

CS for ESB 2130

THE HOUSE OF REPRESENTATIVES
Tuesday, April 6, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 2130

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2130 - By:
BARRINGTON of the Senate and ARMES of the House.

[retirement - Oklahoma Firefighters Pension and Retirement System -
modifying definition - make irrevocable election - specifying certain election -
survivor benefits – Oklahoma Law Enforcement Retirement System –
retirement based on age and years of service -
emergency]

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

- 1 SECTION 1. AMENDATORY 11 O.S. 2001, Section 49-100.1, as last amended
- 2 by Section 1, Chapter 128, O.S.L. 2003 (11 O.S. Supp. 2009, Section 49-100.1), is
- 3 amended to read as follows:
- 4 Section 49-100.1 As used in this article:
- 5 1. "System" means the Oklahoma Firefighters Pension and Retirement System and
- 6 all predecessor municipal firefighters pension and retirement systems;
- 7 2. "Article" means Article 49 of this title;
- 8 3. "State Board" means the Oklahoma Firefighters Pension and Retirement Board;
- 9 4. "Local board" means the local firefighters pension and retirement boards;
- 10 5. "Fund" means the Oklahoma Firefighters Pension and Retirement Fund;

1 6. "Member" means all eligible firefighters of a participating municipality or a fire
2 protection district who perform the essential functions of fire suppression, prevention,
3 and life safety duties in a fire department. The term "member" shall include but not be
4 limited to the person serving as fire chief of any participating municipality, provided that
5 a person serving as fire chief of a participating municipality shall meet the age, agility,
6 physical and other eligibility requirements required by law at the time said person
7 becomes a member of the System. Effective July 1, 1987, a member does not include a
8 "leased employee". The term "leased employee" means any person (other than an
9 employee of the recipient) who pursuant to an agreement between the recipient and any
10 other person ("leasing organization") has performed services for the recipient (or for the
11 recipient and related persons determined in accordance with Section 414(n)(6) of the
12 Internal Revenue Code of 1986, as amended) on a substantially full-time basis for a
13 period of at least one year, and such services are performed under primary direction or
14 control by the recipient. Contributions or benefits provided a leased employee by the
15 leasing organization which are attributable to services performed for the recipient
16 employer shall be treated as provided by the recipient employer. A leased employee shall
17 not be considered an employee of the recipient if the requirements of the safe harbor
18 provisions of Section 414(n)(5) of the Internal Revenue Code of 1986, as amended, are
19 satisfied. Effective July 1, 1999, any individual who agrees with the participating
20 municipality that the individual's services are to be performed as a leased employee or an
21 independent contractor shall not be a member regardless of any classification as a

1 common law employee by the Internal Revenue Service or any other governmental
2 agency, or any court of competent jurisdiction;

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

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

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

21 10. "Disability" means the complete inability of the firefighter to perform any and
22 every duty of ~~his~~ the firefighter's regular occupation; provided further, that once benefits

1 have been paid for twenty-four (24) months the provisions of Section 49-110 of this title
 2 shall apply to the firefighter;

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

5 12. "Eligible employer" means any municipality with a municipal fire department
 6 or a fire protection district with an organized fire department;

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

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

1 treated as if the member did not make such an election. Only salary on which required
 2 contributions have been made may be used in computing final average salary.

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

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

21 Effective January 1, 2008, gross salary shall also include gross salary, as described
 22 above, for services, but paid by the later of two and one-half (2 1/2) months after a

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

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

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

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

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

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

20 17. "Accumulated contributions" means the sum of all contributions made by a
21 member to the System and includes both contributions deducted from the compensation
22 of a member and contributions of a member picked up and paid by the participating

1 municipality of the member. Accumulated contributions shall not include any interest on
 2 the contributions of the member, interest on any amount contributed by the municipality
 3 or state and any amount contributed by the municipality or state; and

4 18. "Limitation year" means the year used in applying the limitations of Section
 5 415 of the Internal Revenue Code of 1986, which year shall be the calendar year.

6 SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-106.1, as last amended
 7 by Section 1, Chapter 177, O.S.L. 2008 (11 O.S. Supp. 2009, Section 49-106.1), is
 8 amended to read as follows:

9 Section 49-106.1 A. In lieu of terminating employment and accepting a service
 10 retirement pension pursuant to Sections 49-101 and 49-106 of this title, any member of
 11 the Oklahoma Firefighters Pension and Retirement System who has not less than twenty
 12 (20) years of creditable service and who is eligible to receive a service retirement pension
 13 may elect to participate in the Oklahoma Firefighters Deferred Option Plan and defer
 14 the receipts of benefits in accordance with the provisions of this section.

15 B. For purposes of this section, creditable service shall include service credit
 16 reciprocally recognized pursuant to Sections 49-100.1 through 49-100.8 and Sections 49-
 17 101, 49-101.1 and 49-101.2 of this title but for eligibility purposes only.

18 C. The duration of participation in the Oklahoma Firefighters Deferred Option
 19 Plan for active firefighters shall not exceed five (5) years. Participation in the Oklahoma
 20 Firefighters Deferred Option Plan must begin the first day of a month and end on the
 21 last day of a month. At the conclusion of a member's participation in the Oklahoma
 22 Firefighters Deferred Option Plan, the member shall terminate employment with all

1 participating municipalities as a firefighter, and shall start receiving the member's
2 accrued monthly retirement benefit from the System. Such a member may be
3 reemployed by a participating municipality but only in a position not covered under the
4 System, and receive in-service distributions of such member's accrued monthly
5 retirement benefit from the System.

6 D. When a member begins participation in the Oklahoma Firefighters Deferred
7 Option Plan, the contribution of the member shall cease. The employer contributions
8 shall continue to be paid in accordance with subsection B of Section 49-122 of this title.
9 Employer contributions for members who elect the Oklahoma Firefighters Deferred
10 Option Plan shall be credited equally to the Oklahoma Firefighters Pension and
11 Retirement System and to the member's Oklahoma Firefighters Deferred Option Plan
12 account. The monthly retirement benefits that would have been payable had the
13 member elected to cease employment and receive a service retirement shall be paid into
14 the member's Oklahoma Firefighters Deferred Option Plan account.

15 E. 1. A member who participates in this plan shall be eligible to receive cost of
16 living increases.

17 2. A member who participates in this plan shall earn interest at a rate of two
18 percentage points below the rate of return of the investment portfolio of the System, but
19 no less than the actuarial assumed interest rate as certified by the actuary in the yearly
20 evaluation report of the actuary. The interest shall be credited to the individual account
21 balance of the member on an annual basis.

1 F. A member in the plan shall receive, at the option of the member, a lump sum
 2 payment from the account equal to the payments to the account or an annuity based
 3 upon the account of the member or may elect any other method of payment if approved
 4 by the Board of Trustees. If a member becomes so physically or mentally disabled while
 5 in, or in consequence of, the performance of his or her duty as to prevent the effective
 6 performance of his or her duties that the State Board approves an in line of duty
 7 disability pension, the payment from the account shall be an in line of duty disability
 8 payment. Notwithstanding any other provision contained herein to the contrary,
 9 commencement of distributions under the Oklahoma Firefighters Deferred Option Plan
 10 shall be no later than the time as set forth in subsection B of Section 49-106 of this title.

11 G. If a member dies while maintaining an account balance in the plan the System
 12 shall pay to the designated recipient or recipients of the member, or if there is no
 13 designated recipient or if the designated recipient predeceases the member, to the spouse
 14 of the member, or if there is no spouse or if the spouse predeceases the member, to the
 15 estate of the member a lump sum payment equal to the account balance of the member.
 16 If such member was receiving, or eligible to receive, an in line of duty disability pension
 17 at the time of his or her death, payment of the account balance shall be an in line of duty
 18 disability payment. If a designated recipient is the surviving spouse of the member, the
 19 surviving spouse shall receive his or her portion of the account balance of the member
 20 pursuant to subsection F of this section. The surviving spouse, whether or not he or she
 21 is a designated recipient of the member, may elect to receive his or her portion of the
 22 account balance of the member in the same manner as was applicable to the member.

