STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 602 By: Shaw

AS INTRODUCED

An Act relating to the Oklahoma Police Pension and Retirement System; amending 11 O.S. 2011, Sections 50-101, 50-109 and 50-110, which relate to definitions and contribution amounts; modifying definitions; authorizing election by municipal police offers performing law enforcement duties for counties; requiring county to make employer contributions; requiring officer to make employee contributions; providing for codification; 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; <u>and shall also include an officer who is employed by a county, who performs law enforcement services as the direct employee of a county, or who performs law enforcement services for a county pursuant to an agreement between the municipality which is the regular employer of the officer and a county;</u>

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~~ employer" means a municipality which is making contributions to the System on behalf of its officers and any county which employs an officer that makes an election to continue participation in the System pursuant to Section 2 of this act either because the officer becomes the direct employee of a county or because the officer performs law enforcement services for a county pursuant to an agreement between the municipality that is the regular employer of the officer and a county. 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 <u>and any county which employs an officer pursuant to Section 2 of this act</u>;

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 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. 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 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

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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50-101.1A of Title 11, unless there is created a duplication in numbering, reads as follows:

A. Effective July 1, 2015, any officer employed by a municipality that is an eligible employer of the Oklahoma Police Pension and Retirement System who performs law enforcement services as the direct employee of a county or who performs law enforcement service for a county pursuant to an agreement between the municipality, which is the regular employer of the officer, and a county may elect to continue participation in the Oklahoma Police Pension and Retirement System for any period of time the officer is either a direct employee of a county or for any period of time the officer is performing law enforcement services pursuant to a

contract between the municipality, which is the regular employer of the officer, and a county.

B. The county which is the direct employer of an officer making the election authorized by subsection A of this section shall, for all purposes of Sections 50-101 et seq. of Title 11 of the Oklahoma Statutes, be deemed the employer of the officer and shall be required to make employer contributions as required by Section 50-109 of Title 11 of the Oklahoma Statutes.

C. The officer shall continue to make the required employee contributions pursuant to Section 50-110 of Title 11 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 11 O.S. 2011, Section 50-109, is amended to read as follows:

Section 50-109. Any municipality <u>or county required by Section 2 of this act</u> participating in the System shall appropriate funds, for the use and benefit of the System, as provided in the following schedule:

1. Prior to July 1, 1991, a minimum of ten percent (10%) of the actual paid base salary of each member of the System employed by the municipality;

2. Beginning July 1, 1991, a minimum of ten and one-half percent (10 1/2%) of the actual paid base salary of each member of the System employed by the municipality;

3. Beginning July 1, 1992, a minimum of eleven percent (11%) of the actual paid base salary of each member of the System employed by the municipality;

4. Beginning July 1, 1993, a minimum of eleven and one-half percent (11 1/2%) of the actual paid base salary of each member of the System employed by the municipality;

5. Beginning July 1, 1994, a minimum of twelve percent (12%) of the actual paid base salary of each member of the System employed by the municipality;

6. Beginning July 1, 1995, a minimum of twelve and one-half percent (12 1/2%) of the actual paid base salary of each member of the System employed by the municipality; and

7. Beginning July 1, ~~1996~~ 2015, a minimum of thirteen percent (13%) of the actual paid base salary of each member of the System employed by the municipality or county pursuant to Section 2 of this act.

The sum appropriated shall be paid to the System within ten (10) days following the payroll period on which the contribution is based.

The state shall make such appropriation as is necessary to assure the retirement benefits provided by the article.

SECTION 4. AMENDATORY 11 O.S. 2011, Section 50-110, is amended to read as follows:

Section 50-110. A. Each member in the System shall contribute to the System a minimum of eight percent (8%) of the member's actual paid base salary.

At the option of the participating municipality or county pursuant to the provisions of Section 2 of this act, the participating municipality or county may pay all or any part of the member's required contribution. The sums contributed shall be paid to the System as provided in this article within ten (10) days following the payroll period on which the contributions are based. Amounts deducted from the salary of a member and not paid to the System after thirty (30) days from each ending payroll date shall be subject to a monthly late charge of one and one-half percent (1 1/2%) of the unpaid balance to be paid by the municipality to the System. All funds received by a participating municipality or county for police retirement purposes shall be forwarded to the State Board for credit to the Fund.

B. Each municipality or county shall pick up under the provisions of Section 414(h)(2) of the Internal Revenue Code of 1986 and pay the contribution which the member is required by law to make to the System for all compensation earned after ~~December 31, 1988~~ July 1, 2015. Although the contributions so picked up are designated as member contributions, such contributions shall be treated as contributions being paid by the municipality or county in lieu of contributions by the member in determining tax treatment

under the Internal Revenue Code of 1986 and such picked up contributions shall not be includable in the gross income of the member until such amounts are distributed or made available to the member or the beneficiary of the member. The member, by the terms of this System, shall not have any option to choose to receive the contributions so picked up directly and the picked up contributions must be paid by the municipality or county to the System.

Member contributions which are picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date on which member contributions were picked up by the municipality or county. Member contributions so picked up shall be included in gross salary for purposes of determining benefits and contributions under the System.

The municipality or county shall pay the member contributions from the same source of funds used in paying salary to the member, by effecting an equal cash reduction in gross salary of the member.

SECTION 5. This act shall become effective July 1, 2015.

SECTION 6. 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.

55-1-464 LG 2/18/2016 7:09:31 PM