

1 THE STATE SENATE
2 Monday, February 23, 2009

3 Senate Bill No. 1071

4 SENATE BILL NO. 1071 - By: Barrington of the Senate and Armes of the
5 House.

6 An Act relating to retirement; amending 11 O.S. 2001,
7 Sections 49-100.1, as last amended by Section 1, Chapter
8 128, O.S.L. 2003, 49-106, as last amended by Section 1,
9 Chapter 345, O.S.L. 2007, 49-106.2, as last amended by
10 Section 2, Chapter 177, O.S.L. 2008, Section 3, Chapter 345,
11 O.S.L. 2007, 49-109, as last amended by Section 5, Chapter
12 345, O.S.L. 2007 and 49-138, as last amended by Section 4,
13 Chapter 203, O.S.L. 2005 (11 O.S. Supp. 2008, Sections 49-
14 100.1, 49-106, 49-106.2, 49-106.4, 49-109 and 49-138), which
15 relate to the Oklahoma Firefighters Pension and Retirement
16 System; modifying definition, updating statutory citation;
17 specifying that certain limitation is not applicable to
18 certain members; clarifying requirements for certain
19 accounts or annuities; updating statutory citation; allowing
20 certain survivors to be entitled to certain additional
21 benefits; and declaring an emergency.

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

23 SECTION 1. AMENDATORY 11 O.S. 2001, Section 49-100.1, as
24 last amended by Section 1, Chapter 128, O.S.L. 2003 (11 O.S. Supp.
25 2008, Section 49-100.1), is amended to read as follows:

26 Section 49-100.1 As used in this article:

27 1. "System" means the Oklahoma Firefighters Pension and
28 Retirement System and all predecessor municipal firefighters pension
29 and retirement systems;

30 2. "Article" means Article 49 of this title;

1 3. "State Board" means the Oklahoma Firefighters Pension and
2 Retirement Board;

3 4. "Local board" means the local firefighters pension and
4 retirement boards;

5 5. "Fund" means the Oklahoma Firefighters Pension and
6 Retirement Fund;

7 6. "Member" means all eligible firefighters of a participating
8 municipality or a fire protection district who perform the essential
9 functions of fire suppression, prevention, and life safety duties in
10 a fire department. The term "member" shall include but not be
11 limited to the person serving as fire chief of any participating
12 municipality, provided that a person serving as fire chief of a
13 participating municipality shall meet the age, agility, physical and
14 other eligibility requirements required by law at the time said
15 person becomes a member of the System. Effective July 1, 1987, a
16 member does not include a "leased employee". The term "leased
17 employee" means any person (other than an employee of the recipient)
18 who pursuant to an agreement between the recipient and any other
19 person ("leasing organization") has performed services for the
20 recipient (or for the recipient and related persons determined in
21 accordance with Section 414(n)(6) of the Internal Revenue Code of
22 1986, as amended) on a substantially full-time basis for a period of
23 at least one year, and such services are performed under primary

1 direction or control by the recipient. Contributions or benefits
2 provided a leased employee by the leasing organization which are
3 attributable to services performed for the recipient employer shall
4 be treated as provided by the recipient employer. A leased employee
5 shall not be considered an employee of the recipient if the
6 requirements of the safe harbor provisions of Section 414(n)(5) of
7 the Internal Revenue Code of 1986, as amended, are satisfied.
8 Effective July 1, 1999, any individual who agrees with the
9 participating municipality that the individual's services are to be
10 performed as a leased employee or an independent contractor shall
11 not be a member regardless of any classification as a common law
12 employee by the Internal Revenue Service or any other governmental
13 agency, or any court of competent jurisdiction;

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

1 8. "Credited service" means the period of service used to
2 determine the eligibility for and the amount of benefits payable to
3 a member. Credited service shall consist of the period during which
4 the member participated in the System or the predecessor municipal
5 systems as an active employee in an eligible membership
6 classification, plus any service prior to the establishment of the
7 predecessor municipal systems which was credited under the
8 predecessor municipal systems; provided however, "credited service"
9 for members from a fire protection district shall not begin accruing
10 before July 1, 1982;

11 9. "Participating municipality" means a municipality, county
12 fire department organized pursuant to subsection D of Section 351 of
13 Title 19 of the Oklahoma Statutes, or fire protection district which
14 is making contributions to the System on behalf of its firefighters;

15 10. "Disability" means the complete inability of the
16 firefighter to perform any and every duty of his regular occupation;
17 provided further, that once benefits have been paid for twenty-four
18 (24) months the provisions of Section 49-110 of this title shall
19 apply to the firefighter;

20 11. "Executive Director" means the managing officer of the
21 System employed by the State Board;

1 12. "Eligible employer" means any municipality with a municipal
2 fire department or a fire protection district with an organized fire
3 department;

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

7 14. "Final average salary" means the average paid gross salary
8 of the firefighter for normally scheduled hours over the highest
9 salaried thirty (30) consecutive months of the last sixty (60)
10 months of credited service. Gross salary shall not include payment
11 for accumulated sick or annual leave upon termination of employment,
12 any uniform allowances or any other compensation for reimbursement
13 of out-of-pocket expenses. Only salary on which the required
14 contributions have been made may be used in computing the final
15 average salary. Effective January 1, 1988, gross salary shall
16 include any amount of elective salary reduction under Section 125 of
17 the Internal Revenue Code of 1986, as amended. Gross salary shall
18 include any amount of elective salary reduction under Section 457 of
19 the Internal Revenue Code of 1986, as amended, and any amount of
20 nonelective salary reduction under Section 414(h) of the Internal
21 Revenue Code of 1986, as amended. Effective July 1, 1998, for
22 purposes of determining a member's compensation, any contribution by
23 the member to reduce his regular cash remuneration under 132(f)(4)

1 of the Internal Revenue Code of 1986, as amended, shall be treated
2 as if the member did not make such an election. Only salary on
3 which required contributions have been made may be used in computing
4 final average salary.

