

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 1021

By: Stanislawski

AS INTRODUCED

An Act relating to emergency personnel retirement; amending 11 O.S. 2011, Sections 49-100.1, as last amended by Section 2, Chapter 388, O.S.L. 2013 (11 O.S. Supp. 2018, Section 49-100.1) and 50-101, as amended by Section 1, Chapter 346, O.S.L. 2016 (11 O.S. Supp. 2018, Section 50-101), which relate to definitions; modifying definition of final average salary; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 2011, Section 49-100.1, as last amended by Section 2, Chapter 388, O.S.L. 2013 (11 O.S. Supp. 2018, Section 49-100.1), is amended to read as follows:

Section 49-100.1. As used in this article:

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

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

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

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

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

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

1 be treated as provided by the recipient employer. A leased employee
2 shall not be considered an employee of the recipient if the
3 requirements of the safe harbor provisions of Section 414(n)(5) of
4 the Internal Revenue Code of 1986, as amended, are satisfied.

5 Effective July 1, 1999, any individual who agrees with the
6 participating municipality that the individual's services are to be
7 performed as a leased employee or an independent contractor shall
8 not be a member regardless of any classification as a common law
9 employee by the Internal Revenue Service or any other governmental
10 agency, or any court of competent jurisdiction;

11 7. "Normal retirement date" means the date at which the member
12 is eligible to receive the unreduced payments of the member's
13 accrued retirement benefit. Such date shall be the first day
14 following the date the member completes twenty (20) years of
15 credited service. For a member whose first employment with a
16 participating employer of the System occurs on or after November 1,
17 2013, such date shall be the first day following the date the member
18 completes twenty-two (22) years of credited service and has attained
19 the age of at least fifty (50) years. If the member's employment
20 continues past the normal retirement date of the member, the actual
21 retirement date of the member shall be the first day following the
22 date the member terminates employment with more than twenty (20)
23 years of credited service, or with respect to members who are
24 required to complete twenty-two (22) years of service, the first day

1 following the date the member terminates employment with more than
2 twenty-two (22) years of service and who has also attained the age
3 of at least fifty (50) years;

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

14 9. "Participating municipality" means a municipality, county
15 fire department organized pursuant to subsection D of Section 351 of
16 Title 19 of the Oklahoma Statutes, or fire protection district which
17 is making contributions to the System on behalf of its firefighters.
18 All participating municipalities shall appoint a fire chief who
19 shall supervise and administer the fire department;

20 10. "Disability" means the complete inability of the
21 firefighter to perform any and every duty of the firefighter's
22 regular occupation; provided further, that once benefits have been
23 paid for twenty-four (24) months the provisions of Section 49-110 of
24 this title shall apply to the firefighter;

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

3 12. "Eligible employer" means any municipality with a municipal
4 fire department, any county fire department organized pursuant to
5 subsection D of Section 351 of Title 19 of the Oklahoma Statutes or
6 any fire protection district with an organized fire department;

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

10 14. "Final average salary" means the average paid gross salary
11 of the firefighter for normally scheduled hours over the highest
12 salaried thirty (30) consecutive months of the last sixty (60)
13 months. For members hired after July 1, 2019, it shall mean the
14 average paid gross salary of the firefighter for normally scheduled
15 hours over the highest salaried sixty (60) consecutive months of
16 credited service. Gross salary shall not include payment for
17 accumulated sick or annual leave upon termination of employment, any
18 uniform allowances or any other compensation for reimbursement of
19 out-of-pocket expenses. Only salary on which the required
20 contributions have been made may be used in computing the final
21 average salary. Effective January 1, 1988, gross salary shall
22 include any amount of elective salary reduction under Section 125 of
23 the Internal Revenue Code of 1986, as amended. Gross salary shall
24 include any amount of elective salary reduction under Section 457 of

1 the Internal Revenue Code of 1986, as amended, and any amount of
2 nonelective salary reduction under Section 414(h) of the Internal
3 Revenue Code of 1986, as amended. Effective July 1, 1998, for
4 purposes of determining a member's compensation, any contribution by
5 the member to reduce the member's regular cash remuneration under
6 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be
7 treated as if the member did not make such an election. Only salary
8 on which required contributions have been made may be used in
9 computing final average salary.

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

1 period, and the denominator of which is twelve (12). For purposes
2 of this subsection, a "Noneligible Member" is any member who first
3 became a member during a plan year commencing on or after July 1,
4 1996.

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

9 Effective June 9, 2010, gross salary shall also include gross
10 salary, as described above, for services, but paid by the later of
11 two and one-half (2 1/2) months after a firefighter's severance from
12 employment or the end of the calendar year that includes the date
13 the firefighter terminated employment, if it is a payment that,
14 absent a severance from employment, would have been paid to the
15 firefighter while the firefighter continued in employment with the
16 participating municipality.

