ENGROSSED SENATE
BILL NO. 830 By: Brown of the Senate

and

Kirby of the House

An Act relating to retirement; amending 11 O.S. 2001, Sections 50-101, as last amended by Section 1, Chapter 137, O.S.L. 2003, 50-114, as last amended by Section 2, Chapter 152, O.S.L. 2007, 50-114.1, as last amended by Section 5, Chapter 177, O.S.L. 2008, Section 4, Chapter 152, O.S.L. 2007, 50-115, as last amended by Section 6, Chapter 152, O.S.L. 2007 and 50-128, as last amended by Section 4, Chapter 137, O.S.L. 2005 (11 O.S. Supp. 2008, Sections 50-101, 50-114, 50-114.1, 50-114.3, 50-115 and 50-128), which relate to the Oklahoma Police Pension and Retirement System; modifying definition; updating statutory citation; specifying that certain limitation is not applicable to certain members; clarifying requirements for certain accounts or annuities; updating statutory citation; allowing certain survivors to be entitled to certain additional benefits; amending 47 O.S. 2001, Sections 2-300, as last amended by Section 7, Chapter 177, O.S.L. 2008, 2-305, as last amended by Section 7, Chapter 152, O.S.L. 2007, Section 9, Chapter 152, O.S.L. 2007, 2-305.4, as last amended by Section 10, Chapter 177, O.S.L. 2008 and 2-307, as last amended by Section 11, Chapter 177, O.S.L. 2008 (47 O.S. Supp. 2008, Sections 2-300, 2-305, 2-305.1B, 2-305.4 and 2-307), which relate to the Oklahoma Law Enforcement Retirement System; modifying definition; updating statutory citation; specifying that certain limitation is not applicable to certain members; clarifying requirements for certain accounts or annuities; allowing certain survivors to be entitled to certain additional benefits; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 50-101, as last amended by Section 1, Chapter 137, O.S.L. 2003 (11 O.S. Supp. 2008, Section 50-101), is amended to read as follows:

Section 50-101. As used in this article:

1. "System" means the Oklahoma Police Pension and Retirement System and all predecessor municipal Police Pension and Retirement Systems;

2. "Article" means Article 50 of this title;

3. "State Board" means the Oklahoma Police Pension and Retirement Board;

4. "Fund" means the Oklahoma Police Pension and Retirement Fund;

5. "Officer" means any duly appointed and sworn full-time officer of the regular police department of a municipality whose duties are to preserve the public peace, protect life and property, prevent crime, serve warrants, enforce all laws and municipal ordinances of this state, and any political subdivision thereof, and who is authorized to bear arms in the execution of such duties;

6. "Member" means all eligible officers of a participating municipality and any person hired by a participating municipality who is undergoing police training to become a permanent police officer of the municipality. Effective July 1, 1987, a member does not include a "leased employee" as defined under Section 414(n)(2)

of the Internal Revenue Code of 1986, as amended. Effective July 1, 1999, any individual who agrees with the participating municipality that the individual's services are to be performed as a leased employee or an independent contractor shall not be a member regardless of any classification as a common law employee by the Internal Revenue Service or any other governmental agency, or any court of competent jurisdiction. A member shall include eligible commissioned officers of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma State Bureau of Investigation, and the Alcoholic Beverage Laws Enforcement Commission who elect to participate in the System pursuant to Section 50-111.5 of this title;

7. "Normal retirement date" means the date at which the member is eligible to receive the unreduced payments of the member's accrued retirement benefit. Such date shall be the first day of the month coinciding with or following the date the member completes twenty (20) years of credited service. If the member's employment continues past the normal retirement date of the member, the actual retirement date of the member shall be the first day of the month after the member terminates employment with more than twenty (20) years of credited service;

8. "Credited service" means the period of service used to determine the eligibility for and the amount of benefits payable to a member. Credited service shall consist of the period during which

the member participated in the System or the predecessor municipal systems as an active employee in an eligible membership classification, plus any service prior to the establishment of the predecessor municipal systems which was credited under the predecessor municipal systems or credited service granted by the State Board;

9. "Participating municipality" means a municipality which is making contributions to the System on behalf of its officers. The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma State Bureau of Investigation, and the Alcoholic Beverage Laws Enforcement Commission shall be treated in the same manner as a participating municipality only regarding those members who elect to participate in the System pursuant to Section 50-111.5 of this title;

10. "Permanent total disability" means incapacity due to accidental injury or occupational disease, to earn any wages in the employment for which the member is physically suited and reasonably fitted through education, training or experience. Further, the member must be declared one hundred percent (100%) impaired as defined by the "American Medical Association's Guides to the Evaluation of Permanent Impairment" on the basis of a physical medical examination by a physician licensed to practice medicine in this state, as selected by the State Board;

11. "Permanent partial disability" means permanent disability which is less than permanent total disability as defined in this section. The member must be declared no greater than ninety-nine percent (99%) impaired as defined by the "American Medical Association's Guides to the Evaluation of Permanent Impairment" on the basis of a physical medical examination by a physician licensed to practice medicine in this state, as selected by the State Board;

12. "Permanent in-line disability" means incapacity to earn any wages as a certified, commissioned police officer due to accidental injury or occupational disease, incurred while in, and in consequence of, the performance of duty as an officer;

13. "Beneficiary" means a member's surviving spouse or any surviving children, including biological and adopted children, at the time of the member's death. The surviving spouse must have been married to the member for the thirty (30) continuous months immediately preceding the member's death, provided a surviving spouse of a member who died while in, and as a consequence of, the performance of the member's duty for a participating municipality, shall not be subject to the thirty-month marriage requirement for survivor benefits. A surviving child of a member shall be a beneficiary until reaching eighteen (18) years of age or twenty-two (22) years of age if the child is enrolled full time and regularly attending a public or private school or any institution of higher education. Any child adopted by a member after the member's

retirement shall be a beneficiary only if the child is adopted by the member for the thirty (30) continuous months preceding the member's death. Any child who is adopted by a member after the member's retirement and such member dies accidentally or as a consequence of the performance of the member's duty as a police officer shall not be subject to the thirty-month adoption requirement. This definition of beneficiary shall be in addition to any other requirement set forth in this article;

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

15. "Eligible employer" means any municipality with a municipal police department;

16. "Entry date" means the date as of which an eligible employer joins the System. The first entry date pursuant to this article shall be January 1, 1981;

17. "Final average salary" means the average paid base salary of the member for normally scheduled hours over the highest salaried thirty (30) consecutive months of the last sixty (60) months of credited service.

a. Base salary shall not include payment for accumulated sick and annual leave upon termination of employment, severance pay or any uniform allowances. Provided, for purposes of determining the normal disability benefit, final average salary shall be based on the

member's total service if less than thirty (30) months. Base salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986, as amended, and any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986, as amended. Effective January 1, 1988, base salary shall include any amount of elective salary reduction under Section 125 of the Internal Revenue Code of 1986, as amended. Effective July 1, 1998, gross salary shall include any amount of elective salary reduction not includable in the gross income of the member under Section 132(f)(4) of the Internal Revenue Code of 1986, as amended. Only salary on which required contributions have been made may be used in computing the final average salary.

b. In addition to other applicable limitations, and notwithstanding any other provision to the contrary, for plan years beginning on or after July 1, 2002, the annual compensation of each "Noneligible Member" taken into account under the System shall not exceed the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) annual compensation limit. The EGTRRA annual compensation limit is Two Hundred Thousand

Dollars ($200,000.00), as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The annual compensation limit in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which compensation is determined ("determination period") beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12). For purposes of this section, a "Noneligible Member" is any member who first became a member during a plan year commencing on or after July 1, 1996.

c. For plan years beginning on or after July 1, 2002, any reference in the System to the annual compensation limit under Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall mean the EGTRRA annual compensation limit set forth in this provision.

d. Effective January 1, 2008, base salary shall also include base salary, as described above, but paid by the later of two and one-half (2 1/2) months after a

member's severance from employment or the end of the plan year that includes the date the member terminated employment, if it is a payment that, absent a severance from employment, would have been paid to the member while the member continued in employment with the participating municipality.

e. Effective January 1, 2008, any payments not described above shall not be considered gross salary if paid after severance from employment, even if they are paid by the later of two and one-half (2 1/2) months after the date of severance from employment or the end of the plan year that includes the date of severance from employment, except, payments to an individual who does not currently perform services for the participating municipality by reason of qualified military service within the meaning of Section 414(u)(5) of the Internal Revenue Code of 1986, as amended, to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the participating municipality rather than entering qualified military service.

f. Effective January 1, 2008, back pay, within the meaning of Section 1.415 (c)-2(g)(8) of the Income Tax

Regulations, shall be treated as base salary for the plan year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

g. Effective for years beginning after December 31, 2008, base salary shall also include differential wage payments under Section 414(u)(12) of the Internal Revenue Code of 1986, as amended;

18. "Accrued retirement benefit" means two and one-half percent (2 1/2%) of the member's final average salary multiplied by the member's years of credited service not to exceed thirty (30) years;

19. "Normal disability benefit" means two and one-half percent (2 1/2%) of the member's final average salary multiplied by twenty (20) years;