5 In addition to other applicable limitations, and notwithstanding
6 any other provision to the contrary, for plan years beginning on or
7 after July 1, 2002, the annual gross salary of each "Noneligible
8 Member" taken into account under the System shall not exceed the
9 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")
10 annual salary limit. The EGTRRA annual salary limit is Two Hundred
11 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for
12 increases in the cost of living in accordance with Section
13 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
14 annual salary limit in effect for a calendar year applies to any
15 period, not exceeding twelve (12) months, over which salary is
16 determined ("determination period") beginning in such calendar year.
17 If a determination period consists of fewer than twelve (12) months,
18 the EGTRRA salary limit will be multiplied by a fraction, the
19 numerator of which is the number of months in the determination
20 period, and the denominator of which is twelve (12). For purposes
21 of this subsection, a "Noneligible Member" is any member who first
22 became a member during a plan year commencing on or after July 1,
23 1996.

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

5 Effective January 1, 2008, gross salary shall also include gross
6 salary, as described above, but paid by the later of two and one-
7 half (2 1/2) months after a firefighter's severance from employment
8 or the end of the plan year that includes the date the firefighter
9 terminated employment, if it is a payment that, absent a severance
10 from employment, would have been paid to the firefighter while the
11 firefighter continued in employment with the participating
12 municipality. Effective January 1, 2008, any payments not described
13 above shall not be considered gross salary if paid after severance
14 from employment, even if they are paid by the later of two and one-
15 half (2 1/2) months after the date of severance from employment or
16 the end of the plan year that includes the date of severance from
17 employment. Effective January 1, 2008, back pay, within the meaning
18 of Section 1.415 (c)-2(g)(8) of the Income Tax Regulations, shall be
19 treated as gross salary for the plan year to which the back pay
20 relates to the extent the back pay represents wages and compensation
21 that would otherwise be included in this definition. Effective for
22 years beginning after December 31, 2008, gross salary shall also

1 include differential wage payments under Section 414(u)(12) of the
2 Internal Revenue Code of 1986, as amended;

3 15. "Accrued retirement benefit" means two and one-half percent
4 (2 1/2%) of the firefighter's final average salary multiplied by the
5 member's years of credited service not to exceed thirty (30) years;

6 16. "Beneficiary" means a member's surviving spouse or any
7 surviving children, including biological and adopted children, at
8 the time of the member's death. The surviving spouse must have been
9 married to the firefighter for the thirty (30) continuous months
10 preceding the firefighter's death provided a surviving spouse of a
11 member who died while in, or as a consequence of, the performance of
12 the member's duty for a participating municipality, shall not be
13 subject to the marriage limitation for survivor benefits. A
14 surviving child of a member shall be a beneficiary until reaching
15 eighteen (18) years of age or twenty-two (22) years of age if the
16 child is enrolled full time and regularly attending a public or
17 private school or any institution of higher education. Any child
18 adopted by a member after the member's retirement shall be a
19 beneficiary only if the child is adopted by the member for the
20 thirty (30) continuous months preceding the member's death. Any
21 child who is adopted by a member after the member's retirement and
22 such member dies accidentally or as a consequence of the performance
23 of the member's duty as a firefighter shall not be subject to the

1 thirty-month adoption requirement. This definition of beneficiary
2 shall be in addition to any other requirement set forth in this
3 article;

4 17. "Accumulated contributions" means the sum of all
5 contributions made by a member to the System and includes both
6 contributions deducted from the compensation of a member and
7 contributions of a member picked up and paid by the participating
8 municipality of the member. Accumulated contributions shall not
9 include any interest on the contributions of the member, interest on
10 any amount contributed by the municipality or state and any amount
11 contributed by the municipality or state; and

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

15 SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-106, as
16 last amended by Section 1, Chapter 345, O.S.L. 2007 (11 O.S. Supp.
17 2008, Section 49-106), is amended to read as follows:

18 Section 49-106. A. Any firefighter who reaches the
19 firefighter's normal retirement date shall be entitled, upon written
20 request, to retire from such service and be paid from the System a
21 monthly pension equal to the member's accrued retirement benefit;
22 provided, that the pension shall cease during any period of time the
23 member may thereafter serve for compensation in any municipal fire

1 department in the state. If such a member is reemployed by a
2 participating municipality in a position which is not covered by the
3 System, retirement shall also include receipt by such member of in-
4 service distributions from the System.