1 H. In lieu of participating in the Oklahoma Firefighters Deferred Option Plan
2 pursuant to subsections A, B, C, D, E and F of this section, a member may elect to
3 participate in the Oklahoma Firefighters Deferred Option Plan pursuant to this
4 subsection as follows:

5 1. For purposes of this subsection and subsection I of this section, the following
6 definitions shall apply:

- 7 a. “back drop date” means the member’s normal retirement date or the
8 date five (5) years before the member elects to participate in the
9 Oklahoma Firefighters Deferred Option Plan, whichever date is later,
10 b. “termination date” means the date the member elects to participate in
11 the Oklahoma Firefighters Deferred Option Plan pursuant to this
12 subsection, and the date the member terminates employment with all
13 participating municipalities as an active firefighter,
14 c. “earlier attained credited service” means the credited service earned by
15 a member as of the back drop date,-and
16 d. “deferred benefit balance” means all monthly retirement benefits that
17 would have been payable had the member elected to cease employment
18 on the back drop date and receive a service retirement from the back
19 drop date to the termination date, all the member’s contributions and
20 one-half (1/2) of the employer contributions from the back drop date to
21 the termination date, with interest based on how the benefit would
22 have accumulated on a compound annual basis as if the member had

1 participated in the Oklahoma Firefighters Deferred Option Plan
 2 pursuant to subsections A, B, C, D, E and F of this section from the
 3 back drop date to the termination date; and

4 2. At the termination date, the monthly pension benefit shall be determined based
 5 on earlier attained credited service and on the final average salary as of the back drop
 6 date. The member's individual deferred option account shall be credited with an amount
 7 equal to the deferred benefit balance, the member shall terminate employment with all
 8 participating municipalities as a firefighter, and shall start receiving the member's
 9 accrued monthly retirement benefit from the System. Such a member may be
 10 reemployed by a participating municipality but only in a position not covered under the
 11 System, and receive in-service distributions of such member's accrued monthly
 12 retirement benefit from the System. The provisions of subsections B, C, E, F and G of
 13 this section shall apply to this subsection. A member shall not participate in the
 14 Oklahoma Firefighters Deferred Option Plan pursuant to this subsection if the member
 15 has elected to participate in the Oklahoma Firefighters Deferred Option Plan pursuant
 16 to subsections A, B, C, D, E and F of this section.

17 I. Certain surviving spouses and members shall be eligible to participate in the
 18 Oklahoma Firefighters Deferred Option Plan pursuant to subsection H of this section
 19 and this subsection.

20 1. For purposes of this subsection, the following definitions shall apply:

- 21 a. "back drop election date" means the date the surviving spouse or
 22 member elects to commence participation in the Oklahoma

1 Firefighters Deferred Option Plan pursuant to subsection H of this
 2 section and this subsection,

3 b. “interest” means the actuarial assumed interest rate as certified by the
 4 actuary in the yearly evaluation report of the actuary, and

5 c. “monthly adjustment amount” means the difference between the
 6 monthly pension prior to the back drop election and the adjusted
 7 monthly pension due to the back drop election;

8 ~~d. “back drop pension adjustment amount” means the sum of all the~~
 9 ~~monthly adjustment amounts adjusted for interest from the pension~~
 10 ~~commencement date to the back drop election date, and~~

11 ~~e. “deferred benefit balance adjustment amount” means the interest on~~
 12 ~~the deferred benefit balance from the pension commencement date to~~
 13 ~~the back drop election date.~~

14 2. If a member who has more than twenty (20) years of creditable service and is
 15 eligible to receive a service retirement pension dies on or after ~~the effective date of this~~
 16 ~~act~~ June 4, 2007, and prior to terminating employment, the member’s surviving spouse
 17 shall be eligible to elect to receive a benefit determined as if the member had elected to
 18 participate in the Oklahoma Firefighters Deferred Option Plan in accordance with
 19 subsection H of this section on the day immediately preceding such member’s death. The
 20 surviving spouse must make any such election within one (1) year from the date of the
 21 member’s death. If such election is made, the monthly pension such surviving spouse is
 22 ~~receiving, or is entitled to receive,~~ shall be adjusted in accordance with the provisions of

1 subsection H of this section to account for the member's participation in the Oklahoma
 2 Firefighters Deferred Option Plan. ~~The deferred benefit balance such surviving spouse is~~
 3 ~~entitled to receive shall be reduced by the back drop pension adjustment amount and~~
 4 ~~increased by the deferred benefit balance adjustment amount. The surviving spouse may~~
 5 ~~only make a back drop election if the deferred benefit balance after the adjustment~~
 6 ~~described in this paragraph is greater than Zero Dollars (\$0.00). The surviving spouse~~
 7 may only make this election if the member has not previously elected to participate in
 8 the Oklahoma Firefighters Deferred Option Plan. For purposes of this election, the
 9 surviving spouse must have been married to the firefighter for the thirty (30) continuous
 10 months preceding the firefighter's death; provided, the surviving spouse of a member
 11 who died while in, or as a consequence of, the performance of the member's duty for a
 12 participating municipality shall not be subject to the marriage limitation for this
 13 election.

14 3. If a member has more than twenty (20) years of creditable service and is eligible
 15 for a retirement for disability monthly pension pursuant to Section 49-109 of this title on
 16 or after ~~the effective date of this act~~ June 4, 2007, such member shall be eligible to elect
 17 to receive a benefit determined as if the member had elected to participate in the
 18 Oklahoma Firefighters Deferred Option Plan, in accordance with subsection H of this
 19 section, on the day immediately preceding the date of the member's disability retirement,
 20 provided such election is made within two (2) years from the date of the member's
 21 disability retirement. The disability monthly pension such member is ~~receiving, or~~
 22 entitled to receive, shall be adjusted in accordance with the provisions of subsection H of

1 this section to account for the member's participation in the Oklahoma Firefighters
 2 Deferred Option Plan. ~~The deferred benefit balance such member is entitled to receive~~
 3 ~~shall be reduced by the back drop pension adjustment amount and increased by the~~
 4 ~~deferred benefit balance adjustment amount. The member may only make a back drop~~
 5 ~~election if the deferred benefit balance after the adjustment described in this paragraph~~
 6 ~~is greater than Zero Dollars (\$0.00). The member may only make this election if the~~
 7 ~~member has not previously elected to participate in the Oklahoma Firefighters Deferred~~
 8 ~~Option Plan, and prior to commencing his or her monthly disability pension.~~

9 4. If a member has more than twenty (20) years of creditable service and filed a
 10 grievance for wrongful termination occurring on or after ~~the effective date of this act~~
 11 June 4, 2007, but is not reinstated as an active member, such member shall be eligible to
 12 elect to receive a benefit determined as if the member had elected to participate in the
 13 Oklahoma Firefighters Deferred Option Plan in accordance with subsection H of this
 14 section on the day immediately preceding the date of the member's termination. Such
 15 election must be made within two (2) years from the date of the member's termination as
 16 an active member and, if the member's case pertaining to the member's termination is on
 17 appeal to a court of competent jurisdiction, within such period set by the State Board in
 18 its sole discretion. The monthly pension such member is ~~receiving, or~~ entitled to receive,
 19 shall be adjusted in accordance with the provisions of subsection H of this section to
 20 account for the member's participation in the Oklahoma Firefighters Deferred Option
 21 Plan. ~~The deferred benefit balance such member is entitled to receive shall be reduced~~
 22 ~~by the back drop pension adjustment amount and increased by the deferred benefit~~

1 ~~balance adjustment amount. The member may only make a back drop election if the~~
 2 ~~deferred benefit balance after the adjustment described in this paragraph is greater than~~
 3 ~~Zero Dollars (\$0.00).~~ The member may only make this election if the member has not
 4 previously elected to participate in the Oklahoma Firefighters Deferred Option Plan, and
 5 prior to commencing his or her monthly pension or monthly disability pension.