17 Effective June 9, 2010, any payments not described above shall
18 not be considered gross salary if paid after severance from
19 employment, even if they are paid by the later of two and one-half
20 (2 1/2) months after the date of severance from employment or the
21 end of the calendar year that includes the date of severance from
22 employment, except payments to an individual who does not currently
23 perform services for the participating municipality by reason of
24 qualified military service within the meaning of Section 414(u)(5)

1 of the Internal Revenue Code of 1986, as amended, to the extent
2 these payments do not exceed the amounts the individual would have
3 received if the individual had continued to perform services for the
4 participating municipality rather than entering qualified military
5 service.

6 Effective June 9, 2010, back pay, within the meaning of Section
7 1.415(c)-2(g)(8) of the Income Tax Regulations, shall be treated as
8 gross salary for the year to which the back pay relates to the
9 extent the back pay represents wages and compensation that would
10 otherwise be included in this definition.

11 Effective for years beginning after December 31, 2008, gross
12 salary shall also include differential wage payments under Section
13 414(u)(12) of the Internal Revenue Code of 1986, as amended;

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

17 16. "Beneficiary" means a member's surviving spouse or any
18 surviving children, including biological and adopted children, at
19 the time of the member's death. The surviving spouse must have been
20 married to the firefighter for the thirty (30) continuous months
21 preceding the firefighter's death provided a surviving spouse of a
22 member who died while in, or as a consequence of, the performance of
23 the member's duty for a participating municipality, shall not be
24 subject to the marriage limitation for survivor benefits. A

1 surviving child of a member shall be a beneficiary until reaching
2 eighteen (18) years of age or twenty-two (22) years of age if the
3 child is enrolled full time and regularly attending a public or
4 private school or any institution of higher education. Any child
5 adopted by a member after the member's retirement shall be a
6 beneficiary only if the child is adopted by the member for the
7 thirty (30) continuous months preceding the member's death. Any
8 child who is adopted by a member after the member's retirement and
9 such member dies accidentally or as a consequence of the performance
10 of the member's duty as a firefighter shall not be subject to the
11 thirty-month adoption requirement. This definition of beneficiary
12 shall be in addition to any other requirement set forth in this
13 article;

14 17. "Accumulated contributions" means the sum of all
15 contributions made by a member to the System and includes both
16 contributions deducted from the compensation of a member and
17 contributions of a member picked up and paid by the participating
18 municipality of the member. Accumulated contributions shall not
19 include any interest on the contributions of the member, interest on
20 any amount contributed by the municipality or state and any amount
21 contributed by the municipality or state; and

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

1 SECTION 2. AMENDATORY 11 O.S. 2011, Section 50-101, as
2 amended by Section 1, Chapter 346, O.S.L. 2016 (11 O.S. Supp. 2018,
3 Section 50-101), is amended to read as follows:

4 Section 50-101. As used in this article:

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

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

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

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

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

19 6. "Member" means all eligible officers of a participating
20 municipality and any person hired by a participating municipality
21 who is undergoing police training to become a permanent police
22 officer of the municipality. Effective July 1, 1987, a member does
23 not include a "leased employee" as defined under Section 414(n)(2)
24 of the Internal Revenue Code of 1986, as amended. Effective July 1,

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

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

21 8. "Credited service" means the period of service used to
22 determine the eligibility for and the amount of benefits payable to
23 a member. Credited service shall consist of the period during which
24 the member participated in the System or the predecessor municipal

1 systems as an active employee in an eligible membership
2 classification, plus any service prior to the establishment of the
3 predecessor municipal systems which was credited under the
4 predecessor municipal systems or credited service granted by the
5 State Board;

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

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

23 11. "Permanent partial disability" means permanent disability
24 which is less than permanent total disability as defined in this

1 section. The member must be declared no greater than ninety-nine
2 percent (99%) impaired as defined by the "American Medical
3 Association's Guides to the Evaluation of Permanent Impairment" on
4 the basis of a physical medical examination by a physician licensed
5 to practice medicine in this state, as selected by the State Board;

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

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

1 member's death. Any child who is adopted by a member after the
2 member's retirement and such member dies accidentally or as a
3 consequence of the performance of the member's duty as a police
4 officer shall not be subject to the thirty-month adoption
5 requirement. This definition of beneficiary shall be in addition to
6 any other requirement set forth in this article;

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

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

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

14 17. "Final average salary" means the average paid base salary
15 of the member for normally scheduled hours over the highest salaried
16 thirty (30) consecutive months of the last sixty (60) months. For
17 members hired after July 1, 2019, it shall mean the average paid
18 base salary of the member for normally scheduled hours over the
19 highest salaried sixty (60) consecutive months of credited service.
20 Effective July 1, 2016, the following shall apply in computing final
21 average salary:

