

SENATE FLOOR VERSION

February 18, 2021

SENATE BILL NO. 897

By: Paxton

An Act relating to firefighter retirement; amending 11 O.S. 2011, Sections 49-100.1, as last amended by Section 2, Chapter 388, O.S.L. 2013 and 49-135, as last amended by Section 1, Chapter 146 O.S.L. 2019 (11 O.S. Supp. 2020, Sections 49-100.1 and 49-135), which relate to definitions and employment of persons over forty-five; amending definition; adding definition; updating statutory reference; and providing exception to restriction on employment.

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. 2020, 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. "Nonparticipating fire chief" means a firefighter qualified
12 to serve as fire chief pursuant to the employing municipality;
13 provided, however, the firefighter shall not be required to be a
14 current employee of a participating municipality or a previous
15 employee of a participating municipality.

16 8. "Normal retirement date" means the date at which the member
17 is eligible to receive the unreduced payments of the member's
18 accrued retirement benefit. Such date shall be the first day
19 following the date the member completes twenty (20) years of
20 credited service. For a member whose first employment with a
21 participating employer of the System occurs on or after November 1,
22 2013, such date shall be the first day following the date the member
23 completes twenty-two (22) years of credited service and has attained
24 the age of at least fifty (50) years. If the member's employment

1 continues past the normal retirement date of the member, the actual
2 retirement date of the member shall be the first day following the
3 date the member terminates employment with more than twenty (20)
4 years of credited service, or with respect to members who are
5 required to complete twenty-two (22) years of service, the first day
6 following the date the member terminates employment with more than
7 twenty-two (22) years of service and who has also attained the age
8 of at least fifty (50) years;

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

19 ~~9.~~ 10. "Participating municipality" means a municipality,
20 county fire department organized pursuant to subsection D of Section
21 351 of Title 19 of the Oklahoma Statutes, or fire protection
22 district which is making contributions to the System on behalf of
23 its firefighters. All participating municipalities shall appoint a
24 fire chief who shall supervise and administer the fire department;

1 ~~10.~~ 11. "Disability" means the complete inability of the
2 firefighter to perform any and every duty of the firefighter's
3 regular occupation; provided further, that once benefits have been
4 paid for twenty-four (24) months the provisions of Section 49-110 of
5 this title shall apply to the firefighter;

6 ~~11.~~ 12. "Executive Director" means the managing officer of the
7 System employed by the State Board;

8 ~~12.~~ 13. "Eligible employer" means any municipality with a
9 municipal fire department, any county fire department organized
10 pursuant to subsection D of Section 351 of Title 19 of the Oklahoma
11 Statutes or any fire protection district with an organized fire
12 department;

13 ~~13.~~ 14. "Entry date" means the date as of which an eligible
14 employer joins the System. The first entry date pursuant to this
15 article shall be January 1, 1981;

16 ~~14.~~ 15. "Final average salary" means the average paid gross
17 salary of the firefighter for normally scheduled hours over the
18 highest salaried thirty (30) consecutive months of the last sixty
19 (60) months of credited service. Gross salary shall not include
20 payment for accumulated sick or annual leave upon termination of
21 employment, any uniform allowances or any other compensation for
22 reimbursement of out-of-pocket expenses. Only salary on which the
23 required contributions have been made may be used in computing the
24 final average salary. Effective January 1, 1988, gross salary shall

1 include any amount of elective salary reduction under Section 125 of
2 the Internal Revenue Code of 1986, as amended. Gross salary shall
3 include any amount of elective salary reduction under Section 457 of
4 the Internal Revenue Code of 1986, as amended, and any amount of
5 nonelective salary reduction under Section 414(h) of the Internal
6 Revenue Code of 1986, as amended. Effective July 1, 1998, for
7 purposes of determining a member's compensation, any contribution by
8 the member to reduce the member's regular cash remuneration under
9 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be
10 treated as if the member did not make such an election. Only salary
11 on which required contributions have been made may be used in
12 computing final average salary.

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

1 If a determination period consists of fewer than twelve (12) months,
2 the EGTRRA salary limit will be multiplied by a fraction, the
3 numerator of which is the number of months in the determination
4 period, and the denominator of which is twelve (12). For purposes
5 of this subsection, a "Noneligible Member" is any member who first
6 became a member during a plan year commencing on or after July 1,
7 1996.

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

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

20 Effective June 9, 2010, any payments not described above shall
21 not be considered gross salary if paid after severance from
22 employment, even if they are paid by the later of two and one-half
23 (2 1/2) months after the date of severance from employment or the
24 end of the calendar year that includes the date of severance from

1 employment, except payments to an individual who does not currently
2 perform services for the participating municipality by reason of
3 qualified military service within the meaning of Section 414(u) (5)
4 of the Internal Revenue Code of 1986, as amended, to the extent
5 these payments do not exceed the amounts the individual would have
6 received if the individual had continued to perform services for the
7 participating municipality rather than entering qualified military
8 service.

