STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2273

By: McDaniel (Randy) of the House

and

Smalley of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Police Pension and Retirement System; amending 11 O.S. 2011, Sections 50-101, 50-111.1, as amended by Section 2, Chapter 44, O.S.L. 2014 and 50-111.4, as amended by Section 1, Chapter 23, O.S.L. 2015 (11 O.S. Supp. 2015, Sections 50-111.1 and 50-111.4), which relate to disposition of certain contributed amounts; modifying definitions; modifying references to certain individual retirement accounts; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 2011, 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. <u>Effective July 1, 2016, the following shall apply in computing final average salary:</u>

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~~ only paid base salary on which required contributions have been made ~~may~~ shall be used in computing ~~the~~ a member's final average salary~~.~~,

b. for purposes of determining the normal disability benefit only, final average salary shall be based on the member's total service if less than thirty (30) months,

c. ~~In~~ 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.~~

d. ~~For~~ 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~~.~~, and

~~d. Effective January 1, 2008, base salary shall also include base salary, as described above for services, 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 calendar 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 base 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 calendar 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.~~

e. ~~Effective~~ 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 paid base salary for the limitation 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~~ July 1, 2016, any compensation described in subparagraph a of this paragraph that is not described in subparagraph b of this paragraph.

a. Paid base salary shall include only:

(1) normal compensation paid on a regularly scheduled pay period, including, but not limited to, regular pay for holidays, paid time off, vacation or annual leave, sick leave or compensatory time in lieu of overtime, any lump sum payment paid in lieu of a normal wage increase, provided such lump sum payment is retroactively applied over the prior twelve-month period ending with the payment date, compensation for bomb squad pay, education pay, incentive pay, K-9 pay, negotiation pay, shift differential, sniper pay, SWAT team pay, emergency response team pay, any

other special unit pay, and any incremental increase in compensation which is not included by the employer in a member's regular base pay for salary increase purposes but is paid by the employer to the member for group health benefits based on an arrangement with a participating municipality that was in place on December 31, 2015, so long as the arrangement continues uninterrupted for a member employed by a participating municipality on June 30, 2016, who has not since terminated employment and been rehired by such participating municipality,

(2) any amount of elective salary reduction under Section 125 of the Internal Revenue Code of 1986, as amended, that would have been treated as paid base salary but for the salary deferral reduction agreement,

(3) 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, that would have been treated as paid base salary but for the salary deferral reduction agreement,

(4) any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986, as amended, that would have been treated as paid base salary but for the salary deferral reduction agreement,

(5) any amount of elective salary reduction under Section 401(k) of the Internal Revenue Code of 1986, as amended, that would have been treated as paid base salary but for the salary deferral reduction agreement,

(6) any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986, as amended,

(7) educational allowances paid to obtain training certification or pursue an advanced degree,

(8) longevity payments made to members based upon a standardized plan which recognizes length of service to the participating municipality,

(9) paid base salary shall also include base salary, as described in divisions (1) thru (8) of subparagraph a of this paragraph, for services, 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 calendar 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,

(10) any payments not described in divisions (1) thru (9) of subparagraph a of this paragraph shall not be considered paid base 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 calendar 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,

(11) back pay, within the meaning of Section 1.415(c)2(g)(8) of the Income Tax Regulations, shall be treated as paid base salary for the limitation 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, and

(12) paid base salary shall also include differential wage payments under Section 414(u)(12) of the Internal Revenue Code of 1986, as amended.

b. Notwithstanding anything to the contrary in this section, paid base salary shall not include any:

(1) fringe benefits, reimbursements, or increases in compensation due to reimbursements to the extent not specifically included above in subparagraph a of this paragraph,

(2) incremental increase in compensation which is not included by the employer in a member's regular base pay for salary increase purposes but is paid by the employer to the member for group health benefits not otherwise included above in division (1) of subparagraph a of this paragraph,

(3) insurance benefits, including any reimbursements thereof, or insurance proceeds of any type not

otherwise included above in division (1) of subparagraph a of this paragraph,

(4) bonuses, including signing bonuses, lump-sum payments or stipends made to the member not otherwise included above in division (1) of subparagraph a of this paragraph,

(5) overtime compensation,

(6) payments whether prior to or upon termination of employment for accumulated unused vacation or unused annual leave, accumulated unused sick leave, or accumulated unused paid time off or other unused leave,

(7) payments made in error to a member,

(8) payments made by the participating municipality for services rendered by the member, which services are not part of the member's job duties and responsibilities of his or her job position with the participating municipality,

(9) severance pay,

(10) unemployment payments, and

(11) uniform and equipment allowances; 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. 2011, Section 50-111.1, as amended by Section 2, Chapter 44, O.S.L. 2014 (11 O.S. Supp. 2015, Section 50-111.1), is amended to read as follows:

Section 50-111.1 A. A member who terminates service before normal retirement date, other than by death or disability shall, upon application filed with the State Board, be refunded from the Fund an amount equal to the accumulated contributions the member has made to the Fund, but excluding any interest or any amount contributed by the municipality or state. If a member withdraws the member's accumulated contributions, such member shall not have any recourse against the System for any type of additional benefits including, but not limited to, disability benefits. If a member has completed ten (10) years of credited service at the date of termination, the member may elect a vested benefit in lieu of receiving the member's accumulated contributions.