5 B. With respect to distributions under the System made for
6 calendar years beginning on or after January 1, 2005, the System
7 shall apply the minimum distribution incidental benefit
8 requirements, incidental benefit requirements, and minimum
9 distribution requirements of Section 401(a)(9) of the Internal
10 Revenue Code of 1986, as amended, in accordance with the final
11 regulations under Section 401(a)(9) of the Internal Revenue Code of
12 1986, as amended, which were issued in April 2002 and June 2004,
13 notwithstanding any provision of the System to the contrary. With
14 respect to distributions under the System made for calendar years
15 beginning on or after January 1, 2001 through December 31, 2004, the
16 System shall apply the minimum distribution requirements and
17 incidental benefit requirements of Section 401(a)(9) of the Internal
18 Revenue Code of 1986, as amended, in accordance with the regulations
19 under Section 401(a)(9) of the Internal Revenue Code of 1986, as
20 amended, which were proposed in January 2001, notwithstanding any
21 provision of the System to the contrary. Effective July 1, 1989,
22 notwithstanding any other provision contained herein to the
23 contrary, in no event shall commencement of distribution of the

1 accrued retirement benefit of a member be delayed beyond April 1 of
2 the calendar year following the later of:

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

5 2. The actual retirement date of the member.

6 C. Any member or beneficiary eligible to receive a monthly
7 benefit from the System may make an election to waive all or a
8 portion of monthly benefits.

9 D. If the requirements of Section 4 49-106.5 of this ~~act~~ title
10 are satisfied, a member who, by reason of attainment of normal
11 retirement date or age, is separated from service as a public safety
12 officer with the member's participating municipality, may elect to
13 have payment made directly to the provider for qualified health
14 insurance premiums by deduction from his or her monthly pension
15 payment, after December 31, 2006, in accordance with Section 402(1)
16 of the Internal Revenue Code of 1986, as amended.

17 SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-106.2, as
18 last amended by Section 2, Chapter 177, O.S.L. 2008 (11 O.S. Supp.
19 2008, Section 49-106.2), is amended to read as follows:

20 Section 49-106.2 A. Notwithstanding any other provision
21 contained herein to the contrary, the benefits payable to a member
22 from the System provided by employer contributions (including
23 contributions picked up by the employer under Section 414(h) of the

1 Internal Revenue Code of 1986, as amended) shall be subject to the
2 limitations of Section 415 of the Internal Revenue Code of 1986, as
3 amended, in accordance with the provisions of this section. The
4 limitations of this section shall apply in limitation years
5 beginning on or after July 1, 2007, except as otherwise provided
6 below.

7 B. Except as provided below, effective for limitation years
8 ending after December 31, 2001, any accrued retirement benefit
9 payable to a member as an annual benefit as described below shall
10 not exceed One Hundred Sixty Thousand Dollars (\$160,000.00),
11 automatically adjusted under Section 415(d) of the Internal Revenue
12 Code of 1986, as amended, for increases in the cost of living, as
13 prescribed by the Secretary of the Treasury or his delegate,
14 effective January 1 of each calendar year and applicable to the
15 limitation year ending with or within such calendar year. The
16 automatic annual adjustment of the dollar limitation in this
17 subsection under Section 415(d) of the Internal Revenue Code of
18 1986, as amended, shall apply to a member who has had a separation
19 from employment.

20 1. The member's annual benefit is a benefit that is payable
21 annually in the form of a straight life annuity. Except as provided
22 below, where a benefit is payable in a form other than a straight
23 life annuity, the benefit shall be adjusted to an actuarially

1 equivalent straight life annuity that begins at the same time as
2 such other form of benefit and is payable on the first day of each
3 month, before applying the limitations of this section. For a
4 member who has or will have distributions commencing at more than
5 one annuity starting date, the annual benefit shall be determined as
6 of each such annuity starting date (and shall satisfy the
7 limitations of this section as of each such date), actuarially
8 adjusting for past and future distributions of benefits commencing
9 at the other annuity starting dates. For this purpose, the
10 determination of whether a new starting date has occurred shall be
11 made without regard to Section 1.401(a)-20, Q&A 10(d), and with
12 regard to Section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax
13 Regulations.

- 14 2. No actuarial adjustment to the benefit shall be made for:
- 15 a. survivor benefits payable to a surviving spouse under
16 a qualified joint and survivor annuity to the extent
17 such benefits would not be payable if the member's
18 benefit were paid in another form,
 - 19 b. benefits that are not directly related to retirement
20 benefits such as a qualified disability benefit,
21 preretirement incidental death benefits, and
22 postretirement medical benefits, or

1 c. the inclusion in the form of a benefit of an automatic
2 benefit increase feature, provided, the form of
3 benefit is not subject to Section 417(e)(3) of the
4 Internal Revenue Code of 1986, as amended, and would
5 otherwise satisfy the limitations of this section, and
6 the System provides that the amount payable under the
7 form of benefit in any limitation year shall not
8 exceed the limits of this section applicable at the
9 annuity starting date, as increased in subsequent
10 years pursuant to Section 415(d) of the Internal
11 Revenue Code of 1986, as amended. For this purpose,
12 an automatic benefit increase feature is included in a
13 form of benefit if the form of benefit provides for
14 automatic, periodic increases to the benefits paid in
15 that form.