- 22 a. only paid base salary on which required contributions
23 have been made shall be used in computing a member's
24 final average salary,

- b. for purposes of determining the normal disability benefit only, final average salary shall be based on the member's total service if less than thirty (30) months through June 30, 2019, and beginning July 1, 2019, sixty (60) months,
- c. in addition to other applicable limitations, and notwithstanding any other provision to the contrary, for plan years beginning on or after July 1, 2002, the annual compensation of each "Noneligible Member" taken into account under the System shall not exceed the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) annual compensation limit. The EGTRRA annual compensation limit is Two Hundred Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The annual compensation limit in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which compensation is determined ("determination period") beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of

1 months in the determination period, and the
2 denominator of which is twelve (12). For purposes of
3 this section, a "Noneligible Member" is any member who
4 first became a member during a plan year commencing on
5 or after July 1, 1996,

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

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

18 18. "Accrued retirement benefit" means two and one-half percent
19 (2 1/2%) of the member's final average salary multiplied by the
20 member's years of credited service not to exceed thirty (30) years;

21 19. "Normal disability benefit" means two and one-half percent
22 (2 1/2%) of the member's final average salary multiplied by twenty
23 (20) years;

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

4 21. "Paid base salary" means, effective July 1, 2016, any
5 compensation described in subparagraph a of this paragraph that is
6 not described in subparagraph b of this paragraph.

7 a. Paid base salary shall include only:

8 (1) normal compensation paid on a regularly scheduled
9 pay period, including, but not limited to,
10 regular pay for holidays, paid time off, vacation
11 or annual leave, sick leave or compensatory time
12 in lieu of overtime, any lump sum payment paid in
13 lieu of a normal wage increase, provided such
14 lump sum payment is retroactively applied over
15 the prior twelve-month period ending with the
16 payment date, compensation for bomb squad pay,
17 education pay, incentive pay, K-9 pay,
18 negotiation pay, shift differential, sniper pay,
19 SWAT team pay, emergency response team pay, any
20 other special unit pay, and any incremental
21 increase in compensation which is not included by
22 the employer in a member's regular base pay for
23 salary increase purposes but is paid by the
24 employer to the member for group health benefits

1 based on an arrangement with a participating
2 municipality that was in place on December 31,
3 2015, so long as the arrangement continues
4 uninterrupted for a member employed by a
5 participating municipality on June 30, 2016, who
6 has not since terminated employment and been
7 rehired by such participating municipality,

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

13 (3) any amount of elective salary reduction not
14 includable in the gross income of the member
15 under Section 132(f)(4) of the Internal Revenue
16 Code of 1986, as amended, that would have been
17 treated as paid base salary but for the salary
18 deferral reduction agreement,

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

- (5) any amount of elective salary reduction under Section 401(k) of the Internal Revenue Code of 1986, as amended, that would have been treated as paid base salary but for the salary deferral reduction agreement,
- (6) any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986, as amended,
- (7) educational allowances paid to obtain training certification or pursue an advanced degree,
- (8) longevity payments made to members based upon a standardized plan which recognizes length of service to the participating municipality,
- (9) paid base salary shall also include base salary, as described in divisions (1) through (8) of this subparagraph, for services, but paid by the later of two and one-half (2 1/2) months after a member's severance from employment or the end of the calendar year that includes the date the member terminated employment, if it is a payment that, absent a severance from employment, would have been paid to the member while the member continued in employment with the participating municipality,

- (10) any payments not described in divisions (1) through (9) of this subparagraph shall not be considered paid base salary if paid after severance from employment, even if they are paid by the later of two and one-half (2 1/2) months after the date of severance from employment or the end of the calendar year that includes the date of severance from employment, except payments to an individual who does not currently perform services for the participating municipality by reason of qualified military service within the meaning of Section 414(u) (5) of the Internal Revenue Code of 1986, as amended, to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the participating municipality rather than entering qualified military service,
- (11) back pay, within the meaning of Section 1.415(c)-2(g) (8) of the Income Tax Regulations, shall be treated as paid base salary for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation

1 that would otherwise be included in this
2 definition, and

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

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

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

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

18 (3) insurance benefits, including any reimbursements
19 thereof, or insurance proceeds of any type not
20 otherwise included above in division (1) of
21 subparagraph a of this paragraph,

22 (4) bonuses, including signing bonuses, lump-sum
23 payments or stipends made to the member not
24

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

(5) overtime compensation,

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

(7) payments made in error to a member,

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

(9) severance pay,

(10) unemployment payments, and

(11) uniform and equipment allowances; and

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

SECTION 3. This act shall become effective July 1, 2019.

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

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