If the member who has completed ten (10) or more years of credited service elects the vested benefit, the member shall be entitled to a monthly retirement annuity commencing on the date the member reaches fifty (50) years of age or the date the member would have had twenty (20) years of credited service had the member's employment continued uninterrupted, whichever is later. The annual

amount of such retirement annuity shall be equal to two and one-half percent (2 1/2%) of the annualized final average salary multiplied by the number of years of credited service.

If a terminated member has elected a vested benefit and subsequently returns to work as a police officer of a participating municipality, their vested benefit will be set aside and prior credited service will be reinstated.

B. If a member who terminates employment and elects a vested benefit dies prior to being eligible to receive benefits, the member's beneficiary shall be entitled to the member's normal monthly accrued retirement benefits on the date the deceased member would have been eligible to receive the benefit.

C. Whenever a member has terminated or hereafter terminates covered employment and has withdrawn or hereafter withdraws the member's accumulated contributions and has rejoined or hereafter rejoins the System, the member, upon proper application and approval by the Board, may pay to the System the sum of the accumulated contributions the member has withdrawn or hereafter withdraws plus ten percent (10%) annual interest from the date of withdrawal and shall receive the same benefits as if the member had never withdrawn the contributions. ~~Effective July 1, 2003, a~~ A lump-sum payment for repayment of any amounts received because of a member's prior termination may be repaid by trustee-to-trustee transfers of non-Roth funds from a Section 403(b) annuity, an eligible Section 457(b)

plan, and/or a Section 401(a) qualified plan. Those members who at the time of termination of employment could not withdraw any of their accumulated contributions shall receive credited service for the time employed as an officer prior to any such termination upon proper application and approval by the Board. To receive credit for such service, all required contributions and interest shall be paid within ninety (90) days of Board approval of the application. The provisions of this subsection shall not apply to any member who is receiving benefits from the System as of July 1, 1987.

D. If an active member dies and does not leave a beneficiary, the accumulated contributions made to the System by the member shall be paid to the estate of the member.

SECTION 3. AMENDATORY 11 O.S. 2011, Section 50-111.4, as amended by Section 1, Chapter 23, O.S.L. 2015 (11 O.S. Supp. 2015, Section 50-111.4), is amended to read as follows:

Section 50-111.4 A. The Oklahoma Police Pension and Retirement Board shall adopt rules for computation of the purchase price for transferred credited service. These rules shall base the purchase price for each year purchased on the actuarial cost of the incremental projected benefits to be purchased. The purchase price shall represent the present value of the incremental projected benefits discounted according to the member's age at the time of purchase. Incremental projected benefits shall be the difference between the projected benefit the member would receive without

purchasing the transferred credited service and the projected benefit after purchase of the transferred credited service computed as of the earliest age at which the member would be able to retire. The computation shall assume an unreduced benefit and be computed using interest and mortality assumptions consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation.

B. In the event that the member is unable to pay the purchase price provided for in this section by the due date, the Oklahoma Police Pension and Retirement Board shall permit the members to amortize the purchase price over a period not to exceed sixty (60) months. Payments shall be made by payroll deductions unless the Oklahoma Police Pension and Retirement Board permits an alternate payment source. The amortization shall include interest in an amount not to exceed the actuarially assumed interest rate adopted by the Oklahoma Police Pension and Retirement Board for investment earnings each year. Any member who ceases to make payment, terminates, retires or dies before completing the payments provided for in this section shall receive prorated service credit for only those payments made, unless the unpaid balance is paid by the member, his or her estate or successor in interest within six (6) months after the member's death, termination of employment or retirement, provided no retirement benefits shall be payable until the unpaid balance is paid, unless the member or beneficiary

affirmatively waives the additional six-month period in which to pay the unpaid balance. Notwithstanding anything herein to the contrary, lump-sum payments for a transferred credited service purchase may be made by a trustee-to-trustee transfer of non-Roth 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), and/or a Code Section 401(a) qualified plan; or 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). The Oklahoma Police Pension and Retirement Board shall develop such procedures and may require such information from the distributing plan as it deems necessary to reasonably conclude that a potential rollover contribution is a valid rollover contribution under Section 1.401(a)(31)-1, Q&A-14(b)(2), of the Income Tax Regulations. Roth ~~IRAs~~ accounts and Coverdell Education Savings Accounts shall not be used to purchase transferred credited service. A member making installment payments shall have the option of making a cash lump-sum payment for the balance of the actuarial purchase price with interest due through

the date of payment by a trustee-to-trustee transfer of non-Roth 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), and/or a Code Section 401(a) qualified plan; or 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~~ accounts and Coverdell Education Savings Accounts shall not be used to purchase transferred credited service. The State Board shall promulgate such rules as are necessary to implement the provisions of this subsection.

SECTION 4. This act shall become effective July 1, 2016.

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

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