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

14 Effective for years beginning after December 31, 2008, gross
15 salary shall also include differential wage payments under Section
16 414(u) (12) of the Internal Revenue Code of 1986, as amended;

17 ~~15.~~ 16. "Accrued retirement benefit" means two and one-half
18 percent (2 1/2%) of the firefighter's final average salary
19 multiplied by the member's years of credited service not to exceed
20 thirty (30) years;

21 ~~16.~~ 17. "Beneficiary" means a member's surviving spouse or any
22 surviving children, including biological and adopted children, at
23 the time of the member's death. The surviving spouse must have been
24 married to the firefighter for the thirty (30) continuous months

preceding the firefighter's death; provided, a surviving spouse of a member who died while in, or as a consequence of, the performance of the member's duty for a participating municipality, shall not be subject to the marriage limitation for survivor benefits. A surviving child of a member shall be a beneficiary until reaching eighteen (18) years of age or twenty-two (22) years of age if the child is enrolled full time and regularly attending a public or private school or any institution of higher education. Any child adopted by a member after the member's retirement shall be a beneficiary only if the child is adopted by the member for the thirty (30) continuous months preceding the member's death. Any child who is adopted by a member after the member's retirement and such member dies accidentally or as a consequence of the performance of the member's duty as a firefighter shall not be subject to the thirty-month adoption requirement. This definition of beneficiary shall be in addition to any other requirement set forth in this article;

~~17.~~ 18. "Accumulated contributions" means the sum of all contributions made by a member to the System and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the participating municipality of the member. Accumulated contributions shall not include any interest on the contributions of the member, interest on

1 any amount contributed by the municipality or state and any amount
2 contributed by the municipality or state; and

3 ~~18.~~ 19. "Limitation year" means the year used in applying the
4 limitations of Section 415 of the Internal Revenue Code of 1986,
5 which year shall be the calendar year.

6 SECTION 2. AMENDATORY 11 O.S. 2011, Section 49-135, as
7 last amended by Section 1, Chapter 146, O.S.L. 2019 (11 O.S. Supp.
8 2020, Section 49-135), is amended to read as follows:

9 Section 49-135. A. No person shall be employed in a fire
10 department who has reached the age of forty-five (45) years, unless
11 it appears he or she shall become eligible for retirement at the age
12 of sixty-five (65) years, or at the age of sixty-seven (67) years
13 for a firefighter whose first service with a participating employer
14 of the System occurs on or after November 1, 2013, or unless he or
15 she be retired from a municipal fire department in the State of
16 Oklahoma. This section shall not apply to professional engineers,
17 ~~or to~~ persons employed as technical specialists on a temporary
18 basis, persons employed as fire chief of a participating
19 municipality or a nonparticipating fire chief. The State Board
20 shall be authorized to establish the maximum age, within the limits
21 herein prescribed, over which an applicant may not be considered for
22 initial employment, but no person shall be prohibited from making
23 application for reemployment and having such reemployment
24 application considered merely because of his or her age, provided

1 that such person be under the age of forty-five (45) years, and
2 provided further, that such reemployment shall be with the consent
3 of the fire chief of such municipality.

4 B. On or after ~~the effective date of this act~~ November 1, 2015,
5 a person who performs volunteer services as a firefighter, who has
6 attained the age of forty-five (45) or more years as of the first
7 date such volunteer services are performed, for a municipality or a
8 county shall not be eligible to be a member of the Oklahoma
9 Firefighters Pension and Retirement System for any purpose, shall
10 not be eligible for any benefit payable by the System and shall not
11 receive any form of service credit from the System resulting from
12 such volunteer services. The person responsible for decisions
13 regarding the performance of firefighting services having
14 jurisdiction, which in the absence of any other requirement to the
15 contrary shall be the Fire Chief, shall make the final determination
16 on applicants for positions that would involve the performance of
17 volunteer firefighting services if the applicant is over the age of
18 forty-five (45) years based on local rules, regulations, ordinances,
19 guidelines and standard operating procedures.

20 C. Notwithstanding the requirements of subsections C and H of
21 Section 49-106.1 of this title to terminate employment with all
22 participating municipalities as a firefighter, a person receiving an
23 accrued retirement benefit pursuant to Section 49-106 of this title
24 may perform volunteer firefighting services for a volunteer

1 department pursuant to subsection B of this section and continue to
2 receive the member's accrued retirement benefit; provided, that the
3 pension shall cease during any period of time the member may
4 thereafter serve for compensation in any municipal fire department
5 in the state; provided further, that no person shall perform any
6 services as a firefighter if such person is receiving disability
7 benefits pursuant to Section 49-109 of this title.

8 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
9 February 18, 2021 - DO PASS
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