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

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

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

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

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

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

21 (2) the cessation or reduction of Social Security
22 supplements or qualified disability payments as

1 defined in Section 401(a)(11) of the Internal
2 Revenue Code of 1986, as amended.

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

- 11 (1) the interest rate and the mortality table or
12 other tabular factor, each as set forth in
13 subsection H of Section 49-100.9 of this title
14 for adjusting benefits in the same form, and
15 (2) a five percent (5%) interest rate assumption and
16 the applicable mortality table described in
17 Revenue Ruling 2001-62 for that annuity starting
18 date, or

19 d. Limitation Years Beginning On or After July 1, 2007.
20 For limitation years beginning on or after July 1,
21 2007, the actuarially equivalent straight life annuity
22 is equal to the greater of:

- 1 (1) the annual amount of the straight life annuity,
2 if any, payable to the member under the System
3 commencing at the same annuity starting date as
4 the member's form of benefit, and
5 (2) the annual amount of the straight life annuity
6 commencing at the same annuity starting date that
7 has the same actuarial present value as the
8 member's form of benefit, computed using a five
9 percent (5%) interest rate assumption and the
10 applicable mortality table described in Revenue
11 Ruling 2001-62 for that annuity starting date.

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

- 19 a. Annuity Starting Date in Plan Years Beginning After
20 2005. If the annuity starting date of the member's
21 form of benefit is in a plan year beginning after
22 2005, the actuarially equivalent straight life annuity
23 is equal to the greatest of:

- 1 (1) the annual amount of the straight life annuity
2 commencing at the same annuity starting date that
3 has the same actuarial present value as the
4 member's form of benefit, computed using the
5 interest rate and the mortality table or other
6 tabular factor each as set forth in subsection H
7 of Section 49-100.9 of this title for adjusting
8 benefits in the same form,
- 9 (2) the annual amount of the straight life annuity
10 commencing at the same annuity starting date that
11 has the same actuarial present value as the
12 member's form of benefit, computed using a five
13 and one-half percent (5.5%) interest rate
14 assumption and the applicable mortality table
15 described in Revenue Ruling 2001-62, and
- 16 (3) the annual amount of the straight life annuity
17 commencing at the same annuity starting date that
18 has the same actuarial present value as the
19 member's form of benefit, computed using:
- 20 (a) the rate of interest on thirty-year Treasury
21 securities as specified by the Commissioner
22 for the lookback month for the stability
23 period specified below. The lookback month

1 applicable to the stability period is the
2 fourth calendar month preceding the first
3 day of the stability period, as specified
4 below. The stability period is the
5 successive period of one plan year which
6 contains the annuity starting date for the
7 distribution and for which the applicable
8 interest rate remains constant, and

9 (b) the applicable mortality table described in
10 Revenue Ruling 2001-62,
11 divided by one and five one-hundredths (1.05).

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

14 (1) If the annuity starting date of the member's form
15 of benefit is in a plan year beginning in 2004 or
16 2005, the actuarially equivalent straight life
17 annuity is equal to the annual amount of the
18 straight life annuity commencing at the same
19 annuity starting date that has the same actuarial
20 present value as the member's form of benefit,
21 computed using whichever of the following
22 produces the greater annual amount:

1 (a) the interest rate and the mortality table or
2 other tabular factor, each as set forth in
3 subsection H of Section 49-100.9 of this
4 title for adjusting benefits in the same
5 form, and

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

9 (2) If the annuity starting date of the member's
10 benefit is on or after the first day of the first
11 plan year beginning in 2004 and before December
12 31, 2004, the application of this subparagraph b
13 shall not cause the amount payable under the
14 member's form of benefit to be less than the
15 benefit calculated under the System, taking into
16 account the limitations of this section, except
17 that the actuarially equivalent straight life
18 annuity is equal to the annual amount of the
19 straight life annuity commencing at the same
20 annuity starting date that has the same actuarial
21 present value as the member's form of benefit,
22 computed using whichever of the following
23 produces the greatest annual amount:

- 1 (a) the interest rate and mortality table or
2 other tabular factor, each as set forth in
3 subsection H of Section 49-100.9 of this
4 title for adjusting benefits in the same
5 form,
- 6 (b) i. the rate of interest on thirty-year
7 Treasury securities as specified by the
8 Commissioner for the lookback month for
9 the stability period specified below.
10 The lookback month applicable to the
11 stability period is the fourth calendar
12 month preceding the first day of the
13 stability period, as specified below.
14 The stability period is the successive
15 period of one plan year which contains
16 the annuity starting date for the
17 distribution and for which the
18 applicable interest rate remains
19 constant, and
- 20 ii. the applicable mortality table
21 described in Revenue Ruling 2001-62,
22 and

- 1 (c) i. the rate of interest on thirty-year
2 Treasury securities as specified by the
3 Commissioner for the lookback month for
4 the stability period specified below.
5 The lookback month applicable to the
6 stability period is the fourth calendar
7 month preceding the first day of the
8 stability period, as specified below.
9 The stability period is the successive
10 period of one plan year which contains
11 the annuity starting date for the
12 distribution and for which the
13 applicable interest rate remains
14 constant (as in effect on the last day
15 of the last plan year beginning before
16 January 1, 2004, under provisions of
17 the System then adopted and in effect),
18 and
19 ii. the applicable mortality table
20 described in Revenue Ruling 2001-62.