6 SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-106.2, as last amended
 7 by Section 2, Chapter 177, O.S.L. 2008 (11 O.S. Supp. 2009, Section 49-106.2), is
 8 amended to read as follows:

9 Section 49-106.2 A. For limitation years prior to July 1, 2007, the limitations of
 10 Section 415 of the Internal Revenue Code of 1986, as amended, shall be computed in
 11 accordance with the applicable provisions of the System in effect at that time and, to the
 12 extent applicable, Revenue Ruling 98-1 and Revenue Ruling 2001-51, except as provided
 13 below. Notwithstanding any other provision contained herein to the contrary, the
 14 benefits payable to a member from the System provided by employer contributions
 15 (including contributions picked up by the employer under Section 414(h) of the Internal
 16 Revenue Code of 1986, as amended) shall be subject to the limitations of Section 415 of
 17 the Internal Revenue Code of 1986, as amended, in accordance with the provisions of this
 18 section. The limitations of this section shall apply in limitation years beginning on or
 19 after July 1, 2007, except as otherwise provided below.

20 B. Except as provided below, effective for limitation years ending after December
 21 31, 2001, any accrued retirement benefit payable to a member as an annual benefit as
 22 described below shall not exceed One Hundred Sixty Thousand Dollars (\$160,000.00),

1 automatically adjusted under Section 415(d) of the Internal Revenue Code of 1986, as
2 amended, for increases in the cost of living, as prescribed by the Secretary of the
3 Treasury or his or her delegate, effective January 1 of each calendar year and applicable
4 to the limitation year ending with or within such calendar year. The automatic annual
5 adjustment of the dollar limitation in this subsection under Section 415(d) of the Internal
6 Revenue Code of 1986, as amended, shall apply to a member who has had a separation
7 from employment.

8 1. The member's annual benefit is a benefit that is payable annually in the form of
9 a straight life annuity. Except as provided below, where a benefit is payable in a form
10 other than a straight life annuity, the benefit shall be adjusted to an actuarially
11 equivalent straight life annuity that begins at the same time as such other form of
12 benefit and is payable on the first day of each month, before applying the limitations of
13 this section. For a member who has or will have distributions commencing at more than
14 one annuity starting date, the annual benefit shall be determined as of each such
15 annuity starting date (and shall satisfy the limitations of this section as of each such
16 date), actuarially adjusting for past and future distributions of benefits commencing at
17 the other annuity starting dates. For this purpose, the determination of whether a new
18 starting date has occurred shall be made without regard to Section 1.401(a)-20, Q&A
19 10(d), and with regard to Section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax
20 Regulations.

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

- 1 a. survivor benefits payable to a surviving spouse under a qualified joint
 2 and survivor annuity to the extent such benefits would not be payable
 3 if the member's benefit were paid in another form,
- 4 b. benefits that are not directly related to retirement benefits such as a
 5 qualified disability benefit, preretirement incidental death benefits,
 6 and postretirement medical benefits, or
- 7 c. the inclusion in the form of a benefit of an automatic benefit increase
 8 feature, provided, the form of benefit is not subject to Section 417(e)(3)
 9 of the Internal Revenue Code of 1986, as amended, and would
 10 otherwise satisfy the limitations of this section, and the System
 11 provides that the amount payable under the form of benefit in any
 12 limitation year shall not exceed the limits of this section applicable at
 13 the annuity starting date, as increased in subsequent years pursuant
 14 to Section 415(d) of the Internal Revenue Code of 1986, as amended.
 15 For this purpose, an automatic benefit increase feature is included in a
 16 form of benefit if the form of benefit provides for automatic, periodic
 17 increases to the benefits paid in that form.

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

1 Income Tax Regulations, but shall disregard benefits attributable to employee
2 contributions or rollover contributions.

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

6 5. Benefit Forms Not Subject to Section 417(e)(3) of the Internal Revenue Code of
7 1986, as amended: The straight life annuity that is actuarially equivalent to the
8 member's form of 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 annuity) payable
11 for a period of not less than the life of the member (or, in the case of a
12 qualified preretirement survivor annuity, the life of the surviving
13 spouse), or

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

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

19 (2) the cessation or reduction of Social Security supplements or
20 qualified disability payments as defined in Section 401

21 411(a)(11)(9) of the Internal Revenue Code of 1986, as amended.

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- c. ~~Limitation Year~~ Years Beginning Before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member’s form of benefit computed using whichever of the following produces the greater annual amount:
 - (1) the interest rate and the mortality table or other tabular factor, each as set forth in subsection H of Section 49-100.9 of this title for adjusting benefits in the same form, and
 - (2) a five percent (5%) interest rate assumption and the applicable mortality table described in Revenue Ruling 2001-62 (or its successor for these purposes, if applicable) for that annuity starting date, or

- d. ~~Limitation Years~~ Beginning On or After July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:
 - (1) the annual amount of the straight life annuity, if any, payable to the member under the System commencing at the same annuity starting date as the member’s form of benefit, and
 - (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member’s form of benefit, computed using a

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 five percent (5%) interest rate assumption and the applicable
 2 mortality table described in Revenue Ruling 2001-62 (or its
 3 successor for these purposes, if applicable) for that annuity
 4 starting date.

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

10 a. Annuity Starting Date in Plan Years Beginning After ~~2005~~ December
 11 31, 2007 (Plan Years beginning on or after July 1, 2008). If the
 12 annuity starting date of the member's form of benefit is in a plan year
 13 beginning after ~~2005~~ December 31, 2007, the actuarially equivalent
 14 straight life annuity is equal to the greatest of (1), (2) or (3) below:

- 15 (1) the annual amount of the straight life annuity commencing at
 16 the same annuity starting date that has the same actuarial
 17 present value as the member's form of benefit, computed using
 18 the interest rate and the mortality table or other tabular factor
 19 each as set forth in subsection H of Section 49-100.9 of this title
 20 for adjusting benefits in the same form,
 21 (2) the annual amount of the straight life annuity commencing at
 22 the same annuity starting date that has the same actuarial

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present value as the member’s form of benefit, computed using a five and one-half percent (5.5%) interest rate assumption and the applicable mortality table described in Revenue Ruling 2001-62 (or its successor for these purposes, if applicable), and

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

(a) the adjusted first, second, and third segment rates under Section 417(e)(3)(C) and (D) of the Internal Revenue Code of 1986, as amended, applied under rules similar to the rules of Section 430(h)(2)(C) of the Internal Revenue Code of 1986, as amended, for the fourth calendar month preceding the plan year in which falls the annuity starting date for the distribution and the stability period is the successive period of one plan year which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, or as otherwise provided in the applicable guidance if the first day of the first plan year beginning after December 31, 2007, does not coincide with the first day of the applicable stability period, and

1 **(b) the applicable mortality table described in Revenue**
 2 **Ruling 2001-62 (or its successor for these purposes, if**
 3 **applicable),**
 4 **divided by one and five one-hundredths (1.05).**

5 **b. Annuity Starting Date in Plan Years Beginning in 2006 or 2007. If the**
 6 **annuity starting date of the member’s form of benefit is in a plan year**
 7 **beginning in 2006 or 2007, the actuarially equivalent straight life**
 8 **annuity is equal to the greatest of (1), (2) or (3) below:**

9 **(1) the annual amount of the straight life annuity commencing at**
 10 **the same annuity starting date that has the same actuarial**
 11 **present value as the member’s form of benefit, computed using**
 12 **the interest rate and the mortality table (or other tabular factor)**
 13 **each as set forth in subsection H of Section 49-100.9 of this title**
 14 **for adjusting benefits in the same form,**

15 **(2) the annual amount of the straight life annuity commencing at**
 16 **the same annuity starting date that has the same actuarial**
 17 **present value as the member’s form of benefit, computed using a**
 18 **five and one-half percent (5.5%) interest rate assumption and**
 19 **the applicable mortality table described in Revenue Ruling**
 20 **2001-62 (or its successor for these purposes, if applicable), and**

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

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

(b) the applicable mortality table described in Revenue Ruling 2001-62 (or its successor for these purposes, if applicable),

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

~~b.~~

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

- 4 (a) the interest rate and the mortality table or other tabular
 5 factor, each as set forth in subsection H of Section 49-
 6 100.9 of this title for adjusting benefits in the same form,
 7 and
- 8 (b) a five and one-half percent (5.5%) interest rate
 9 assumption and the applicable mortality table described
 10 in Revenue Ruling 2001-62 (or its successor for these
 11 purposes, if applicable).