20. "Limitation year" means the year used in applying the limitations of Section 415 of the Internal Revenue Code of 1986, as amended, which year shall be the calendar year;

21. "Paid base salary" means, effective May 1, 2002, all compensation that shall include longevity, educational allowances, and normal compensation paid on a regularly scheduled pay period of which said pay period shall include holidays, annual leave and sick leave. Paid base salary shall not include overtime, shall not include payment for accumulated sick and annual leave upon termination of employment, and shall not include any uniform

allowance or any other compensation for reimbursement of out-of-pocket expenses; and

22. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received based on interest rate and mortality assumptions set by the State Board, in a manner that precludes employer discretion, and based upon recommendations from independent professional advisors, and which shall be published annually in the actuarial report.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 50-114, as last amended by Section 2, Chapter 152, O.S.L. 2007 (11 O.S. Supp. 2008, Section 50-114), is amended to read as follows:

Section 50-114. A. The State Board is hereby authorized to pay out of funds in the System a monthly service pension to any member eligible as hereinafter provided, not exceeding in any event the amount of money in such funds and not exceeding in any event the accrued retirement benefit for such member, except as provided for herein. In order for a member to be eligible for such service pension the following requirements must be complied with:

1. The member's service with the police department for any participating municipality must have ceased; however, a member may be subsequently reemployed in the position of police chief pursuant to subsection C of Section 50-112 of this title;

2. The member must have reached the member's normal retirement date; and

3. The member must have complied with any agreement as to contributions by the member and other members to any funds of the System where said agreement has been made as provided by this article; provided, that should a retired member receive disability benefits as provided in this and other sections of this article, the time the retired member is receiving said disability benefits shall count as time on active service if the retired member should be recalled by the Chief of Police from said disability retirement. It shall be necessary before said time shall be counted toward retirement that the retired member make the same contribution as the member would have otherwise made if on active service for the time the retired member was disabled.

B. Any member complying with all requirements of this article, who reaches normal retirement date, upon application, shall be retired at the accrued retirement benefit. When a member has served for the necessary number of years and is otherwise eligible, as provided in this article, if such member is discharged without cause by the participating municipality, the member shall be eligible for a pension.

C. Effective July 1, 1989, in no event shall commencement of distribution of the accrued retirement benefit of a member be delayed beyond April 1 of the calendar year following the later of:

1. The calendar year in which the member reaches seventy and one-half (70 1/2) years of age; or

2. The actual retirement date of the member.

For distributions made for calendar years beginning on or after January 1, 2001 through December 31, 2004, the System shall apply the minimum distribution requirements and incidental benefit requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, which were proposed on January 17, 2001, notwithstanding any provision of the System to the contrary. For distributions made for calendar years beginning on or after January 1, 2005, the System shall apply the minimum distribution incidental benefit requirements, incidental benefit requirements, and minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the final regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, which were issued in April 2002 and June 2004, notwithstanding any provision of the System to the contrary.

D. In the event of the death of any member who has been awarded a retirement benefit or is eligible therefor as provided in this section, such member's beneficiaries shall be paid such retirement benefit. The remaining portion of the member's retirement benefit shall be distributed to the beneficiaries at least as rapidly as under the method of distribution to the member. Effective March 1, 1997, if a member to whom a retirement benefit has been awarded or

who is eligible therefor dies prior to the date as of which the total amount of retirement benefit paid equals the total amount of the employee contributions paid by or on behalf of the member and the member does not have a surviving beneficiary, the total benefits paid as of the date of the member's death shall be subtracted from the accumulated employee contribution amount and the balance, if greater than zero (0), shall be paid to the member's estate.

E. The State Board may review and affirm a member's request for retirement benefits prior to the member's normal retirement date provided that no retirement benefits are paid prior to the normal retirement date.

F. A member retired under the provisions of this article may apply to the State Board to have the member's retirement benefits set aside and may make application for disability benefits. Upon approval of the disability benefits, the member would become subject to all provisions of this article pertaining to disability retirement.

G. Upon the death of a retired member or a beneficiary, the benefit payment for the month in which the retired member or beneficiary died, if not previously paid, shall be made to the beneficiary of the member or to the member's or beneficiary’s estate if there is no beneficiary. Such benefit payment shall be made in an amount equal to a full monthly benefit payment regardless of the day of the month in which the retired member or beneficiary died.

H. If the requirements of Section ~~5~~ 50-114.4 of this ~~act~~ title are satisfied, a member who, by reason of attainment of normal retirement date or age, is separated from service as a public safety officer with the member's participating municipality, may elect to have payment made directly to the provider for qualified health insurance premiums by deduction from his or her monthly pension payment, after December 31, 2006, in accordance with Section 402(l) of the Internal Revenue Code of 1986, as amended.

SECTION 3. AMENDATORY 11 O.S. 2001, Section 50-114.1, as last amended by Section 5, Chapter 177, O.S.L. 2008 (11 O.S. Supp. 2008, Section 50-114.1), is amended to read as follows:

Section 50-114.1 A. Notwithstanding any other provision contained herein to the contrary, the benefits payable to a member from the System provided by employer contributions (including contributions picked up by the employer under Section 414(h) of the Internal Revenue Code of 1986, as amended) shall be subject to the limitations of Section 415 of the Internal Revenue Code of 1986, as amended, in accordance with the provisions of this section. The limitations of this section shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided below.

B. Except as provided below, effective for limitation years ending after December 31, 2001, any accrued retirement benefit payable to a member as an annual benefit as described below shall

not exceed One Hundred Sixty Thousand Dollars ($160,000.00), automatically adjusted under Section 415(d) of the Internal Revenue Code of 1986, as amended, for increases in the cost of living, as prescribed by the Secretary of the Treasury or the Secretary's delegate, effective January 1 of each calendar year and applicable to the limitation year ending with or within such calendar year. The automatic annual adjustment of the dollar limitation in this subsection under Section 415(d) of the Internal Revenue Code of 1986, as amended, shall apply to a member who has had a separation from employment.

1. The member's annual benefit is a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this section. For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be

made without regard to Section 1.401(a)-20, Q&A 10(d), and with regard to Section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

2. No actuarial adjustment to the benefit shall be made for:

a. survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form,

b. benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits), or

c. the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code of 1986, as amended, and would otherwise satisfy the limitations of this section, and the System provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this section applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code of 1986, as amended. For this purpose, an automatic benefit increase feature is included in a

form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

3. The determination of the annual benefit shall take into account Social Security supplements described in Section 411(a)(9) of the Internal Revenue Code of 1986, as amended, and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to Section 1.411(d)-4, Q&A-3(c), of the Income Tax Regulations, but shall disregard benefits attributable to employee contributions or rollover contributions.

4. Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with paragraph 5 or paragraph 6 of this subsection.

5. Benefit Forms Not Subject to Section 417(e)(3) of the Internal Revenue Code of 1986, as amended: The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph 5 if the form of the member's benefit is either:

a. a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse), or

b. an annuity that decreases during the life of the member merely because of:

(1) the death of the survivor annuitant (but only if the reduction is not below fifty percent (50%) of the benefit payable before the death of the survivor annuitant), or

(2) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 401(a)(11) of the Internal Revenue Code of 1986, as amended).

c. Limitation Years Beginning Before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(1) the interest rate and the mortality table (or other tabular factor), each as set forth in subsection G of Section 50-105.4 of this title for adjusting benefits in the same form; and

(2) a five percent (5%) interest rate assumption and the applicable mortality table described in Rev. Rul. 2001-62 for that annuity starting date.

d. Limitation Years Beginning On Or After July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

(1) the annual amount of the straight life annuity (if any) payable to the member under the System commencing at the same annuity starting date as the member's form of benefit, and

(2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent (5%) interest rate assumption and the applicable mortality table described in Rev. Rul. 2001-62 for that annuity starting date.

6. Benefit Forms Subject to Section 417(e)(3) of the Internal Revenue Code of 1986, as amended: The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph 6 if the form of the member's benefit is other than a benefit form described in paragraph 5 of

this subsection. In this case, the actuarially equivalent straight life annuity shall be determined as follows:

a. Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

(1) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) each as set forth in subsection G of Section 50-105.4 of this title for adjusting benefits in the same form,

(2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and one-half percent (5.5%) interest rate assumption and the applicable mortality table described in Rev. Rul. 2001-62, and

(3) the annual amount of the straight life annuity commencing at the same annuity starting date that

has the same actuarial present value as the member's form of benefit, computed using:

(a) the rate of interest on thirty-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified below. The lookback month applicable to the stability period is the fourth calendar month preceding the first day of the stability period, as specified below. The stability period is the successive period of one (1) plan year which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, and

(b) the applicable mortality table described in Rev. Rul. 2001-62,

divided by one and five one-hundredths (1.05).

b. Annuity Starting Date in Plan Years Beginning in 2004 or 2005:

(1) If the annuity starting date of the member's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same

annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greater annual amount:

(a) the interest rate and the mortality table (or other tabular factor) each as set forth in subsection G of Section 50-105.4 of this title for adjusting benefits in the same form, and

(b) a five and one-half percent (5.5%) interest rate assumption and the applicable mortality table described in Rev. Rul. 2001-62.