21 7. The foregoing limitation shall not be applicable with
22 respect to any member whose annual benefits from the System and
23 under all other defined benefit plans of the participating

1 municipality are less than Ten Thousand Dollars (\$10,000.00) for the
2 year or from any prior year, if such member has not at any time
3 participated in any defined contribution plan maintained by the
4 participating municipality.

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

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

1 under subsection B of this section shall be adjusted under paragraph
2 2 of this subsection, as modified by paragraph 3 of this subsection.

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

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

19 (1) the interest rate and the mortality table or
20 other tabular factor, each as set forth in
21 subsection H of Section 49-100.9 of this title,
22 or

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

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

5 (1) System Does Not Have Immediately Commencing
6 Straight Life Annuity Payable at Both Sixty-two
7 (62) Years of Age and the Age of Benefit
8 Commencement. If the annuity starting date for
9 the member's benefit is prior to sixty-two (62)
10 years of age and occurs in a limitation year
11 beginning on or after July 1, 2007, and the
12 System does not have an immediately commencing
13 straight life annuity payable at both sixty-two
14 (62) years of age and the age of benefit
15 commencement, the dollar limitation for the
16 member's annuity starting date is the annual
17 amount of a benefit payable in the form of a
18 straight life annuity commencing at the member's
19 annuity starting date that is the actuarial
20 equivalent of the dollar limitation under
21 subsection B of this section (adjusted under
22 subsection C of this section for years of
23 participation less than ten (10), if required)

1 with actuarial equivalence computed using a five
2 percent (5%) interest rate assumption and the
3 applicable mortality table for the annuity
4 starting date as described in Revenue Ruling
5 2001-62 (and expressing the member's age based on
6 completed calendar months as of the annuity
7 starting date).

8 (2) System Has Immediately Commencing Straight Life
9 Annuity Payable at Both Sixty-two (62) Years of
10 Age and the Age of Benefit Commencement. If the
11 annuity starting date for the member's benefit is
12 prior to sixty-two (62) years of age and occurs
13 in a limitation year beginning on or after July
14 1, 2007, and the System has an immediately
15 commencing straight life annuity payable at both
16 sixty-two (62) years of age and the age of
17 benefit commencement, the dollar limitation for
18 the member's annuity starting date is the lesser
19 of the limitation determined under division (1)
20 of this subparagraph b of this paragraph and the
21 dollar limitation under subsection B of this
22 section (adjusted under subsection C of this
23 section for years of participation less than ten

1 (10), if required) multiplied by the ratio of the
2 annual amount of the immediately commencing
3 straight life annuity under the System at the
4 member's annuity starting date to the annual
5 amount of the immediately commencing straight
6 life annuity under the System at sixty-two (62)
7 years of age, both determined without applying
8 the limitation of this section.

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

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

1 whichever of the following produces the smaller annual
2 amount:

3 (1) the interest rate and the mortality table or
4 other tabular factor, each as set forth in
5 subsection H of Section 49-100.9 of this title,
6 or

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

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

11 (1) System Does Not Have Immediately Commencing
12 Straight Life Annuity Payable at Both Sixty-five
13 (65) Years of Age and the Age of Benefit
14 Commencement. If the annuity starting date for
15 the member's benefit is after sixty-five (65)
16 years of age and occurs in a limitation year
17 beginning on or after July 1, 2007, and the
18 System does not have an immediately commencing
19 straight life annuity payable at both sixty-five
20 (65) years of age and the age of benefit
21 commencement, the dollar limitation at the
22 member's annuity starting date is the annual
23 amount of a benefit payable in the form of a

1 straight life annuity commencing at the member's
2 annuity starting date that is the actuarial
3 equivalent of the dollar limitation under
4 subsection B of this section (adjusted under
5 subsection C of this section for years of
6 participation less than ten (10), if required)
7 with actuarial equivalence computed using a five
8 percent (5%) interest rate assumption and the
9 applicable mortality table for the annuity
10 starting date as described in Revenue Ruling
11 2001-62 (and expressing the member's age based on
12 completed calendar months as of the annuity
13 starting date).

14 (2) System Has Immediately Commencing Straight Life
15 Annuity Payable at Both Sixty-five (65) Years of
16 Age and Age of Benefit Commencement. If the
17 annuity starting date for the member's benefit is
18 after sixty-five (65) years of age and occurs in
19 a limitation year beginning on or after July 1,
20 2007, and the System has an immediately
21 commencing straight life annuity payable at both
22 sixty-five (65) years of age and the age of
23 benefit commencement, the dollar limitation at

1 the member's annuity starting date is the lesser
2 of the limitation determined under division (1)
3 of subparagraph b of this paragraph and the
4 dollar limitation under subsection B of this
5 section (adjusted under subsection C of this
6 section for years of participation less than ten
7 (10), if required) multiplied by the ratio of the
8 annual amount of the adjusted immediately
9 commencing straight life annuity under the System
10 at the member's annuity starting date to the
11 annual amount of the adjusted immediately
12 commencing straight life annuity under the System
13 at sixty-five (65) years of age, both determined
14 without applying the limitations of this section.
15 For this purpose, the adjusted immediately
16 commencing straight life annuity under the System
17 at the member's annuity starting date is the
18 annual amount of such annuity payable to the
19 member, computed disregarding the member's
20 accruals after sixty-five (65) years of age but
21 including actuarial adjustments even if those
22 actuarial adjustments are used to offset
23 accruals; and the adjusted immediately commencing

1 straight life annuity under the System at sixty-
2 five (65) years of age is the annual amount of
3 such annuity that would be payable under the
4 System to a hypothetical member who is sixty-five
5 (65) years of age and has the same accrued
6 benefit as the member.