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

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- (a) the interest rate and mortality table or other tabular factor, each as set forth in subsection H of Section 49-100.9 of this title for adjusting benefits in the same form,
- (b) i. the rate of interest on thirty-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified below. The lookback month applicable to the stability period is the fourth calendar month preceding the first day of the stability period, as specified below. The stability period is the successive period of one plan year which contains the annuity starting date for the distribution and for which the applicable interest rate remains constant, and
- ii. the applicable mortality table described in Revenue Ruling 2001-62 (or its successor for these purposes, if applicable), and
- (c) i. the rate of interest on thirty-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified below. The lookback month applicable to the stability period is the fourth calendar month

1 preceding the first day of the stability period, as
 2 specified below. The stability period is the
 3 successive period of one plan year which contains
 4 the annuity starting date for the distribution and
 5 for which the applicable interest rate remains
 6 constant (as in effect on the last day of the last plan
 7 year beginning before January 1, 2004, under
 8 provisions of the System then adopted and in
 9 effect), and

- 10 ii. the applicable mortality table described in Revenue
 11 Ruling 2001-62 (or its successor for these purposes,
 12 if applicable).

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

18 D. Adjustment of Dollar Limitation for Benefit Commencement Before Sixty-two
 19 (62) Years of Age or After Sixty-five (65) Years of Age: Effective for benefits commencing
 20 in limitation years ending after December 31, 2001, the dollar limitation under
 21 subsection B of this section shall be adjusted if the annuity starting date of the member's
 22 benefit is before sixty-two (62) years of age or after sixty-five (65) years of age. If the

1 annuity starting date is before sixty-two (62) years of age, the dollar limitation under
 2 subsection B of this section shall be adjusted under paragraph 1 of this subsection, as
 3 modified by paragraph 3 of this subsection, but subject to paragraph 4 of this subsection.
 4 If the annuity starting date is after sixty-five (65) years of age, the dollar limitation
 5 under subsection B of this section shall be adjusted under paragraph 2 of this subsection,
 6 as modified by paragraph 3 of this subsection.

7 1. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement

8 Before Sixty-two (62) Years of Age:

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

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

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expressing the member’s age based on completed calendar months as of the annuity starting date).

(2) System Has Immediately Commencing Straight Life Annuity Payable at Both Sixty-two (62) Years of Age and the Age of Benefit Commencement. If the annuity starting date for the member’s benefit is prior to sixty-two (62) years of age and occurs in a limitation year beginning on or after July 1, 2007, and the System has an immediately commencing straight life annuity payable at both sixty-two (62) years of age and the age of benefit commencement, the dollar limitation for the member’s annuity starting date is the lesser of the limitation determined under division (1) of ~~this~~ subparagraph b of this paragraph and the dollar limitation under subsection B of this section (adjusted under subsection C of this section for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the System at the member’s annuity starting date to the annual amount of the immediately commencing straight life annuity under the System at sixty-two (62) years of age, both determined without applying the ~~limitation~~ limitations of this section.

2. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement

After Sixty-five (65) Years of Age:

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

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

(2) a five percent (5%) interest rate assumption and the applicable mortality table as described in Revenue Ruling 2001-62 (or its successor for these purposes, if applicable).

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

(1) System Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Sixty-five (65) Years of Age and the

1 Age of Benefit Commencement. If the annuity starting date for
 2 the member's benefit is after sixty-five (65) years of age and
 3 occurs in a limitation year beginning on or after July 1, 2007,
 4 and the System does not have an immediately commencing
 5 straight life annuity payable at both sixty-five (65) years of age
 6 and the age of benefit commencement, the dollar limitation at
 7 the member's annuity starting date is the annual amount of a
 8 benefit payable in the form of a straight life annuity
 9 commencing at the member's annuity starting date that is the
 10 actuarial equivalent of the dollar limitation under subsection B
 11 of this section (adjusted under subsection C of this section for
 12 years of participation less than ten (10), if required) with
 13 actuarial equivalence computed using a five percent (5%)
 14 interest rate assumption and the applicable mortality table for
 15 the annuity starting date as described in Revenue Ruling 2001-
 16 62 (or its successor for these purposes, if applicable) (and
 17 expressing the member's age based on completed calendar
 18 months as of the annuity starting date).

19 (2) System Has Immediately Commencing Straight Life Annuity
 20 Payable at Both Sixty-five (65) Years of Age and Age of Benefit
 21 Commencement. If the annuity starting date for the member's
 22 benefit is after sixty-five (65) years of age and occurs in a

1 limitation year beginning on or after July 1, 2007, and the
2 System has an immediately commencing straight life annuity
3 payable at both sixty-five (65) years of age and the age of benefit
4 commencement, the dollar limitation at the member's annuity
5 starting date is the lesser of the limitation determined under
6 division (1) of subparagraph b of this paragraph and the dollar
7 limitation under subsection B of this section (adjusted under
8 subsection C of this section for years of participation less than
9 ten (10), if required) multiplied by the ratio of the annual
10 amount of the adjusted immediately commencing straight life
11 annuity under the System at the member's annuity starting
12 date to the annual amount of the adjusted immediately
13 commencing straight life annuity under the System at sixty-five
14 (65) years of age, both determined without applying the
15 limitations of this section. For this purpose, the adjusted
16 immediately commencing straight life annuity under the System
17 at the member's annuity starting date is the annual amount of
18 such annuity payable to the member, computed disregarding the
19 member's accruals after sixty-five (65) years of age but including
20 actuarial adjustments even if those actuarial adjustments are
21 used to offset accruals; and the adjusted immediately
22 commencing straight life annuity under the System at sixty-five

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

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

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

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

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

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

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

10 2. The participating municipality (or a predecessor employer) has not at any time
 11 maintained a defined contribution plan in which the member participated (for this
 12 purpose, mandatory employee contributions under a defined benefit plan, individual
 13 medical accounts under Section 401(h) of the Internal Revenue Code of 1986, as
 14 amended, and accounts for postretirement medical benefits established under Section
 15 419A(d)(1) of the Internal Revenue Code of 1986, as amended, are not considered a
 16 separate defined contribution plan).

17 F. In no event shall the maximum annual accrued retirement benefit of a member
 18 allowable under this section be less than the annual amount of such accrued retirement
 19 benefit, including early pension and qualified joint and survivor annuity amounts, duly
 20 accrued by the member as of the last day of the limitation year beginning in 1982, or as
 21 of the last day of the limitation year beginning in 1986, whichever is greater,

1 disregarding any plan changes or cost-of-living adjustments occurring after July 1, 1982,
2 as to the 1982 accrued amount, and May 5, 1986, as to the 1986 accrued amount.

3 G. For limitation years beginning on or after January 1, 1995, subsection C of this
4 section, paragraph 1 of subsection D of this section, and the proration provided under
5 subparagraphs a and b of paragraph 1 of subsection E of this section, shall not apply to a
6 benefit paid under the System as a result of the member becoming disabled by reason of
7 personal injuries or sickness, or amounts received by the beneficiaries, survivors or
8 estate of the member as a result of the death of the member.