(2) If the annuity starting date of the member's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this subparagraph b shall not cause the amount payable under the member’s form of benefit to be less than the benefit calculated under the System, taking into account the limitations of this section, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial

present value as the member's form of benefit, computed using whichever of the following produces the greatest annual amount:

(a) the interest rate and mortality table (or other tabular factor) each as set forth in subsection G of Section 50-105.4 of this title for adjusting benefits in the same form,

(b) (i) the rate of interest on thirty-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified below. The lookback month applicable to the stability period is the fourth calendar month preceding the first day of the stability period, as specified below. The stability period is the successive period of one (1) plan year which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, and

(ii) the applicable mortality table described in Rev. Rul. 2001-62, and

(c) (i) the rate of interest on thirty-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified below. The lookback month applicable to the stability period is the fourth calendar month preceding the first day of the stability period, as specified below. The stability period is the successive period of one (1) plan year which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of the System then adopted and in effect), and

(ii) the applicable mortality table described in Rev. Rul. 2001-62.

7. The foregoing limitation shall not be applicable with respect to any member whose annual benefits from the System and under all other defined benefit plans of the participating municipality are less than Ten Thousand Dollars ($10,000.00) for the

year or from any prior year, if such member has not at any time participated in any defined contribution plan maintained by the participating municipality.

C. If a member has less than ten (10) years of participation in the System and all predecessor municipal police pension and retirement systems, the dollar limitation otherwise applicable under subsection B of this section shall be multiplied by a fraction, the numerator of which is the number of the years of participation in the System of the member, but never less than one (1), and the denominator of which is ten (10).

D. Adjustment of Dollar Limitation for Benefit Commencement Before Age Sixty-two (62) or After Age Sixty-five (65): Effective for benefits commencing in limitation years ending after December 31, 2001, the dollar limitation under subsection B of this section shall be adjusted if the annuity starting date of the member's benefit is before age sixty-two (62) or after age sixty-five (65). If the annuity starting date is before age sixty-two (62), the dollar limitation under subsection B of this section shall be adjusted under paragraph 1 of this subsection, as modified by paragraph 3 of this subsection, but subject to paragraph 4 of this subsection. If the annuity starting date is after age sixty-five (65), the dollar limitation under subsection B of this section shall be adjusted under paragraph 2 of this subsection, as modified by paragraph 3 of this subsection.

1. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age Sixty-two (62):

a. Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the member's benefit is prior to age sixty-two (62) and occurs in a limitation year beginning before July 1, 2007, the dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(1) the interest rate and the mortality table (or other tabular factor) each as set forth in subsection G of Section 50-105.4 of this title, or

(2) a five-percent interest rate assumption and the applicable mortality table as described in Rev. Rul. 2001-62.

b. Limitation Years Beginning On Or After July 1, 2007.

(1) System Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age Sixty-two (62) and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age sixty-two (62) and occurs in a limitation year beginning on or after July 1, 2007, and the System does not have an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) with actuarial equivalence computed using a five-percent interest rate assumption and the applicable mortality table for the annuity starting date as described in Rev. Rul. 2001-62 (and expressing the member's age based on

completed calendar months as of the annuity starting date).

(2) System Has Immediately Commencing Straight Life Annuity Payable at Both Age Sixty-two (62) and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age sixty-two (62) and occurs in a limitation year beginning on or after July 1, 2007, and the System has an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the dollar limitation for the member's annuity starting date is the lesser of the limitation determined under division (1) of subparagraph b of this paragraph and the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the System at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the System at age sixty-two

(62), both determined without applying the limitations of this section.

2. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age Sixty-five (65):

a. Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the member's benefit is after age sixty-five (65) and occurs in a limitation year beginning before July 1, 2007, the dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(1) the interest rate and the mortality table (or other tabular factor) each as set forth in subsection G of Section 50-105.4 of this title, or

(2) a five-percent interest rate assumption and the applicable mortality table as described in Rev. Rul. 2001-62.

b. Limitation Years Beginning On Or After July 1, 2007.

(1) System Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age Sixty-five (65) and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age sixty-five (65) and occurs in a limitation year beginning on or after July 1, 2007, and the System does not have an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) with actuarial equivalence computed using a five-percent interest rate assumption and the

applicable mortality table for the annuity starting date as described in Rev. Rul. 2001-62 (and expressing the member's age based on completed calendar months as of the annuity starting date).

(2) System Has Immediately Commencing Straight Life Annuity Payable at Both Age Sixty-five (65) and Age of Commencement. If the annuity starting date for the member's benefit is after age sixty-five (65) and occurs in a limitation year beginning on or after July 1, 2007, and the System has an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the lesser of the limitation determined under division (1) of subparagraph b of this paragraph and the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the System at the member's annuity starting date to the

annual amount of the adjusted immediately commencing straight life annuity under the System at age sixty-five (65), both determined without applying the limitations of this section. For this purpose, the adjusted immediately commencing straight life annuity under the System at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age sixty-five (65) but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the System at age sixty-five (65) is the annual amount of such annuity that would be payable under the System to a hypothetical member who is age sixty-five (65) and has the same accrued benefit as the member.

3. Notwithstanding the other requirements of this subsection, no adjustment shall be made to the dollar limitation under subsection B of this section to reflect the probability of a member's death between the annuity starting date and age sixty-two (62), or between age sixty-five (65) and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the

member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the System does not charge members for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the Internal Revenue Code of 1986, as amended, upon the member's death.

4. Notwithstanding any other provision to the contrary, for limitation years beginning on or after January 1, 1997, if payment begins before the member reaches age sixty-two (62), the reductions in the limitations in this subsection shall not apply to a member who is a "qualified participant" as defined in Section 415(b)(2)(H) of the Internal Revenue Code of 1986, as amended.

E. Minimum Benefit Permitted: Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a member under this System shall be deemed not to exceed the maximum permissible benefit if:

1. The retirement benefits payable for a limitation year under any form of benefit with respect to such member under this System and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by a participating municipality do not exceed Ten Thousand Dollars ($10,000.00) multiplied by a fraction:

a. the numerator of which is the member's number of credited years (or part thereof, but not less than one (1) year) of service (not to exceed ten (10) years) with the participating municipality, and

b. the denominator of which is ten (10); and

2. The participating municipality (or a predecessor employer) has not at any time maintained a defined contribution plan in which the member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Section 401(h) of the Internal Revenue Code of 1986, as amended, and accounts for postretirement medical benefits established under Section 419A(d)(1) of the Internal Revenue Code of 1986, as amended, are not considered a separate defined contribution plan).

F. In no event shall the maximum annual accrued retirement benefit of a member allowable under this section be less than the annual amount of such accrued retirement benefit, including early pension and qualified joint and survivor annuity amounts, duly accrued by the member as of the last day of the limitation year beginning in 1982, or as of the last day of the limitation year beginning in 1986, whichever is greater, disregarding any plan changes or cost-of-living adjustments occurring after July 1, 1982, as to the 1982 accrued amount, and May 5, 1986, as to the 1986 accrued amount.

G. Effective for years beginning after December 31, 1997, if a member purchases service pursuant to Section 50-111.2 and Section 50-111.4 of this title, which qualifies as "permissive service credit" pursuant to Section 415(n) of the Internal Revenue Code of 1986, as amended, the limitations of Section 415 of the Internal Revenue Code of 1986, as amended, may be met by either:

1. Treating the accrued benefit derived from such contributions as an annual benefit under subsection B of this section, or

2. Treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code of 1986, as amended.

H. Effective for years beginning after December 31, 1997, if a member repays to the System any amounts received because of such member's prior termination pursuant to subsection C of Section 50-111.1 of this title, such repayment shall not be taken into account for purposes of Section 415 of the Internal Revenue Code of 1986, as amended, pursuant to Section 415(k)(3) of the Internal Revenue Code of 1986, as amended.

I. For limitation years beginning on or after January 1, 1995, subsection C of this section, paragraph 1 of subsection D of this section, and the proration provided under subparagraphs a and b of paragraph 1 of subsection E of this section shall not apply to a benefit paid under the System as the result of the member becoming disabled by reason of personal injuries or sickness, or amounts

received by the beneficiaries, survivors or estate of the member as the result of the death of the member.

J. For distributions made in limitation years beginning on or after January 1, 2000, the combined limit of repealed Section 415(e) of the Internal Revenue Code of 1986, as amended, shall not apply.

K. The State Board is hereby authorized to revoke the special election previously made on June 19, 1991, under Internal Revenue Code Section 415(b)(10).

SECTION 4. AMENDATORY Section 4, Chapter 152, O.S.L. 2007 (11 O.S. Supp. 2008, Section 50-114.3), is amended to read as follows:

Section 50-114.3 A. An individual who has been designated, pursuant to Section 401(a)(9)(E) of the Internal Revenue Code of 1986, as amended, as the beneficiary of a deceased member and who is not the surviving spouse of the member, may elect, in accordance with Section 402(c)(11) of the Internal Revenue Code of 1986, as amended, and at the time and in the manner prescribed by the State Board, to have a direct trustee-to-trustee transfer of any portion of such beneficiary's lump-sum distribution from the System after December 31, 2006, made to an individual retirement account or individual retirement annuity (other than an endowment contract) described in Section 408(a) or (b) of the Internal Revenue Code of 1986, as amended (IRA)<u>, that is established on behalf of such designated individual</u>. If such transfer is made, then:

1. The transfer is treated as an eligible rollover distribution for purposes of Section 402(c)(11) of the Internal Revenue Code of 1986, as amended;

2. The transferee IRA is treated as an inherited individual retirement account or an inherited individual retirement annuity (within the meaning of Section 408(d)(3)(C) of the Internal Revenue Code of 1986, as amended), and must be titled in the name of the deceased member, for the benefit of the beneficiary; and

3. The required minimum distribution rules of Section 401(a)(9)(B) (other than clause iv thereof) of the Internal Revenue Code of 1986, as amended, apply to the transferee IRA.

B. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.

C. The State Board shall promulgate such rules as are necessary to implement the provisions of this section.

SECTION 5. AMENDATORY 11 O.S. 2001, Section 50-115, as last amended by Section 6, Chapter 152, O.S.L. 2007 (11 O.S. Supp. 2008, Section 50-115), is amended to read as follows:

Section 50-115. A. The State Board is authorized to pay a disability benefit to a member of the System or a pension to the beneficiaries of such member eligible as hereinafter provided, not exceeding the accrued retirement benefit of the member, except as otherwise provided in this article. Such disability benefit shall

be payable immediately upon determination of eligibility. Any preexisting condition identified at the time of any initial or subsequent membership shall be used to offset the percentage of impairment to the whole person in determining any disability benefit. Once the initial disability benefit has been awarded by the Board on the basis of the percentage of impairment to the whole person, the member shall have no further recourse to increase the awarded percentage of impairment.

B. In order for any member to be eligible for any disability benefit, or the member's beneficiaries to be eligible for a pension, the member must have complied with any agreement as to contributions by the member and other members to any funds of the System where said agreement has been made as provided by this article; and the State Board must find:

1. That the member incurred a permanent total disability or a permanent partial disability or died while in, and in consequence of, the performance of duty as an officer; or

2. That such member has served ten (10) years and incurred a permanent total disability or a permanent partial disability or has died from any cause.

C. In the event of the death of any member who has been awarded a disability benefit or is eligible therefor as provided in this article, the member's beneficiary shall be paid the benefit.

D. As of the date of determination by the State Board that a member is physically or mentally disabled and that the disability is permanent and partial or permanent and total as was incurred while in, and in consequence of, the performance or duty as an officer, the member shall be awarded a disability benefit on the basis of the percentage of impairment to the whole person, as defined by the most current standards of the impairment as outlined in the "American Medical Association's Guides to the Evaluation of Permanent Impairment," as provided in the following table:

| | |
|---|---|
| 1% to 49% impairment to whole person = | 50% of the normal disability benefit |
| 50% to 74% impairment to whole person = | 75% of the normal disability benefit |
| 75% to 100% impairment to whole person = | 100% of the normal disability benefit. |

E. If the participating municipality denies a disabled member the option of continuing employment instead of retiring on a disability pension, then the burden of proof rests with the participating municipality to show cause to the State Board that there is no position as a sworn officer within the police department of that municipality which the member can fill.

F. Upon determination by the State Board that a member is physically or mentally disabled and that the disability is permanent and total and that the member has completed ten (10) years of

credited service and is disabled by any cause, the member shall receive a disability benefit on the basis of the member's accrued retirement benefit.

G. Upon determination by the State Board that a member is physically or mentally disabled and that the disability is permanent and partial and that the member has completed ten (10) years of credited service as a member and is disabled from any cause, the member shall be awarded a disability benefit on the basis of the member's years of credited service as a member and the percentage of impairment to the whole person, as defined by the most current standards of the impairment as outlined in the "American Medical Association's Guides to the Evaluation of Permanent Impairment", on the basis of the following table:

1% to 24% impaired = 25% of accrued retirement benefit

25% to 49% impaired = 50% of accrued retirement benefit

50% to 74% impaired = 75% of accrued retirement benefit

75% to 99% impaired = 90% of accrued retirement benefit.

H. Before making a finding as to the disability of a member, the State Board shall require that, if the member is able, the member shall make a certificate as to the disability which shall be subscribed and sworn to by the member. It shall also require a certificate as to such disability to be made by some physician licensed to practice in this state as selected by the State Board. The State Board may require other evidence of disability before

making the disability benefit. The salary of any such member shall continue while the member is so necessarily confined to such hospital bed or home and necessarily requires medical care or professional nursing on account of such sickness or disability for a period of not more than six (6) months, after which said period the other provisions of this article may apply. The State Board, in making disability benefits, shall act upon the written request of the member or without such request, if it deem it for the good of the police department. Any disability benefits shall cease when the member receiving same shall be restored to active service at a salary not less than three-fourths (3/4) of the member's average monthly salary.

I. Any member of a police department of any municipality who, in the line of duty, has been exposed to hazardous substances, including but not limited to chemicals used in the manufacture of a controlled dangerous substance or chemicals resulting from the manufacture of a controlled dangerous substance, or to blood-borne pathogens and who is later disabled from a condition that was the result of such exposure and that was not revealed by the physical examination passed by the member upon entry into the System shall be presumed to have incurred such disability while performing the officer's duties unless the contrary is shown by competent evidence. The presumption created by this subsection shall have no application whatever to any workers' compensation claim or claims, and it shall

not be applied or be relied upon in any way in workers' compensation proceedings. All compensation or benefits due to any member pursuant to the presumption created by this subsection shall be paid solely by the system.

J. If the requirements of Section ~~5~~ 50-114.4 of this ~~act~~ title are satisfied, a member who, by reason of disability, is separated from service as a public safety officer with the member's participating municipality, may elect to have payment made directly to the provider for qualified health insurance premiums by deduction from his or her monthly disability benefit, after December 31, 2006, in accordance with Section 402(l) of the Internal Revenue Code of 1986, as amended.

SECTION 6. AMENDATORY 11 O.S. 2001, Section 50-128, as last amended by Section 4, Chapter 137, O.S.L. 2005 (11 O.S. Supp. 2008, 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 be entitled to prior service credit, not to exceed five (5) years, for 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 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 by honorably discharged persons during the following time periods, as reflected on such person's Defense Department Form 214, as follows:

1. 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, commonly referred to as World War I,

b. September 16, 1940, to December 7, 1941, as a member of the 45th Division,

c. December 7, 1941, to December 31, 1946, commonly referred to as World War II,

d. June 27, 1950, to January 31, 1955, commonly referred to as the Korean Conflict or the Korean War,

e. February 28, 1961, to May 7, 1975, 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

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

f. August 1, 1990, to December 31, 1991, commonly referred to as the Gulf War, the Persian Gulf War, or Operation Desert Storm, but excluding any person who 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, 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 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~~:

1. 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, which is in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA). The municipality's contributions to the System for a member covered by USERRA are due when such a member makes up his or her contributions that were missed due to his or her qualified military service; and

2. Effective January 1, 2007, if any member dies while performing qualified military service, the survivors of the member are entitled to any additional benefits other than benefit accruals relating to the period of qualified military service provided under the System had the member resumed and then terminated employment on account of death.

SECTION 7. AMENDATORY 47 O.S. 2001, Section 2-300, as last amended by Section 7, Chapter 177, O.S.L. 2008 (47 O.S. Supp. 2008, Section 2-300), is amended to read as follows:

Section 2-300. As used in Section 2-300 et seq. of this title:

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

2. "Act" means Section 2-300 et seq. of this title;

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

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

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

6. a. "Member" means:

(1) all commissioned law enforcement officers of the Oklahoma Highway Patrol Division of the Department of Public Safety who have obtained certification from the Council on Law Enforcement Education and Training, and all cadets of a Patrol Academy of the Department of Public Safety,

(2) law enforcement officers and criminalists of the Oklahoma State Bureau of Investigation,

(3) law enforcement officers of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control designated to perform duties in the investigation and prevention of crime and the enforcement of the criminal laws of this state,

(4) law enforcement officers of the Oklahoma Alcoholic Beverage Laws Enforcement Commission designated to perform duties in the investigation and prevention of crime and the enforcement of the criminal laws of this state,

(5) employees of the Communications Section of the Oklahoma Highway Patrol Division, radio technicians, and tower technicians of the Department of Public Safety, who are employed in any such capacity as of June 30, 2008, and who remain employed on or after July 1, 2008, until a termination of service, or until a termination of service with an election of a vested benefit from the System, or until retirement. Effective July 1, 2008, a person employed for the first time as an employee of the Department of Public Safety in the Communications Division as an information systems telecommunication technician of the Department of Public Safety shall not be a member of the System,

(6) park rangers of the Oklahoma Tourism and Recreation Department and any park manager or park supervisor of the Oklahoma Tourism and Recreation Department who was employed in such a position prior to July 1, 1985, and who elects on or before September 1, 1996, to participate in the System, and

(7) inspectors of the Board of Pharmacy.

b. Effective July 1, 1987, a member does not include a "leased employee" as defined under Section 414(n)(2)of the Internal Revenue Code of 1986, as amended. Effective July 1, 1999, any individual who agrees with the participating employer that the individual's services are to be performed as a leased employee or an independent contractor shall not be a member regardless of any classification as a common-law employee by the Internal Revenue Service or any other governmental agency, or any court of competent jurisdiction.

c. All persons who shall be offered a position of a commissioned law enforcement officer as an employee of one of the agencies described in subparagraph a of this paragraph shall participate in the System upon the person meeting the requisite post-offer-pre-employment physical examination standards which shall be subject to the following requirements:

(1) all such persons shall be of good moral character, free from deformities, mental or physical conditions, or disease and alcohol or drug addiction which would prohibit the person from performing the duties of a law enforcement officer,

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

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

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

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

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

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

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

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

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

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

With respect to distributions under the System made for calendar years beginning on or after January 1, 2005, the System shall apply the minimum distribution incidental benefit requirements, incidental benefit requirements, and minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the final regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, which were issued in April 2002 and June 2004, notwithstanding any provision of the System to the contrary. With respect to distributions under the System made for calendar years beginning on or after January 1, 2001, through December 31, 2004, the System shall apply the minimum distribution requirements and incidental benefit requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, which were proposed in January 2001, notwithstanding any provision of the System to the contrary.