7 3. Notwithstanding the other requirements of this subsection,
8 no adjustment shall be made to the dollar limitation under
9 subsection B of this section to reflect the probability of a
10 member's death between the annuity starting date and sixty-two (62)
11 years of age, or between sixty-five (65) years of age and the
12 annuity starting date, as applicable, if benefits are not forfeited
13 upon the death of the member prior to the annuity starting date. To
14 the extent benefits are forfeited upon death before the annuity
15 starting date, such an adjustment shall be made. For this purpose,
16 no forfeiture shall be treated as occurring upon the member's death
17 if the System does not charge members for providing a qualified
18 preretirement survivor annuity, as defined in Section 417(c) of the
19 Internal Revenue Code of 1986, as amended, upon the member's death.

20 4. Notwithstanding any other provision to the contrary, for
21 limitation years beginning on or after January 1, 1997, if payment
22 begins before the member reaches sixty-two (62) years of age, the
23 reductions in the limitations in this subsection shall not apply to

1 a member who is a "qualified participant" as defined in Section
2 415(b)(2)(H) of the Internal Revenue Code of 1986, as amended.

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

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

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

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

18 2. The participating municipality (or a predecessor employer)
19 has not at any time maintained a defined contribution plan in which
20 the member participated (for this purpose, mandatory employee
21 contributions under a defined benefit plan, individual medical
22 accounts under Section 401(h) of the Internal Revenue Code of 1986,
23 as amended, and accounts for postretirement medical benefits

1 established under Section 419A(d)(1) of the Internal Revenue Code of
2 1986, as amended, are not considered a separate defined contribution
3 plan).

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

14 G. For limitation years beginning on or after January 1, 1995,
15 subsection C of this section, paragraph 1 of subsection D of this
16 section, and the proration provided under subparagraphs a and b of
17 paragraph 1 of subsection E of this section, shall not apply to a
18 benefit paid under the System as a result of the member becoming
19 disabled by reason of personal injuries or sickness, or amounts
20 received by the beneficiaries, survivors or estate of the member as
21 a result of the death of the member.

22 H. Effective for years beginning after December 31, 1997, if a
23 member purchases service under Sections 49-117.2 and 49-117.3 of

1 this title, which qualifies as "permissive service credit" pursuant
2 to Section 415(n) of the Internal Revenue Code of 1986, as amended,
3 the limitations of Section 415 of the Internal Revenue Code of 1986,
4 as amended, may be met by either:

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

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

10 I. Effective for years beginning after December 31, 1997, if a
11 member repays to the System any amounts received because of the
12 member's prior termination pursuant to Section 49-117.1 of this
13 title, such repayment shall not be taken into account for purposes
14 of Section 415 of the Internal Revenue Code of 1986, as amended,
15 pursuant to Section 415(k)(3) of the Internal Revenue Code of 1986,
16 as amended.

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

20 K. The State Board is hereby authorized to revoke the special
21 election previously made on June 21, 1991, under Internal Revenue
22 Code Section 415(b)(10).

1 SECTION 4. AMENDATORY Section 3, Chapter 345, O.S.L.
2 2007 (11 O.S. Supp. 2008, Section 106.4), is amended to read as
3 follows:

4 Section 49-106.4 A. An individual who has been designated,
5 pursuant to Section 401(a)(9)(E) of the Internal Revenue Code of
6 1986, as amended, as the beneficiary of a deceased member and who is
7 not the surviving spouse of the member, may elect, in accordance
8 with Section 402(c)(11) of the Internal Revenue Code of 1986, as
9 amended, and at the time and in the manner prescribed by the
10 Oklahoma Firefighters Pension and Retirement Board, to have a direct
11 trustee-to-trustee transfer of any portion of such beneficiary's
12 lump-sum distribution from the Oklahoma Firefighters Pension and
13 Retirement System after December 31, 2006, made to an individual
14 retirement account or individual retirement annuity (other than an
15 endowment contract) described in Section 408(a) or (b) of the
16 Internal Revenue Code of 1986, as amended (IRA), that is established
17 on behalf of such designated individual. If such transfer is made
18 then:

19 1. The transfer is treated as an eligible rollover distribution
20 for purposes of Section 402(c)(11) of the Internal Revenue Code of
21 1986, as amended;

22 2. The transferee IRA is treated as an inherited individual
23 retirement account or an inherited individual retirement annuity

1 (within the meaning of Section 408(d)(3)(C) of the Internal Revenue
2 Code of 1986, as amended), and must be titled in the name of the
3 deceased member, for the benefit of the beneficiary; and

4 3. The required minimum distribution rules of Section
5 401(a)(9)(B) (other than clause iv thereof) of the Internal Revenue
6 Code of 1986, as amended, apply to the transferee IRA.

