-trustee transfers from a Section 403(b) annuity, an eligible Section 457(b) plan and/or a Section 401(a) qualified plan.

SECTION 4. AMENDATORY 72 O.S. 2001, Section 67.13a, is amended to read as follows:

Section 67.13a Except for the purposes of determining military service credit for state retirement, ~~The~~ the words "war veterans" used in Section 67.13 of this title shall be construed to mean such honorably discharged persons as served:

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

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

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

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

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

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

a. February 28, 1961, and ended on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period, and

b. August 5, 1964, and ended on May 7, 1975, in all other cases,

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

7. In the Armed Forces of the United States on or after August 1, 1990, during the period of time in which the United States participates in a war, military or naval campaign, or expedition, excluding any person who shall have served on active duty for training only, unless discharged from active duty for service-connected disability.

The term "war veterans" shall include only those persons who shall have served during the times or in the areas prescribed in this section, and those persons who were awarded service medals, as authorized by the United States Department of Defense as reflected in the veteran's Defense Department Form 214, related to the Vietnam Conflict who served prior to August 5, 1964. Any honorably discharged war veteran of any of the Armed Forces of the United States shall be entitled to such tax exemptions to include but not be limited to tax-exempt veterans' benefits as provided in paragraph 12 of Section 2887 of Title 68 of the Oklahoma Statutes, special permits and veterans' preferences for state employment; provided, that any person who shall have served on active duty for training purposes only shall not be entitled to any such tax exemptions, special permits or veterans' preferences.

The provisions of this act shall include military retirees, whose retirement was based only on active service, that have been rated as having twenty percent (20%) or greater service-connected disability by the Veterans Administration or the Armed Forces of the United States. <u>For the purpose of defining military service or status as a war veteran for the granting of military service credit in the retirement systems of the State of Oklahoma, the specific statutory provisions and definitions of each respective system shall govern exclusively.</u>

SECTION 5. 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, 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 an honorably discharged person during the following time periods, as reflected on such person's Defense Department Form 214, 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~~ following periods, including the beginning and ending dates, and only for the periods served, from:

(i) April 6, 1917, to November 11, 1918, ~~both dates inclusive~~ commonly referred to as World War I,

~~(b) in the Armed Forces of the United States as members of the 45th Division at any time during the period from~~

(ii) September 16, 1940, to December 7, 1941, ~~both dates inclusive~~ as a member of the 45th Division,

~~(c) in the Armed Forces of the United States at any time during the period from~~

(iii) December 7, 1941, to December 31, 1946, ~~both dates inclusive~~ commonly referred to as World War II,

~~(d) in the Armed Forces of the United States at any time during the period from~~

(iv) June 27, 1950, to January 31, 1955, ~~both dates inclusive~~ commonly referred to as the Korean Conflict or the Korean War,

~~(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)~~

(v) February 28, 1961, ~~and ended on~~ to May 7, 1975, ~~in the case of a veteran who served~~ commonly referred to as the Vietnam era, except that:

a. for the period from February 28, 1961, to August 4, 1964, military service shall only include service 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~~

b. for purposes of determining eligibility for education and training benefits, such period shall end on December 31, 1976, or

~~(g) in the Armed Forces of the United States on or after~~

(vi) August 1, 1990, ~~and ended on~~ to December 31, 1991, commonly referred to as the Gulf War, the Persian Gulf War, or Operation Desert Storm, but excluding any person who ~~shall have~~ served on active duty for training only, unless discharged from such active duty for a service-connected disability;

(b) during a period of war or combat military operation other than a conflict, war or era listed in subparagraph (a) of this paragraph, beginning on the date of Congressional authorization, Congressional resolution, or Executive Order of the President of the United States, for the use of the Armed Forces of the United States in a war or combat military operation, if such war or combat military operation lasted for a period of ninety (90) days or more, for a person who served, and only for the period served, in the area of responsibility of the war or combat military operation, but excluding a person who served on active duty for training only, unless discharged from such active duty for a service-connected disability, and provided that the burden of proof of military service during this period shall be with the member, who must present appropriate documentation establishing such service.

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 only if such person provides appropriate documentation in such time and manner as required by the System to establish such military service prescribed in this paragraph, or for service pursuant to subdivision a of division (v) of subparagraph (a) of this paragraph 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~~ for service 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,

(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 6. AMENDATORY 74 O.S. 2001, Section 932, is amended to read as follows:

Section 932. ~~All~~ Except for the member's name, age, amount of contributions paid in, benefits being paid, amount of credited service and any documents verifying credited service or benefits, all information, documents and copies thereof contained in a member's retirement file shall be given confidential treatment and shall not be made public by the System without the prior written consent of the member to which it pertains, but shall be subject to subpoena or court order.

SECTION 7. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The amendments to Sections 1 through 5 of this act are for the purpose of clarifying legislative intent.

SECTION 8. 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 Senate the 6th day of May, 2004.

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Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2004.

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Presiding Officer of the House
of Representatives