9 H. Effective for years beginning after December 31, 1997, if a member purchases
10 service under Sections 49-117.2 and 49-117.3 of this title, which qualifies as “permissive
11 service credit” pursuant to Section 415(n) of the Internal Revenue Code of 1986, as
12 amended, the limitations of Section 415 of the Internal Revenue Code of 1986, as
13 amended, may be met by either:

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

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

18 I. Effective for years beginning after December 31, 1997, if a member repays to the
19 System any amounts received because of the member’s prior termination pursuant to
20 Section 49-117.1 of this title, such repayment shall not be taken into account for purposes
21 of Section 415 of the Internal Revenue Code of 1986, as amended, pursuant to Section
22 415(k)(3) of the Internal Revenue Code of 1986, as amended.

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

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

6 SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-106.3, as last amended
 7 by Section 3, Chapter 177, O.S.L. 2008 (11 O.S. Supp. 2009, Section 49-106.3), is
 8 amended to read as follows:

9 Section 49-106.3 A. For distributions made on or after January 1, 1993, and
 10 notwithstanding any provision of the System to the contrary that would otherwise limit a
 11 Distributee's election hereunder, a Distributee, including a nonspouse designated
 12 beneficiary, to the extent permitted under paragraph 3 of subsection B of this section,
 13 may elect, at the time and in the manner prescribed by the State Board, to have any
 14 portion of an Eligible Rollover Distribution paid directly to ~~an~~:

15 1. An Eligible Retirement Plan; or

16 2. Effective for distributions after December 31, 2007, a Roth IRA described in
 17 Section 408A of the Internal Revenue Code of 1986, as amended, subject to any
 18 limitations described in Section 408A(c) of the Internal Revenue Code of 1986, as
 19 amended, specified by the Distributee in a Direct Rollover.

20 B. For purposes of this section, the following definitions shall apply:

21 1. "Eligible Rollover Distribution" means any distribution of all or any portion of
 22 the balance to the credit of the Distributee, except that an Eligible Rollover Distribution

1 does not include any distribution that is one of a series of substantially equal periodic
 2 payments (not less frequently than annually) made for the life (or life expectancy) of the
 3 Distributee or the joint lives (or life expectancies) of the Distributee and the Distributee's
 4 designated beneficiary, or for a specified period of ten (10) years or more; any distribution
 5 to the extent such distribution is required under Section 401(a)(9) of the Internal
 6 Revenue Code of 1986, as amended; and the portion of any distribution that is not
 7 includable in gross income. Effective January 1, 2002, a portion of a distribution shall
 8 not fail to be an Eligible Rollover Distribution merely because the portion consists of
 9 after-tax member contributions which are not includable in gross income. However, such
 10 portion may be ~~paid~~ transferred only:

- 11 (a) from January 1, 2002, through December 31, 2006, ~~to:~~
- 12 (1) to an individual retirement account or annuity described in
 13 Section 408(a) or (b) of the Internal Revenue Code of 1986, as
 14 amended, or
- 15 (2) in a direct trustee-to-trustee transfer, to a qualified trust which
 16 is a part of a defined contribution plan ~~described in Section~~
 17 ~~401(a) or 403(a) of the Internal Revenue Code of 1986, as~~
 18 ~~amended, and which~~ that agrees to separately account for
 19 amounts so transferred, including separately accounting for the
 20 portion of such distribution which is includable in gross income
 21 and the portion of such distribution which is not so includable,
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- (b) on or after January 1, 2007, ~~to:~~
- (1) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code of 1986, as amended, or
 - (2) in a direct trustee-to-trustee transfer, to a qualified trust described in Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended, or an annuity contract described in Section 403(b) of the Internal Revenue Code of 1986, as amended, and if such trust or annuity contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.
- Effective for distributions after December 31, 2007, such after-tax portion may also be transferred to a Roth IRA described in Section 408A of the Internal Revenue Code of 1986, as amended, subject to any limitations described in Section 408A(c) of the Internal Revenue Code of 1986, as amended, that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable;

1 2. “Eligible Retirement Plan” means an individual retirement account described in
 2 Section 408(a) of the Internal Revenue Code of 1986, as amended, an individual
 3 retirement annuity described in Section 408(b) of the Internal Revenue Code of 1986, as
 4 amended, an annuity plan described in Section 403(a) of the Internal Revenue Code of
 5 1986, as amended, or a qualified trust described in Section 401(a) of the Internal
 6 Revenue Code of 1986, as amended, that accepts the Distributee’s Eligible Rollover
 7 Distribution. Effective January 1, 2002, an Eligible Retirement Plan shall also mean an
 8 annuity contract described in Section 403(b) of the Internal Revenue Code of 1986, as
 9 amended, and an eligible plan under Section 457(b) of the Internal Revenue Code of
 10 1986, as amended, which is maintained by a state, political subdivision of a state, or any
 11 agency or instrumentality of a state or political subdivision of a state and which agrees to
 12 separately account for amounts transferred into such plan from the System;

13 3. “Distributee” means a member whether or not the member is an active
 14 firefighter. In addition, effective June 7, 1993, the member’s surviving spouse and the
 15 member’s spouse or former spouse who is an alternate payee under a qualified domestic
 16 order, as provided in subsection B of Section 49-126 of this title, are Distributees with
 17 regard to the interest of the spouse or former spouse. Effective for distributions after
 18 December 31, 2006, a Distributee also includes the member’s nonspouse designated
 19 beneficiary, pursuant to Section 401(a)(9)(E) of the Internal Revenue Code of 1986, as
 20 amended. ~~In the case of a nonspouse beneficiary, the~~ who may only elect a Direct
 21 Rollover may be made only (to the extent such Distributee does not receive a lump sum
 22 payment) to an individual retirement account or annuity (other than an endowment

1 contract) described in Section 408(a) or (b) of the Internal Revenue Code of 1986, as
 2 amended, (IRA), that is established on behalf of such designated beneficiary and that will
 3 be treated as an inherited IRA pursuant to the provisions of Section 402(c)(11) of the
 4 Internal Revenue Code of 1986, as amended. Also, in this case, the determination of any
 5 required minimum distribution under Section 401(a)(9) of the Internal Revenue Code of
 6 1986, as amended, that is ineligible for rollover shall be made in accordance with Notice
 7 2007-7, Q&A 17 and 18, ~~Announcement~~ 2007-5 Internal Revenue Bulletin 395. The
 8 required minimum distribution rules of Section 401(a)(9)(B)(other than clause iv thereof)
 9 of the Internal Revenue Code of 1986, as amended, apply to the transferee IRA; and

10 4. "Direct Rollover" means a payment by the System to the Eligible Retirement
 11 Plan specified by the Distributee or, effective for distributions on or after January 1,
 12 2008, to a Roth IRA under Section 408A of the Internal Revenue Code of 1986, as
 13 amended, as specified by the Distributee, assuming the Distributee otherwise meets the
 14 Roth IRA requirements.

15 C. At least thirty (30) days before and, effective January 1, 2007, not more than one
 16 hundred eighty (180) days before the date of distribution, the Distributee (other than a
 17 nonspouse designated beneficiary prior to January 1, 2010) must be provided with a
 18 notice of rights which satisfies Section 402(f) of the Internal Revenue Code of 1986, as
 19 amended, as to rollover options and tax effects. Such distribution may commence less
 20 than thirty (30) days after the notice is given, provided that:

1 1. The State Board clearly informs the Distributee that the Distributee has a right
2 to a period of at least thirty (30) days after receiving the notice to consider the decision of
3 whether or not to elect a distribution; and

4 2. The Distributee, after receiving the notice, affirmatively elects a distribution.

5 D. Prior to January 1, 2010, a distribution with respect to a nonspouse designated
6 beneficiary shall be made in accordance with Notice 2007-7, Q&A 15, 2007-5 Internal
7 Revenue Bulletin 395. Effective January 1, 2010, a distribution with respect to a
8 nonspouse designated beneficiary shall be subject to Sections 401(a)(31), 402(f) and
9 3405(c) of the Internal Revenue Code of 1986, as amended.