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

10 C. The Oklahoma Firefighters Pension and Retirement Board shall
11 promulgate such rules as are necessary to implement the provisions
12 of this section.

13 SECTION 5. AMENDATORY 11 O.S. 2001, Section 49-109, as
14 last amended by Section 5, Chapter 345, O.S.L. 2007 (11 O.S. Supp.
15 2008, Section 49-109), is amended to read as follows:

16 Section 49-109. A. Whenever any firefighter serving in any
17 capacity in a regularly constituted fire department of a
18 municipality shall become so physically or mentally disabled while
19 in, or in consequence of, the performance of the firefighter's duty
20 as to prevent the effective performance of the firefighter's duties,
21 the State Board may, upon the firefighter's written request, or
22 without such request if the State Board deems it for the good of the
23 department, retire the firefighter from active service, and if so

1 retired, shall direct that the firefighter be paid from the System a
2 monthly pension equal to the greater of:

3 1. Fifty percent (50%) of the average monthly salary which was
4 paid to the firefighter during the last thirty (30) months of the
5 firefighter's service; or

6 2. Two and one-half percent (2 1/2%) of the firefighter's final
7 average salary multiplied by the member's years of credited service,
8 not to exceed thirty (30) years, provided such firefighter has
9 completed twenty (20) or more years of credited service.

10 B. If the disability ceases within two (2) years from the date
11 of the firefighter's disability retirement and before the
12 firefighter's normal retirement date, the formerly disabled person
13 shall be restored to active service at the salary attached to the
14 rank the firefighter held at the time of the firefighter's
15 disability retirement provided the firefighter is capable of
16 performing the duties of a firefighter. Whenever such disability
17 shall cease, such disability pension provided pursuant to paragraph
18 1 of subsection A of this section shall cease. If a firefighter
19 participates in the Oklahoma Firefighters Deferred Option Plan
20 pursuant to Section 49-106.1 of this title, the firefighter's
21 disability pension provided pursuant to this subsection shall be
22 reduced to account for the firefighter's participation in the
23 Oklahoma Firefighters Deferred Option Plan.

1 C. Whenever any firefighter, who has served in any capacity in
2 a regularly constituted fire department of a municipality of the
3 state, and who has served less than the firefighter's normal
4 retirement date, shall become so physically or mentally disabled
5 from causes not arising in the line of duty as to prevent the
6 effective performance of the firefighter's duties, the firefighter
7 shall be entitled to a pension during the continuance of said
8 disability based upon the firefighter's service period which shall
9 be fifty percent (50%) of the average monthly salary which was paid
10 to the firefighter during the last sixty (60) months of the
11 firefighter's service.

12 D. No firefighter shall accrue additional service time while
13 receiving a disability pension; provided further, that nothing
14 herein contained shall affect the eligibility of any firefighter to
15 apply for and receive a retirement pension after the firefighter's
16 normal retirement date; provided further, that no firefighter shall
17 receive retirement benefits from the System during the time the
18 firefighter is receiving disability benefits from the System. Any
19 member or beneficiary eligible to receive a monthly benefit pursuant
20 to this section may make an election to waive all or a portion of
21 monthly benefits.

22 E. If the requirements of Section 4 49-106.5 of this ~~act~~ title
23 are satisfied, a member who, by reason of disability, is separated

1 from service as a public safety officer with the member's
2 participating municipality, may elect to have payment made directly
3 to the provider for qualified health insurance premiums by deduction
4 from his or her monthly disability benefit, after December 31, 2006,
5 in accordance with Section 402(1) of the Internal Revenue Code of
6 1986, as amended.

7 SECTION 6. AMENDATORY 11 O.S. 2001, Section 49-138, as
8 last amended by Section 4, Chapter 203, O.S.L. 2005 (11 O.S. Supp.
9 2008, Section 49-138), is amended to read as follows:

10 Section 49-138. A. Any member of a regularly constituted fire
11 department of any municipality who is now serving or may hereafter
12 serve in the Armed Forces of the United States whether such service
13 is voluntary or involuntary, who shall have been a member of such
14 fire department at the time of entering such service, shall be
15 entitled to have the whole of the time of such service applied under
16 the provisions of Section 49-106 of this title, so far as the same
17 applies to a service pension; provided further, that the
18 municipality shall continue its payment into said pension fund, to
19 the same force and effect as though the member were in the actual
20 service of such fire department; provided, that any person who is
21 eligible for such service but who shall have volunteered for
22 military or naval service for a period not to exceed five (5) years
23 shall likewise be entitled to all of the benefits of Sections 49-138

1 through 49-142 of this title for the full period of such service or
2 enlistment; provided further, that only one such period of voluntary
3 service shall be considered hereunder. If such person shall
4 reenlist, unless he is required to do so by law, he shall not
5 thereafter be entitled to the provisions of this subsection. The
6 provisions of this subsection shall not apply where any such person
7 dies during the period of said service or enlistment, and shall not
8 entitle the surviving spouse or children to any benefits, and shall
9 not apply to any member who shall have served on active duty
10 (including initial active duty) for training purposes only and/or
11 inactive duty training.