Effective July 1, 1989, notwithstanding any other provision contained herein to the contrary, in no event shall commencement of distribution of the accrued retirement benefit of a member be delayed beyond April 1 of the calendar year following the later of: (1) the calendar year in which the member reaches seventy and one-half (70 1/2) years of age; or (2) the actual retirement date of the member. The preceding sentence does not allow deferral of benefit commencement beyond the age of sixty-five (65).

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

8. "Actual paid base salary" means the salary received by a member, excluding payment for any accumulated leave or uniform

allowance. Salary shall include any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986;

9. "Final average salary" means the average of the highest thirty (30) consecutive complete months of actual paid gross salary. Gross salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986, as amended, and any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986, as amended. Effective July 1, 1992, gross salary shall include any amount of elective salary reduction under Section 125 of the Internal Revenue Code of 1986, as amended. Effective July 1, 1998, gross salary shall include any amount of elective salary reduction not includable in the gross income of the member under Section 132(f)(4) of the Internal Revenue Code of 1986, as amended. Effective July 1, 1998, for purposes of determining a member's compensation, any contribution by the member to reduce his or her regular cash remuneration under Section 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be treated as if the member did not make such an election. Only salary on which required contributions have been made may be used in computing the final average salary. <u>Gross salary shall not include severance pay.</u>

In addition to other applicable limitations, and notwithstanding any other provision to the contrary, for plan years beginning on or after July 1, 2002, the annual gross salary of each "Noneligible

Member" taken into account under the System shall not exceed the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") annual salary limit. The EGTRRA annual salary limit is Two Hundred Thousand Dollars ($200,000.00), as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The annual salary limit in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which salary is determined ("determination period") beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the EGTRRA salary limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12). For purposes of this section, a "Noneligible Member" is any member who first became a member during a plan year commencing on or after July 1, 1996.

For plan years beginning on or after July 1, 2002, any reference in the System to the annual salary limit under Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall mean the EGTRRA salary limit set forth in this provision.

Effective January 1, 2008, gross salary for a plan year shall also include gross salary, as described above, but paid by the later of two and one-half (2 1/2) months after a member's severance from employment or the end of the plan year that includes the date the

member terminated employment, if it is a payment that, absent a severance from employment, would have been paid to the member while the member continued in employment with the employer.

Effective January 1, 2008, any payments not described above shall not be considered gross salary if paid after severance from employment, even if they are paid by the later of two and one-half (2 1/2) months after the date of severance from employment or the end of the plan year that includes the date of severance from employment, except, payments to an individual who does not currently perform services for the employer by reason of qualified military service within the meaning of Section 414(u)(5) of the Internal Revenue Code of 1986, as amended, to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

Effective January 1, 2008, back pay, within the meaning of Section 1.415 (c)-2(g)(8) of the Income Tax Regulations, shall be treated as gross salary for the plan year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

Effective for years beginning after December 31, 2008, gross salary shall also include differential wage payments under Section 414(u)(12) of the Internal Revenue Code of 1986, as amended;

10. "Credited service" means the period of service used to determine the amount of benefits payable to a member. Credited service shall consist of the period during which the member participated in the System or the predecessor Plan as an active employee in an eligible membership classification, plus any service prior to the establishment of the predecessor Plan which was credited under the predecessor Plan and for law enforcement officers and criminalists of the Oklahoma State Bureau of Investigation and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control who became members of the System on July 1, 1980, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1980, and for members of the Communications and Lake Patrol Divisions of the Oklahoma Department of Public Safety, who became members of the System on July 1, 1981, any service credited under the predecessor Plan or the Oklahoma Public Employees Retirement System as of June 30, 1981, and for law enforcement officers of the Alcoholic Beverage Laws Enforcement Commission who became members of the System on July 1, 1982, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1982, and for park rangers of the Oklahoma Tourism and Recreation Department who became members of the System on July 1, 1985, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1985, and for inspectors of the Oklahoma State Board of Pharmacy who became members of the System on July 1, 1986, any service credited

under the Oklahoma Public Employees Retirement System as of June 30, 1986, for law enforcement officers of the Oklahoma Capitol Patrol Division of the Department of Public Safety who became members of the System effective July 1, 1993, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1993, and for all commissioned officers in the Gunsmith/Ammunition Reloader Division of the Department of Public Safety who became members of the System effective July 1, 1994, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1994, and for the park managers or park supervisors of the Oklahoma Tourism and Recreation Department who were employed in such a position prior to July 1, 1985, and who elect to become members of the System effective September 1, 1996, any service transferred pursuant to subsection C of Section 2-309.6 of this title and any service purchased pursuant to subsection B of Section 2-307.2 of this title. Effective August 5, 1993, an authorized leave of absence shall include a period of absence pursuant to the Family and Medical Leave Act of 1993;

11. "Disability" means a physical or mental condition which, in the judgment of the Board, totally and presumably permanently prevents the member from engaging in the usual and customary duties of the occupation of the member and thereafter prevents the member from performing the duties of any occupation or service for which the member is qualified by reason of training, education or

experience. A person is not under a disability when capable of performing a service to the employer, regardless of occupation, providing the salary of the employee is not diminished thereby;

12. "Limitation year" means the year used in applying the limitations of Section 415 of the Internal Revenue Code of 1986, which year shall be the calendar year;

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

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

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

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

17. "Beneficiary" means the individual designated by the member on a beneficiary designation form supplied by the Oklahoma Law Enforcement Retirement System, or if there is no designated beneficiary or if the designated beneficiary predeceases the member, the estate of the member. If the member's spouse is not designated as the sole primary beneficiary, the member's spouse must sign a consent.

SECTION 8. AMENDATORY 47 O.S. 2001, Section 2-305, as last amended by Section 7, Chapter 152, O.S.L. 2007 (47 O.S. Supp. 2008, Section 2-305), is amended to read as follows:

Section 2-305. A. Except as otherwise provided in this title, at any time after attaining normal retirement date, any member of the Oklahoma Law Enforcement Retirement System upon application for unreduced retirement benefits made and approved, may retire, and, during the remainder of the member's lifetime, receive annual retirement pay, payable in equal monthly payments, equal to two and one-half percent (2 1/2%) of the final average salary times years of credited service. If such retired member is reemployed by a state agency in a position which is not covered by the System, such retired member shall continue to receive in-service distributions from the System. Prior to September 19, 2002, if such retired member was reemployed by a state agency in a position which is covered by the System, such member shall continue to receive in-service distributions from the System and shall not accrue any

further credited service. If such a member is reemployed by a state agency in a position which is covered by the System on or after September 19, 2002, such member's monthly retirement payments shall be suspended until such member retires and is not reemployed by a state agency in a position which is covered by the System. No member shall be required to retire for length of service unless and until the member shall have reached the age of sixty (60) years, but any member of the System who shall have reached the age of sixty (60) years and who shall also have completed twenty (20) years or more of credited service shall be retired by the Board unless, after application to the Board and such examination and showing as the Board may deem proper, the Board shall determine that such member of the System is physically and mentally able to continue to perform duties or service as required of a member. Unless such application be made by a member of the System within thirty (30) days after reaching the age of sixty (60) years and completing twenty (20) years or more of credited service or if, after such application and examination, the Board shall determine that such member of the System is not physically or mentally able to continue to perform services as required of the employer, the Board shall by resolution order his or her retirement with retirement pay for length of service as provided herein.

B. Beginning July 1, 1994, members who retired or were eligible to retire prior to July 1, 1980 or their surviving spouses shall

receive annual retirement pay, payable in equal monthly payments, equal to the greater of their current retirement pay, or two and one-half percent (2 1/2%) of the actual paid gross salary being currently paid to a highway patrol officer, at the time each such monthly retirement payment is made, multiplied by the retired member's years of credited service.