10 SECTION 5. AMENDATORY Section 3, Chapter 345, O.S.L. 2007 (11 O.S.
11 Supp. 2009, Section 49-106.4), is amended to read as follows:

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

1 1. The transfer is treated as an eligible rollover distribution for purposes of Section
2 402(c)(11) of the Internal Revenue Code of 1986, as amended;

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

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

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

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

14 SECTION 6. AMENDATORY 11 O.S. 2001, Section 49-122, is amended to read
15 as follows:

16 Section 49-122. A. Each municipality having a paid member of a fire department
17 shall deduct monthly from the salary of each member of the fire department of such
18 municipality an amount equal to eight percent (8%) of the actual paid gross salary of
19 each member of the fire department. The deduction shall be considered the minimum
20 deduction. At the option of the municipality, the municipality may pay all or any part of
21 the member's required contribution. ~~The members of a fire department, by a majority~~
22 ~~vote of its paid members, may vote to increase the amount of the deduction.~~ The

1 treasurer of each municipality shall deduct the authorized deductions from the salary of
 2 each paid member of the fire department. The treasurer of the municipality shall deposit
 3 within ten (10) days from each ending payroll date in the System the amount deducted
 4 from the salary of each member of the fire department. Amounts deducted from the
 5 salary of a member and not paid to the System after thirty (30) days from each ending
 6 payroll date shall be subject to a monthly late charge of one and one-half percent (1 1/2%)
 7 of the unpaid balance to be paid by the municipality to the System.

8 Each municipality shall pick up under the provisions of Section 414(h)(2) of the
 9 Internal Revenue Code of 1986, as amended, and pay the contribution which the member
 10 is required by law to make to the System for all compensation earned after December 31,
 11 1988. Although the contributions so picked up are designated as member contributions,
 12 such contributions shall be treated as contributions being paid by the municipality in lieu
 13 of contributions by the member in determining tax treatment under the Internal
 14 Revenue Code of 1986 and such picked up contributions shall not be includable in the
 15 gross income of the member until such amounts are distributed or made available to the
 16 member or the beneficiary of the member. The member, by the terms of this system,
 17 shall not have any option to choose to receive the contributions so picked up directly and
 18 the picked up contributions must be paid by the municipality to the System.

19 Member contributions which are picked up shall be treated in the same manner and
 20 to the same extent as member contributions made prior to the date on which member
 21 contributions were picked up by the municipality. Member contributions so picked up
 22 shall be included in salary for purposes of the System.

1 The municipality shall pay the member contributions from the same source of funds
 2 used in paying salary to the member, by effecting an equal cash reduction in gross salary
 3 of the member, or by an offset against future salary increases, or by a combination of
 4 reduction in gross salary and offset against future salary increases.

5 The treasurer of each municipality shall deduct the picked up contributions from
 6 the salary of each paid member of the fire department. The treasurer of the municipality
 7 shall deposit monthly in the System the amount picked up from the salary of each
 8 member of the fire department.

9 B. Each municipality having a paid member of a fire department shall deposit
 10 monthly with the State Board an amount equal to the following:

11 1. Prior to July 1, 1991, ten percent (10%) of the total actual paid gross salaries of
 12 the members of the fire department;

13 2. Beginning July 1, 1991 through June 30, 1992, ten and one-half percent (10
 14 1/2%) of the total actual paid gross salaries of the members of the fire department;

15 3. Beginning July 1, 1992 through June 30, 1993, eleven percent (11%) of the total
 16 actual paid gross salaries of the members of the fire department;

17 4. Beginning July 1, 1993 through June 30, 1994, eleven and one-half percent (11
 18 1/2%) of the total actual paid gross salaries of the members of the fire department;

19 5. Beginning July 1, 1994 through June 30, 1995, twelve percent (12%) of the total
 20 actual paid gross salaries of the members of the fire department;

21 6. Beginning July 1, 1995 through June 30, 1996, twelve and one-half percent (12
 22 1/2%) of the total actual paid gross salaries of the members of the fire department; and

1 7. Beginning July 1, 1996, thirteen percent (13%) of the total actual paid gross
2 salaries of the members of the fire department.

3 C. Each county or municipality having a volunteer member of a fire department
4 shall deposit yearly with the State Board Sixty Dollars (\$60.00) for each volunteer
5 member of the department.

6 Provided, the above-mentioned volunteer county or municipal contributions shall be
7 reevaluated by the next scheduled actuarial study and the amounts adjusted so that in a
8 nine-year period of time, the amounts would reflect the actuarial recommendations at
9 that time. Any county or municipality with an income of less than Twenty-five Thousand
10 Dollars (\$25,000.00) to its general fund during a fiscal year shall be exempt from the
11 provisions of this subsection.

12 Any municipality that fails to comply with the provisions of this section shall not be
13 entitled to its proportionate share of the Motor Fuel Excise Tax which is received
14 through the Oklahoma Tax Commission. Any county or municipality may exceed the
15 amount of contribution required by this section.

16 The provisions of this section shall supercede any city charter provision in direct
17 conflict with this section.

18 SECTION 7. AMENDATORY 11 O.S. 2001, Section 49-126, as last amended by
19 Section 5, Chapter 356, O.S.L. 2007 (11 O.S. Supp. 2009, Section 49-126), is amended to
20 read as follows:

21 Section 49-126. A. Except as otherwise provided by this section, no portion of said
22 pension shall, either before or after its order of distribution by the State Board to such

1 disabled members of said fire department, or the surviving spouse, alternate payee as
 2 defined in subsection B of this section, or guardian of such minor child or children, to the
 3 deceased or retired member of such department, be held, seized, taken, subjected to or
 4 detained or levied on by virtue of any attachment, execution, injunction, writ
 5 interlocutory or other order or decree, or any process or proceeding whatever, issued out
 6 of or by any court of this state for the payment or satisfaction, in whole or in part, of any
 7 debt, damages, claim, demand or judgment against such member, or his or her surviving
 8 spouse, alternate payee, or the guardian of said minor child or children of any deceased
 9 member, nor shall said fund or any claim thereto be directly or indirectly assigned and
 10 any attempt to assign or transfer the same shall be void; but the funds shall be held,
 11 kept, secured and distributed for the purpose of pensioning the persons named in this
 12 article, and for no other purpose whatever. Notwithstanding the foregoing, effective
 13 August 5, 1997, the State Board may approve any offset of a member's benefit to pay a
 14 judgment or settlement against a member for a crime involving the System, for a breach
 15 of the member's fiduciary duty to the System, or for funds or monies incorrectly paid to a
 16 member or beneficiary by mistake, provided such offset is in accordance with the
 17 requirements of Section 401(a)(13) of the Internal Revenue Code of 1986, as amended.

18 B. 1. The provisions of subsection A of this section shall not apply to a qualified
 19 domestic order as provided pursuant to this subsection.

20 2. The term "qualified domestic order" means an order issued by a district court of
 21 this state pursuant to the domestic relation laws of this state which relates to the
 22 provision of marital property rights to an alternate payee and which creates or

1 recognizes the existence of the right of an alternate payee and assigns to an alternate
2 payee the right to receive a portion of the benefits payable with respect to a member of
3 the System.

4 3. The term “alternate payee” means any spouse, former spouse, minor or disabled
5 child or children, or other dependent of the member who is recognized by a domestic
6 relations order as having a right to receive benefits payable with respect to a member of
7 the System.

8 4. For purposes of the payment of marital property, to qualify as an alternate
9 payee, a spouse or former spouse must have been married to the related member for a
10 period of not less than thirty (30) continuous months immediately preceding the
11 commencement of the proceedings from which the qualified domestic order issues.

12 5. A qualified domestic order is valid and binding on the State Board and the
13 related member only if it meets the requirements of this subsection.