12 B. Effective February 1, 1997, credited service received
13 pursuant to this section or credited service for wartime military
14 service received as otherwise provided by law shall be used in
15 determining the member's retirement benefit but shall not be used in
16 determining years of service for retirement, vesting purposes or
17 eligibility for participation in the Oklahoma Firefighters Deferred
18 Option Plan. For a member of the System hired on or after July 1,
19 2003, if the military service credit authorized by this section is
20 used to compute the retirement benefit of the member and the member
21 retires from the System, such military service credit shall not be
22 used to compute the retirement benefit in any other retirement
23 system created pursuant to the Oklahoma Statutes and the member may

1 receive credit for such service only in the retirement system from
2 which the member first retires.

3 C. A member who retires or elects to participate in the
4 Oklahoma Firefighters Deferred Option Plan on or after July 1, 1998,
5 shall be entitled to prior service credit, not to exceed five (5)
6 years, for those periods of military service on active duty prior to
7 membership in the Oklahoma Firefighters Pension and Retirement
8 System.

9 For purposes of this subsection, "military service" means
10 service in the Armed Forces of the United States by honorably
11 discharged persons during the following time periods, as reflected
12 on such person's Defense Department Form 214, as follows:

- 13 1. During the following periods, including the beginning and
14 ending dates, and only for the periods served, from:
- 15 a. April 6, 1917, to November 11, 1918, commonly referred
16 to as World War I,
 - 17 b. September 16, 1940, to December 7, 1941, for members
18 of the 45th Division,
 - 19 c. December 7, 1941, to December 31, 1946, commonly
20 referred to as World War II,
 - 21 d. June 27, 1950, to January 31, 1955, commonly referred
22 to as the Korean Conflict or the Korean War,

1 e. February 28, 1961, to May 7, 1975, commonly referred
2 to as the Vietnam era, except that:
3 (1) for the period from February 28, 1961, to August
4 4, 1964, military service shall only include
5 service in the Republic of Vietnam during that
6 period, and
7 (2) for purposes of determining eligibility for
8 education and training benefits, such period
9 shall end on December 31, 1976, or
10 f. August 1, 1990, to December 31, 1991, commonly
11 referred to as the Gulf War, the Persian Gulf War, or
12 Operation Desert Storm, but excluding any person who
13 served on active duty for training only, unless
14 discharged from such active duty for a service-
15 connected disability;
16 2. During a period of war or combat military operation other
17 than a conflict, war or era listed in paragraph 1 of this
18 subsection, beginning on the date of Congressional authorization,
19 Congressional resolution, or Executive Order of the President of the
20 United States, for the use of the Armed Forces of the United States
21 in a war or combat military operation, if such war or combat
22 military operation lasted for a period of ninety (90) days or more,
23 for a person who served, and only for the period served, in the area

1 of responsibility of the war or combat military operation, but
2 excluding a person who served on active duty for training only,
3 unless discharged from such active duty for a service-connected
4 disability, and provided that the burden of proof of military
5 service during this period shall be with the member, who must
6 present appropriate documentation establishing such service.

7 D. An eligible member pursuant to subsection C of this section
8 shall include only those persons who shall have served during the
9 times or in the areas prescribed in subsection C of this section,
10 and only if such person provides appropriate documentation in such
11 time and manner as required by the System to establish such military
12 service prescribed in this section, or for service pursuant to
13 division (1) of subparagraph e of paragraph 1 of subsection C of
14 this section, those persons who were awarded service medals, as
15 authorized by the United States Department of Defense as reflected
16 in the veteran's Defense Department Form 214, related to the Vietnam
17 Conflict for service prior to August 5, 1964. The provisions of
18 subsection C of this section shall include military retirees, whose
19 retirement was based only on active service, that have been rated as
20 having twenty percent (20%) or greater service-connected disability
21 by the Veterans Administration or the Armed Forces of the United
22 States. The provisions of subsection C of this section shall not
23 apply to any person who shall have served on active duty for

1 training purposes only unless discharged from active duty for a
2 service-connected disability.

3 E. Notwithstanding any provision herein to the contrary,
4 contributions:

5 1. Contributions, benefits and service credit with respect to
6 qualified military service shall be provided in accordance with
7 Section 414(u) of the Internal Revenue Code of 1986, which is in
8 accordance with the Uniformed Services Employment and Reemployment
9 Rights Act of 1994, (USERRA) as amended. The municipality's
10 contributions to the System for a member covered by USERRA are due
11 when such a member makes up his or her contributions that were
12 missed due to his or her qualified military service; and

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

19 F. Members or beneficiaries shall make application to the
20 System for credited service related to wartime military service.
21 Interest on additional benefits related to wartime military service
22 owed by the System to a retired member or beneficiary as provided by
23 law shall cease accruing one (1) year after the effective date the

1 additional benefits are payable by the System or July 1, 2000,
2 whichever is later, if the member has not applied to the System for
3 credited service related to such wartime military service.

4 SECTION 7. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated
9 2-12-09 - DO PASS, As Coauthored.