C. Members of the System whose salary is set by statute who have retired after completion of the mandatory twenty (20) years of service, and those members with statutory salaries who retire after reaching the mandatory twenty-year retirement, shall receive an annual retirement pay, payable in equal monthly installments, based upon the greater of either:

1. The top base pay currently paid to an active member, at the time each such monthly retirement payment is made, multiplied by two and one-half percent (2 1/2%) multiplied by the number of years of credited service and fraction thereof for the following positions:

a. Oklahoma Highway Patrolman,

b. Communications Dispatcher,

c. Capitol Patrolman,

d. Lake Patrolman,

e. Oklahoma State Bureau of Investigation-Special Agent; or

2. The member's final average salary as set forth in paragraph 9 of Section 2-300 of this title, multiplied by two and one-half

percent (2 1/2%), and multiplied by the number of years of credited service and fraction thereof.

No member of the System retired prior to July 1, 2002, shall receive a benefit less than the amount the member is receiving as of June 30, 2002.

D. Other members of the System whose retirement benefit is not otherwise prescribed by this section who have retired after completion of the mandatory twenty (20) years of service, and those members who retire after reaching the mandatory twenty-year retirement, shall receive an annual retirement pay, payable in equal monthly payments, based upon the greater of either:

1. The actual average salary currently paid to the highest nonsupervisory position in the participating agency, at the time each such monthly payment is made, multiplied by two and one-half percent (2 1/2%), multiplied by the number of years of credited service and fraction thereof for the following positions:

a. Alcoholic Beverage Laws Enforcement Commission-ABLE Commission Agent III,

b. Oklahoma State Bureau of Narcotics and Dangerous Drugs Control—Narcotics Agent III,

c. Oklahoma Tourism and Recreation Department—Park Ranger II,

d. Oklahoma State Board of Pharmacy—Pharmacy Inspector,

e. University of Oklahoma-Police Officer,

f. Oklahoma State University-Police Officer; or

2. The other member's final average salary as set forth in paragraph 9 of Section 2-300 of this title, multiplied by two and one-half percent (2 1/2%), multiplied by the number of years of credited service and fraction thereof.

No member of the System retired prior to July 1, 2002, shall receive a benefit less than the amount the member is receiving as of June 30, 2002. The participating employer must certify to the System in writing the actual average gross salary currently paid to the highest nonsupervisory position. The Board of Trustees shall promulgate such rules as are necessary to implement the provisions of this section.

E. A member who meets the definition of disability as defined in paragraph 11 of Section 2-300 of this title by direct reason of the performance of the member's duties as an officer shall receive a monthly benefit equal to the greater of fifty percent (50%) of final average salary or two and one-half percent (2 1/2%) of final average salary multiplied by the number of years of the member's credited service. If such member participates in the Oklahoma Law Enforcement Deferred Option Plan pursuant to Section 2-305.2 of this title, then such member's disability pension provided pursuant to this subsection shall be reduced to account for such member's participation in the Oklahoma Law Enforcement Deferred Option Plan.

F. A member who meets the definition of disability as defined in paragraph 11 of Section 2-300 of this title and whose disability is by means of personal and traumatic injury of a catastrophic nature and in the line of duty, shall receive a monthly benefit equal to:

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

2. Multiplied by:

a. twenty (20) years of service, regardless of the actual number of years of credited service performed by the member prior to the date of disability, if the member had performed less than twenty (20) years of service, or

b. the actual number of years of service performed by the member if the member had performed twenty (20) or more years of service;

3. Multiplied by a final average salary equal to:

a. the salary which the member would have received pursuant to statutory salary schedules in effect upon the date of the disability for twenty (20) years of service prior to disability. The final average salary for a member who performed less than twenty (20) years of service prior to disability shall be computed assuming that the member was paid the highest salary allowable pursuant to the law in effect at the time of

the member's disability based upon twenty (20) years of service and with an assumption that the member was eligible for any and all increases in pay based upon rank during the entire period. If the salary of a member is not prescribed by a specific salary schedule upon the date of the member's disability, the final average salary for the member shall be computed by the member's actual final average salary or the highest median salary amount for a member whose salary was prescribed by a specific salary schedule upon the date of the member's disability, whichever final average salary amount would be greater, or

b. the actual final average salary of the member if the member had performed twenty (20) or more years of service prior to disability.

If such member participates in the Oklahoma Law Enforcement Deferred Option Plan pursuant to Section 2-305.2 of this title, such member's disability pension provided pursuant to this subsection shall be adjusted as provided in Section 2-305.2 of this title to account for such member's participation in the Oklahoma Law Enforcement Deferred Option Plan.

G. A member who meets the definition of disability as defined in Section 2-300 of this title and whose disability occurred prior to the member's normal retirement date but after completing three

(3) years of vesting service and not by reason of the performance of the member's duties as an officer or as a result of the member's willful negligence shall receive a monthly benefit equal to two and one-half percent (2 1/2%) of final average salary multiplied by the number of years of the member's credited service.

H. Payment of a disability pension shall commence as of the first day of the month coinciding or next following the date of retirement and shall continue as long as the member meets the definition of total and permanent disability provided in this section.

I. For the purpose of determining the member's disability under subsection E, F or G of this section, the member shall be required by the Board to be examined by a minimum of two recognized physicians selected by the Board to determine the extent of the member's injury or illness. The examining physicians shall furnish the Board a detailed written report of the injury or illness of the examined member establishing the extent of disability and the possibilities of the disabled member being returned to his or her regular duties or an alternate occupation or service covered by the System after a normal recuperation period. The Board shall require all retired disabled members who have not attained their normal retirement date to submit to a physical examination once each year for a minimum of three (3) years following retirement. The Board shall select a minimum of two physicians to examine the retired

members and pay for their services from the fund. Any retired disabled member found no longer disabled by the examining physicians to perform the occupation of the member or an alternate occupation or service covered by the System shall be required to return to duty and complete twenty (20) years of service as provided in subsection A of this section, or forfeit all his or her rights and claims under this act.

J. The disability benefit under this section shall be for the lifetime of the member unless such member is found no longer disabled pursuant to subsection I of this section. Such member shall not be entitled to the retirement benefit pursuant to subsection A of this section unless such member returns to active duty and is eligible for a retirement benefit as provided in subsection A of this section.

K. At the postoffer, preemployment physical examination required under paragraph 6 of Section 2-300 of this title, the physician selected by the Board shall determine the extent to which a new member is disabled. If a member is determined to be partially disabled, the physician shall assign a percentage of disability to such partial disability. If such member then becomes entitled to a disability benefit under either subsection E or subsection G of this section, the benefit payable shall be reduced by the percentage which such member was determined to be disabled at the postoffer, preemployment physical unless the Board makes a determination that

the initially determined percentage of disability at the preemployment physical examination is unrelated to the reason for 0the disability currently sought pursuant to subsection E or subsection G of this section. Upon employment, the member shall disclose to the Board any disability payments received from any source. The amount of disability to be paid to any member cannot exceed one hundred percent (100%) disability from all sources. The provisions of this subsection shall apply only to members whose effective date of membership is on or after July 1, 2000.

L. In addition to the pension provided for under subsection F of this section, if said member has one or more children under the age of eighteen (18) years or under the age of 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, Four Hundred Dollars ($400.00) a month shall be paid from said Fund for the support of each surviving child to the member or person having the care and custody of such children until each child reaches the age of eighteen (18) years or reaches the age of 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.

M. Notwithstanding any other provisions in Section 2-300 through 2-315 of this title, in order to be eligible to receive disability benefits, a member who meets the definition of disability

as defined in paragraph 11 of Section 2-300 of this title shall file the member's completed application for disability benefits with the System before such member's date of termination from service and provide such additional information that the System's rules require within six (6) months of the System's receipt of such application. If the member's completed application for disability benefits is not filed with the System before the member's date of termination from service or such additional information as is required under the System's rules is not provided within six (6) months of the System's receipt of such application, such member shall be eligible only for such other benefits as are available to members of the System and shall not be eligible to receive any disability benefits.

N. If the requirements of Section ~~10~~ 2-305.1C of this ~~act~~ title are satisfied, a member who, by reason of disability or attainment of normal retirement date or age, is separated from service as a public safety officer with the member's participating employer may elect to have payment made directly to the provider for qualified health insurance premiums by deduction from his or her monthly disability benefit or monthly retirement payment, after December 31, 2006, in accordance with Section 402(1) of the Internal Revenue Code of 1986, as amended.

SECTION 9. AMENDATORY Section 9, Chapter 152, O.S.L. 2007 (47 O.S. Supp. 2008, Section 2-305.1B), is amended to read as follows:

Section 2-305.1B A. An individual who has been designated, pursuant to Section 401(a)(9)(E) of the Internal Revenue Code of 1986, as amended, as the beneficiary of a deceased member and who is not the surviving spouse of the member, may elect, in accordance with Section 402(c)(11) of the Internal Revenue Code of 1986, as amended, and at the time and in the manner prescribed by the Board, to have a direct trustee-to-trustee transfer of any portion of such beneficiary's lump-sum distribution from the Oklahoma Law Enforcement Retirement System after December 31, 2006, made to an individual retirement account or individual retirement annuity (other than an endowment contract) described in Section 408(a) or (b) of the Internal Revenue Code of 1986, as amended (IRA), that is established on behalf of such designated individual. If such transfer is made, then:

1. The transfer is treated as an eligible rollover distribution for purposes of Section 402(c)(11) of the Internal Revenue Code of 1986, as amended;

2. The transferee IRA is treated as an inherited individual retirement account or an inherited individual retirement annuity (within the meaning of Section 408(d)(3)(C) of the Internal Revenue Code of 1986, as amended), and must be titled in the name of the deceased member, for the benefit of the beneficiary; and

3. The required minimum distribution rules of Section 401(a)(9)(B), other than clause iv thereof, of the Internal Revenue Code of 1986, as amended, apply to the transferee IRA.

B. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.

C. The Board shall promulgate such rules as are necessary to implement the provisions of this section.

SECTION 10. AMENDATORY 47 O.S. 2001, Section 2-305.4, as last amended by Section 10, Chapter 177, O.S.L. 2008 (47 O.S. Supp. 2008, Section 305.4), is amended to read as follows:

Section 305.4 A. Notwithstanding any other provision contained herein to the contrary, the benefits payable to a member from the Oklahoma Law Enforcement Retirement System provided by employer contributions (including contributions picked up by the employer under Section 414(h) of the Internal Revenue Code of 1986, as amended), shall be subject to the limitations of Section 415 of the Internal Revenue Code of 1986, as amended, in accordance with the provisions of this section. The limitations of this section shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided below.

B. Except as provided below, effective for limitation years ending after December 31, 2001, any accrued retirement benefit payable to a member as an annual benefit as described below shall

not exceed One Hundred Sixty Thousand Dollars ($160,000.00), automatically adjusted under Section 415(d) of the Internal Revenue Code of 1986, as amended, for increases in the cost of living, as prescribed by the Secretary of the Treasury or the Secretary's delegate, effective January 1 of each calendar year and applicable to the limitation year ending with or within such calendar year. The automatic annual adjustment of the dollar limitation in this subsection under Section 415(d) of the Internal Revenue Code of 1986, as amended, shall apply to a member who has had a separation from employment.

1. The member's annual benefit is a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this section. For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be

made without regard to Section 1.401(a)-20, Q&A 10(d), and with regard to Section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

2. No actuarial adjustment to the benefit shall be made for:

a. survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form,

b. benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits) and postretirement medical benefits, or

c. the inclusion in the form of a benefit of an automatic benefit increase feature, provided, the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code of 1986, as amended, and would otherwise satisfy the limitations of this section, and the System provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this section applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code of 1986, as amended. For this purpose, an automatic benefit increase feature is included in a

form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

3. The determination of the annual benefit shall take into account Social Security supplements described in Section 411(a)(9) of the Internal Revenue Code of 1986, as amended, and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to Section 1.411(d)-4, Q&A-3(c), of the Income Tax Regulations, but shall disregard benefits attributable to employee contributions or rollover contributions.

4. Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with paragraph 5 or paragraph 6 of this subsection.

5. Benefit Forms Not Subject to Section 417(e)(3) of the Internal Revenue code of 1986, as amended: The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph 5 if the form of the member's benefit is either:

a. a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse), or

b. an annuity that decreases during the life of the member merely because of:

(1) the death of the survivor annuitant (but only if the reduction is not below fifty percent (50%) of the benefit payable before the death of the survivor annuitant), or

(2) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 401(a)(11) of the Internal Revenue Code of 1986, as amended).

c. Limitation Years Beginning Before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(1) the interest rate and the mortality table or other tabular factor, each as set forth in subsection H of Section 2-303.1 of this title for adjusting benefits in the same form, and

(2) a five percent (5%) interest rate assumption and the applicable mortality table described in

Revenue Ruling 2001-62 for that annuity starting date.

d. Limitation Years Beginning On Or After July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

(1) the annual amount of the straight life annuity, if any, payable to the member under the System commencing at the same annuity starting date as the member's form of benefit, and

(2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent (5%) interest rate assumption and the applicable mortality table described in Revenue Ruling 2001-62 for that annuity starting date.

6. Benefit Forms Subject to Section 417(e)(3) of the Internal Revenue Code of 1986, as amended: The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph 6 if the form of the member's benefit is other than a benefit form described in paragraph 5 of this subsection. In this case, the actuarially equivalent straight life annuity shall be determined as follows:

a. Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

(1) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate and the mortality table or other tabular factor, each as set forth in subsection H of Section 2-303.1 of this title for adjusting benefits in the same form,

(2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and one-half percent (5.5%) interest rate assumption and the applicable mortality table described in Revenue Ruling 2001-62, and

(3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using:

(a) the rate of interest on thirty-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified below. The lookback month applicable to the stability period is the fourth calendar month preceding the first day of the stability period, as specified below. The stability period is the successive period of one (1) plan year which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, and

(b) the applicable mortality table described in Revenue Ruling 2001-62,

divided by one and five one-hundredths (1.05).

b. Annuity Starting Date in Plan Years Beginning in 2004 or 2005.

(1) If the annuity starting date of the member's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit,

computed using whichever of the following produces the greater annual amount:

(a) the interest rate and the mortality table or other tabular factor, each as set forth in subsection H of Section 2-303.1 of this title for adjusting benefits in the same form, and

(b) a five and one-half percent (5.5%) interest rate assumption and the applicable mortality table described in Revenue Ruling 2001-62.

(2) If the annuity starting date of the member's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this subparagraph shall not cause the amount payable under the member's form of benefit to be less than the benefit calculated under the System, taking into account the limitations of this section, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit,

computed using whichever of the following produces the greatest annual amount:

(a) the interest rate and mortality table or other tabular factor, each as set forth in subsection H of Section 2-203.1 of this title for adjusting benefits in the same form,

(b) i. the rate of interest on thirty-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified below. The lookback month applicable to the stability period is the fourth calendar month preceding the first day of the stability period, as specified below. The stability period is the successive period of one (1) plan year which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, and

ii. the applicable mortality table described in Revenue Ruling 2001-62, and

(c) i. the rate of interest on thirty-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified below. The lookback month applicable to the stability period is the fourth calendar month preceding the first day of the stability period, as specified below. The stability period is the successive period of one (1) plan year which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of the System then adopted and in effect), and

ii. the applicable mortality table described in Revenue Ruling 2001-62.

7. The foregoing limitation shall not be applicable with respect to any member whose annual benefits from the System and under all other defined benefit plans of the employer are less than Ten Thousand Dollars ($10,000.00) for the year or from any prior

year, if such member has not at any time participated in any defined contribution plan maintained by the employer.

C. If a member has less than ten (10) years of participation in the System and all predecessor pension and retirement systems, the dollar limitation otherwise applicable under subsection B of this section shall be multiplied by a fraction, the numerator of which is the number of the years of participation in the System of the member, but never less than one (1), and the denominator of which is ten (10).

D. Adjustment of Dollar Limitation for Benefit Commencement Before Sixty-two (62) Years of Age or After Sixty-five (65) Years of Age: Effective for benefits commencing in limitation years ending after December 31, 2001, the dollar limitation under subsection B of this section shall be adjusted if the annuity starting date of the member's benefit is before sixty-two (62) years of age or after sixty-five (65) years of age. If the annuity starting date is before sixty-two (62) years of age, the dollar limitation under subsection B of this section shall be adjusted under paragraph 1 of this subsection, as modified by paragraph 3 of this subsection, but subject to paragraph 4 of this subsection. If the annuity starting date is after sixty-five (65) years of age, the dollar limitation under subsection B of this section shall be adjusted under paragraph 2 of this subsection, as modified by paragraph 3 of this subsection.

1. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Sixty-two (62) Years of Age:

a. Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the member's benefit is prior to sixty-two (62) years of age and occurs in a limitation year beginning before July 1, 2007, the dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(1) the interest rate and the mortality table or other tabular factor, each as set forth in subsection H of Section 2-303.1 of this title, or

(2) a five percent (5%) interest rate assumption and the applicable mortality table as described in Revenue Ruling 2001-62.

b. Limitation Years Beginning On or After July 1, 2007.

(1) System Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Sixty-two (62) Years of Age and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to sixty-two (62) years of age and occurs in a limitation year beginning on or after July 1, 2007, and the System does not have an immediately commencing straight life annuity payable at both sixty-two (62) years of age and the age of benefit commencement, the dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the annuity starting date as described in Revenue Ruling 2001-62 (and expressing the member's age based on

completed calendar months as of the annuity starting date).

(2) System Has Immediately Commencing Straight Life Annuity Payable at Both Sixty-two (62) Years of Age and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to sixty-two (62) years of age and occurs in a limitation year beginning on or after July 1, 2007, and the System has an immediately commencing straight life annuity payable at both sixty-two (62) years of age and the age of benefit commencement, the dollar limitation for the member's annuity starting date is the lesser of the limitation determined under division (1) of subparagraph b of this paragraph and the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the System at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the System at sixty-two (62)

years of age, both determined without applying the limitation of this section.

2. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Sixty-five (65) Years of Age:

a. Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the member's benefit is after sixty-five (65) years of age and occurs in a limitation year beginning before July 1, 2007, the dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(1) the interest rate and the mortality table or other tabular factor, each as set forth in subsection H of Section 2-303.1 of this title, or

(2) a five percent (5%) interest rate assumption and the applicable mortality table as described in Revenue Ruling 2001-62.

b. Limitation Years Beginning On or After July 1, 2007.