14 6. A qualified domestic order shall clearly specify:

- 15 a. the name and last-known mailing address (if any) of the member and
16 the name and mailing address of the alternate payee covered by the
17 order,
18 b. the amount or percentage of the member’s benefits to be paid by the
19 System to the alternate payee,
20 c. the number of payments or period to which such order applies,
21 d. the characterization of the benefit as to marital property rights or child
22 support, and

1 e. each plan to which such order applies.

2 7. A qualified domestic order meets the requirements of this subsection only if such
3 order:

4 a. does not require the System to provide any type or form of benefit, or
5 any option not otherwise provided under state law as relates to the
6 System,

7 b. does not require the System to provide increased benefits, and

8 c. does not require the payment of benefits to an alternate payee which
9 are required to be paid to another alternate payee pursuant to another
10 order previously determined to be a qualified domestic order or an
11 order recognized by the System as a valid order prior to ~~the effective~~
12 ~~date of this act~~ June 7, 1993.

13 8. A qualified domestic order shall not require payment of benefits to an alternate
14 payee prior to the actual retirement date of the related member.

15 9. The alternate payee shall have a right to receive benefits payable to a member of
16 the System under the Oklahoma Firefighters Deferred Option plan provided for pursuant
17 to Section 49-106.1 of this title, but only to the extent such benefits have been credited or
18 paid into the member's Oklahoma Firefighters Deferred Option Plan account during the
19 term of the marriage.

20 10. The obligation of the System to pay an alternate payee pursuant to a qualified
21 domestic order shall cease upon the earlier of the death of the related member or the
22 death of the alternate payee. Upon the death of the alternate payee, the assignment to

1 the alternate payee of the right to receive a portion of the benefits payable with respect
2 to the member shall cease and the payments of benefits to the member shall be
3 reinstated.

4 11. This subsection shall not be subject to the provisions of the Employee
5 Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. Section 1001, et seq., as
6 amended from time to time, or rules and regulations promulgated thereunder, and court
7 cases interpreting said act.

8 12. The Oklahoma Firefighters Pension and Retirement Board shall promulgate
9 such rules as are necessary to implement the provisions of this subsection.

10 13. An alternate payee who has acquired beneficiary rights pursuant to a valid
11 qualified domestic order must fully comply with all provisions of the rules promulgated
12 by the State Board pursuant to this subsection in order to continue receiving his or her
13 benefit.

14 C. The provisions of subsection A of this section shall not apply to a Child Support
15 Enforcement Division order for a support arrearage pursuant to Section 240.23 of Title
16 56 of the Oklahoma Statutes and current child support payments made pursuant to a
17 valid court order.

18 D. The provisions of subsection A of this section shall not apply to a federal tax levy
19 made pursuant to Section 6331 of the Internal Revenue Code of 1986, as amended, and
20 the collection by the United States on a judgment resulting from an unpaid tax
21 assessment.

1 E. The provisions of subsection A of this section shall not apply in the case of an
 2 overpayment to a member or other payee. Such overpayment may be corrected through a
 3 return of the overpayment, or an adjustment of future payments, or a combination of
 4 these two methods, as approved by the State Board. The term “other payee” shall
 5 include, but not be limited to, alternate payees as defined in subsection B of this section,
 6 beneficiaries, designated recipients, and other individuals eligible to receive benefits
 7 pursuant to Section 49-113 of this title.

8 SECTION 8. AMENDATORY 11 O.S. 2001, Section 49-138, as last amended by
 9 Section 4, Chapter 203, O.S.L. 2005 (11 O.S. Supp. 2009, Section 49-138), is amended to
 10 read as follows:

11 Section 49-138. A. Any member of a regularly constituted fire department of any
 12 municipality who is now serving or may hereafter serve in the Armed Forces of the
 13 United States whether such service is voluntary or involuntary, who shall have been a
 14 member of such fire department at the time of entering such service, shall be entitled to
 15 have the whole of the time of such service applied under the provisions of Section 49-106
 16 of this title, so far as the same applies to a service pension; provided further, that the
 17 municipality shall continue its payment into said pension fund, to the same force and
 18 effect as though the member were in the actual service of such fire department; provided,
 19 that any person who is eligible for such service but who shall have volunteered for
 20 military or naval service for a period not to exceed five (5) years shall likewise be entitled
 21 to all of the benefits of Sections 49-138 through 49-142 of this title for the full period of
 22 such service or enlistment; provided further, that only one such period of voluntary

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

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

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

1 For purposes of this subsection, “military service” means service in the Armed
2 Forces of the United States by honorably discharged persons during the following time
3 periods, as reflected on such person’s Defense Department Form 214, as follows:

4 1. During the following periods, including the beginning and ending dates, and only
5 for the periods served, from:

6 a. April 6, 1917, to November 11, 1918, commonly referred to as World
7 War I,

8 b. September 16, 1940, to December 7, 1941, for members of the 45th
9 Division,

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

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

14 e. February 28, 1961, to May 7, 1975, commonly referred to as the
15 Vietnam era, except that:

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

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

21 f. August 1, 1990, to December 31, 1991, commonly referred to as the
22 Gulf War, the Persian Gulf War, or Operation Desert Storm, but

1 excluding any person who served on active duty for training only,
2 unless discharged from such active duty for a service-connected
3 disability;

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

15 D. An eligible member pursuant to subsection C of this section shall include only
16 those persons who shall have served during the times or in the areas prescribed in
17 subsection C of this section, and only if such person provides appropriate documentation
18 in such time and manner as required by the System to establish such military service
19 prescribed in this section, or for service pursuant to division (1) of subparagraph e of
20 paragraph 1 of subsection C of this section, those persons who were awarded service
21 medals, as authorized by the United States Department of Defense as reflected in the
22 veteran's Defense Department Form 214, related to the Vietnam Conflict for service prior

1 to August 5, 1964. The provisions of subsection C of this section shall include military
 2 retirees, whose retirement was based only on active service, that have been rated as
 3 having twenty percent (20%) or greater service-connected disability by the Veterans
 4 Administration or the Armed Forces of the United States. The provisions of subsection C
 5 of this section shall not apply to any person who shall have served on active duty for
 6 training purposes only unless discharged from active duty for a service-connected
 7 disability.

8 E. Notwithstanding any provision herein to the contrary, ~~contributions:~~

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

16 2. Effective January 1, 2007, if any member dies while performing qualified
 17 military service (as defined in Section 414(u) of the Internal Revenue Code of 1986, as
 18 amended), the survivors of the member are entitled to any additional benefits (other than
 19 benefits accruals relating to the period of qualified military service) provided under the
 20 System had the member resumed and then terminated employment on account of death.

21 F. Members or beneficiaries shall make application to the System for credited
 22 service related to wartime military service. Interest on additional benefits related to

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

5 SECTION 9. AMENDATORY 47 O.S. 2001, Section 2-305, as last amended by
 6 Section 9, Chapter 169, O.S.L. 2009 (47 O.S. Supp. 2009, Section 2-305), is amended to
 7 read as follows:

8 Section 2-305. A. Except as otherwise provided in this title, at any time after
 9 attaining normal retirement date, any member of the Oklahoma Law Enforcement
 10 Retirement System upon application for unreduced retirement benefits made and
 11 approved, may retire, and, during the remainder of the member's lifetime, receive annual
 12 retirement pay, payable in equal monthly payments, equal to two and one-half percent (2
 13 1/2%) of the final average salary times years of credited service. If such retired member
 14 is reemployed by a state agency in a position which is not covered by the System, such
 15 retired member shall continue to receive in-service distributions from the System. Prior
 16 to September 19, 2002, if such retired member was reemployed by a state agency in a
 17 position which is covered by the System, such member shall continue to receive in-service
 18 distributions from the System and shall not accrue any further credited service. If such a
 19 member is reemployed by a state agency in a position which is covered by the System on
 20 or after September 19, 2002, such member's monthly retirement payments shall be
 21 suspended until such member retires and is not reemployed by a state agency in a
 22 position which is covered by the System. No member shall be required to retire for

1 length of service unless and until the member shall have reached the age of sixty (60)
2 years, ~~but any member of the System who shall have reached the age of sixty (60) years~~
3 ~~and who shall also have completed twenty (20) years or more of credited service shall be~~
4 ~~retired by the Board unless, after application to the Board and such examination and~~
5 ~~showing as the Board may deem proper, the Board shall determine that such member of~~
6 ~~the System is physically and mentally able to continue to perform duties or service as~~
7 ~~required of a member. Unless such application be made by a member of the System~~
8 ~~within thirty (30) days after reaching the age of sixty (60) years and completing twenty~~
9 ~~(20) years or more of credited service or if, after such application and examination, the~~
10 ~~Board shall determine that such member of the System is not physically or mentally able~~
11 ~~to continue to perform services as required of the employer, the Board shall by resolution~~
12 ~~order his or her retirement with retirement pay for length of service as provided herein.~~

13 B. Beginning July 1, 1994, members who retired or were eligible to retire prior to
14 July 1, 1980 or their surviving spouses shall receive annual retirement pay, payable in
15 equal monthly payments, equal to the greater of their current retirement pay, or two and
16 one-half percent (2 1/2%) of the actual paid gross salary being currently paid to a
17 highway patrol officer, at the time each such monthly retirement payment is made,
18 multiplied by the retired member's years of credited service.

19 C. Members of the System whose salary is set by statute who have retired after
20 completion of the mandatory twenty (20) years of service, and those members with
21 statutory salaries who retire after reaching the mandatory twenty-year retirement, shall

1 receive an annual retirement pay, payable in equal monthly installments, based upon the
 2 greater of either:

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

- 7 a. Oklahoma Highway Patrolman,
- 8 b. Communications Dispatcher,
- 9 c. Capitol Patrolman,
- 10 d. Lake Patrolman,
- 11 e. Oklahoma State Bureau of Investigation-Special Agent; or

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

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

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

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

- 5 a. Alcoholic Beverage Laws Enforcement Commission-ABLE Commission
- 6 Agent III,
- 7 b. Oklahoma State Bureau of Narcotics and Dangerous Drugs Control—
- 8 Narcotics Agent III,
- 9 c. Oklahoma Tourism and Recreation Department—Park Ranger II,
- 10 d. Oklahoma State Board of Pharmacy—Pharmacy Inspector,
- 11 e. University of Oklahoma-Police Officer,
- 12 f. Oklahoma State University-Police Officer; or

13 2. The other member’s final average salary as set forth in paragraph 9 of Section 2-
 14 300 of this title, multiplied by two and one-half percent (2 1/2%), multiplied by the
 15 number of years of credited service and fraction thereof.

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

21 E. A member who meets the definition of disability as defined in paragraph 11 of
 22 Section 2-300 of this title by direct reason of the performance of the member’s duties as

1 an officer shall receive a monthly benefit equal to the greater of fifty percent (50%) of
 2 final average salary or two and one-half percent (2 1/2%) of final average salary
 3 multiplied by the number of years of the member's credited service. If such member
 4 participates in the Oklahoma Law Enforcement Deferred Option Plan pursuant to
 5 Section 2-305.2 of this title, then such member's disability pension provided pursuant to
 6 this subsection shall be reduced to account for such member's participation in the
 7 Oklahoma Law Enforcement Deferred Option Plan.

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

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

13 2. Multiplied by:

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

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

20 3. Multiplied by a final average salary equal to:

21 a. the salary which the member would have received pursuant to
 22 statutory salary schedules in effect upon the date of the disability for

1 twenty (20) years of service prior to disability. The final average
2 salary for a member who performed less than twenty (20) years of
3 service prior to disability shall be computed assuming that the member
4 was paid the highest salary allowable pursuant to the law in effect at
5 the time of the member's disability based upon twenty (20) years of
6 service and with an assumption that the member was eligible for any
7 and all increases in pay based upon rank during the entire period. If
8 the salary of a member is not prescribed by a specific salary schedule
9 upon the date of the member's disability, the final average salary for
10 the member shall be computed by the member's actual final average
11 salary or the highest median salary amount for a member whose
12 salary was prescribed by a specific salary schedule upon the date of the
13 member's disability, whichever final average salary amount would be
14 greater, or

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

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

1 G. A member who meets the definition of disability as defined in Section 2-300 of
2 this title and whose disability occurred prior to the member's normal retirement date but
3 after completing three (3) years of vesting service and not by reason of the performance of
4 the member's duties as an officer or as a result of the member's willful negligence shall
5 receive a monthly benefit equal to two and one-half percent (2 1/2%) of final average
6 salary multiplied by the number of years of the member's credited service.

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

10 I. For the purpose of determining the member's disability under subsection E, F or
11 G of this section, the member shall be required by the Board to be examined by a
12 minimum of two recognized physicians selected by the Board to determine the extent of
13 the member's injury or illness. The examining physicians shall furnish the Board a
14 detailed written report of the injury or illness of the examined member establishing the
15 extent of disability and the possibilities of the disabled member being returned to his or
16 her regular duties or an alternate occupation or service covered by the System after a
17 normal recuperation period. The Board shall require all retired disabled members who
18 have not attained their normal retirement date to submit to a physical examination once
19 each year for a minimum of three (3) years following retirement. The Board shall select
20 a minimum of two physicians to examine the retired members and pay for their services
21 from the fund. Any retired disabled member found no longer disabled by the examining
22 physicians to perform the occupation of the member or an alternate occupation or service

1 covered by the System shall be required to return to duty and complete twenty (20) years
2 of service as provided in subsection A of this section, or forfeit all his or her rights and
3 claims under this act.

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

9 K. At the postoffer, preemployment physical examination required under
10 paragraph 6 of Section 2-300 of this title, the physician selected by the Board shall
11 determine the extent to which a new member is disabled. If a member is determined to
12 be partially disabled, the physician shall assign a percentage of disability to such partial
13 disability. If such member then becomes entitled to a disability benefit under either
14 subsection E or subsection G of this section, the benefit payable shall be reduced by the
15 percentage which such member was determined to be disabled at the postoffer,
16 preemployment physical unless the Board makes a determination that the initially
17 determined percentage of disability at the preemployment physical examination is
18 unrelated to the reason for the disability currently sought pursuant to subsection E or
19 subsection G of this section. Upon employment, the member shall disclose to the Board
20 any disability payments received from any source. The amount of disability to be paid to
21 any member cannot exceed one hundred percent (100%) disability from all sources. The

1 provisions of this subsection shall apply only to members whose effective date of
2 membership is on or after July 1, 2000.

3 L. In addition to the pension provided for under subsection F of this section, if said
4 member has one or more children under the age of eighteen (18) years or under the age of
5 twenty-two (22) years if the child is enrolled full time in and is regularly attending a
6 public or private school or any institution of higher education, Four Hundred Dollars
7 (\$400.00) a month shall be paid from said Fund for the support of each surviving child to
8 the member or person having the care and custody of such children until each child
9 reaches the age of eighteen (18) years or reaches the age of twenty-two (22) years if the
10 child is enrolled full time in and is regularly attending a public or private school or any
11 institution of higher education.

12 M. Notwithstanding any other provisions in Section 2-300 through 2-315 of this
13 title, in order to be eligible to receive disability benefits, a member who meets the
14 definition of disability as defined in paragraph 11 of Section 2-300 of this title shall file
15 the member's completed application for disability benefits with the System before such
16 member's date of termination from service and provide such additional information that
17 the System's rules require within six (6) months of the System's receipt of such
18 application. If the member's completed application for disability benefits is not filed with
19 the System before the member's date of termination from service or such additional
20 information as is required under the System's rules is not provided within six (6) months
21 of the System's receipt of such application, such member shall be eligible only for such

1 other benefits as are available to members of the System and shall not be eligible to
 2 receive any disability benefits.

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

10 SECTION 10. It being immediately necessary for the preservation of the public
 11 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
 12 this act shall take effect and be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
 14 dated 04-05-10 - DO PASS, As Amended.