(1) System Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Sixty-five (65) Years of Age and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after sixty-five (65) years of age and occurs in a limitation year beginning on or after July 1, 2007, and the System does not have an immediately commencing straight life annuity payable at both sixty-five (65) years of age and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the annuity starting date as described in Revenue Ruling

2001-62 (and expressing the member's age based on completed calendar months as of the annuity starting date).

(2) System Has Immediately Commencing Straight Life Annuity Payable at Both Sixty-five (65) Years of Age and Age of Benefit Commencement. If the annuity starting date for the member's benefit is after sixty-five (65) years of age and occurs in a limitation year beginning on or after July 1, 2007, and the System has an immediately commencing straight life annuity payable at both sixty-five (65) years of age and the age of benefit commencement, the dollar limitation at the member's annuity starting date is the lesser of the limitation determined under division (1) of subparagraph b of this paragraph and the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the System at the member's annuity starting date to the annual amount of the adjusted immediately

commencing straight life annuity under the System at sixty-five (65) years of age, both determined without applying the limitations of this section. For this purpose, the adjusted immediately commencing straight life annuity under the System at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after sixty-five (65) years of age but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the System at sixty-five (65) years of age is the annual amount of such annuity that would be payable under the System to a hypothetical member who is sixty-five (65) years of age and has the same accrued benefit as the member.

3. Notwithstanding the other requirements of this subsection, no adjustment shall be made to the dollar limitation under subsection B of this section to reflect the probability of a member's death between the annuity starting date and sixty-two (62) years of age, or between sixty-five (65) years of age and the annuity starting date, as applicable, if benefits are not forfeited

upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the System does not charge members for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the Internal Revenue code of 1986, as amended, upon the member's death.

4. Notwithstanding any other provision to the contrary, for limitation years beginning on or after January 1, 1997, if payment begins before the member reached sixty-two (62) years of age, the reductions in the limitations in this subsection shall not apply to a member who is a "qualified participant" as defined in Section 415(b)(2)(H) of the Internal Revenue Code of 1986, as amended.

E. Minimum Benefit Permitted: Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a member under this System shall be deemed not to exceed the maximum permissible benefit if:

1. The retirement benefits payable for a limitation year under any form of benefit with respect to such member under this System and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by a participating employer do not exceed Ten Thousand Dollars ($10,000.00) multiplied by a fraction:

a. the numerator of which is the member's number of credited years (or part thereof, but not less than one (1) year) of service, not to exceed ten (10), with the participating employer, and

b. the denominator of which is ten (10), and

2. The participating employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under section 401(h) of the Internal Revenue Code of 1986, as amended, and accounts for postretirement medical benefits established under Section 419A(d)(1) of the Internal Revenue Code of 1986, as amended, are not considered a separate defined contribution plan).

F. In no event shall the maximum annual accrued retirement benefit of a member allowable under this section be less than the annual amount of such accrued retirement benefit, including early pension and qualified joint and survivor annuity amounts, duly accrued by the member as of the last day of the limitation year beginning in 1982, or as of the last day of the limitation year beginning in 1986, whichever is greater, disregarding any plan changes or cost-of-living adjustments occurring after July 1, 1982, as to the 1982 accrued amount, and May 5, 1986, as to the 1986 accrued amount.

G. Effective for years beginning after December 31, 1997, if a member purchases service under this title, which qualifies as "permissive service credit" pursuant to Section 415(n) of the Internal Revenue Code of 1986, as amended, the limitations of Section 415 of the Internal Revenue Code of 1986, as amended, may be met by either:

1. Treating the accrued benefit derived from such contributions as an annual benefit under subsection B of this section, or

2. Treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code of 1986, as amended.

H. Effective for years beginning after December 31, 1997, if a member repays to the System any amounts received because of the member's prior termination pursuant to paragraph 3 of subsection (b) of Section 2-307 of this title, such repayment shall not be taken into account for purposes of Section 415 of the Internal Revenue Code of 1986, as amended, pursuant to Section 415(k)(3) of the Internal Revenue Code of 1986, as amended.

I. For limitation years beginning on or after January 1, 1995, subsection C of this section, paragraph 1 of subsection D of this section, and the proration provided under subparagraphs a and b of paragraph 1 of subsection E of this section, shall not apply to a benefit paid under the System as a result of the member becoming disabled by reason of personal injuries or sickness, or amounts

received by the beneficiaries, survivors or estate of the member as the result of the death of the member.

J. For distributions made in limitation years beginning on or after January 1, 2000, the combined limit of repealed Section 415(e) of the Internal Revenue Code of 1986, as amended, shall not apply.

K. The Board is hereby authorized to revoke the special election previously made under Internal Revenue Code Section 415(b)(10).

SECTION 11. AMENDATORY 47 O.S. 2001, Section 2-307, as last amended by Section 11, Chapter 177, O.S.L. 2008 (47 O.S. Supp. 2008, Section 2-307), is amended to read as follows:

Section 2-307. (a) In the event a member of the System obtains a leave of absence, of not to exceed ninety (90) days at any one time, because of injury or illness or for any personal reason other than the acceptance of other employment, the member's membership in the System shall not terminate and the period of such leave shall be counted toward retirement for length of service if, during such leave of absence or at the end thereof, the member shall pay to the Fund an amount equal to the contributions which would have been deducted from the member's salary during such period if such leave of absence had not been obtained, but if such contributions are not paid during such leave or made up within thirty (30) days after the end of such leave, or if such leave of absence extends for more than ninety (90) days at any one time, the period of such leave shall not

be counted toward length of service for retirement nor in computing the amount of any pension or any retirement pay or any other benefits hereunder.

(b) In the event a member of the System obtains a leave of absence for the purpose of accepting other employment, or if a member resigns and during such resignation accepts other employment, the member's membership in the System shall terminate as of the date of the beginning of such leave. Provided, that if the membership of a member of the System shall have been terminated either by such leave of absence or by termination of employment, and such former member is reemployed, the Board, upon application therefor made in the same manner as an original application for membership in the System, may reinstate such membership. Such reinstated member shall be allowed full credit toward retirement for all service credit accrued up to the time of termination of membership if, but only if:

1. Such application for reinstatement is made within three (3) years from the date of such termination of such membership; and

2. Such reinstated member remains a member of the System for a period of five (5) consecutive years after reinstatement of membership; and

3. Such reinstated member reimburses the Fund, at the time application for reinstatement is made, with the amount of any portion of the membership contribution which has been refunded to the member under the provisions of Section 2-308 of this title; and

4. A lump-sum payment for repayment of any amount received because of a member's prior termination may be repaid by:

a. a cash lump-sum payment,

b. a trustee-to-trustee transfer from a Section 403(b) annuity or custodial account, an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A), and/or a Code Section 401(a) qualified plan,

c. a direct rollover of tax-deferred funds from a Code Section 403(b) annuity or custodial account, an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A), a Code Section 401(a) qualified plan, and/or a Code Section 408(a) or 408(b) traditional or conduit Individual Retirement Account or Annuity (IRA). Roth IRAs, Coverdell Education Savings Accounts and after-tax contributions shall not be used to purchase such service credit, or

d. any combination of the above methods of payment.

The provisions of this subsection shall not apply to absences caused by such military service as may be considered as service for

retirement for length of service under the provisions of subsection (c) of this section.

(c) In determining the eligibility of a member for retirement based upon length of service, any service in the Armed Forces of the United States or any component thereof between the 16th day of September, 1940, and the 30th day of June, 1954, and any service in the Armed Forces of the United States or any component thereof upon call of the President of the United States or of the Governor of the State of Oklahoma, together with such prior service, as would have been otherwise considered as service for retirement for length of service, shall be considered as service for length of service, provided that the member returns and files application for reinstatement as a member of the System within ninety (90) days after the member's release, or opportunity for release, from such Armed Forces or component thereof. The member's employing agency that is making contributions to the System on behalf of the member shall continue payment of contributions into the pension fund, to the same force and effect as though the member was in the actual employment of such agency at the same salary for a period not to exceed five (5) years. If such member shall have been refunded any portion of the membership contributions as provided in Section 2-308 of this title, the member shall be required to reimburse the Fund with the same amount at the time of the member's application for reinstatement in the System, before the reinstated member is given

credit for accrued prior service. Provided, that in no event shall a member of the System who has entered such Armed Forces or component thereof prior to retirement be or become eligible for retirement for length of service unless the member shall thereafter have been reinstated as a member of the System as provided for herein, and thereafter remained a member for at least one (1) year after such reinstatement.

(d) Time spent on involuntary furlough by members pursuant to the rules of the Office of Personnel Management shall be credited.

(e) Notwithstanding any provisions herein to the contrary, ~~contributions~~

1. 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, as amended, which is in accordance with the Uniformed Service Employment and Reemployment Rights Act of 1994, as amended (USERRA). The employer's contributions to the System for a member covered by USERRA are due when such a member makes up his or her contributions that were missed due to his or her qualified military service; and

2. Effective January 1, 2007, if any member dies while performing qualified military service, the survivors of the member are entitled to any additional benefits other than benefit accruals relating to the period of qualified military service provided under

the System had the member resumed and then terminated employment on account of death.

SECTION 12. 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 26th day of February, 2009.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2009.

_____
Presiding Officer of the House of Representatives