

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 889

By: Weaver

AS INTRODUCED

An Act relating to law enforcement pension; amending 47 O.S. 2011, Section 2-300, as amended by Section 1, Chapter 383, O.S.L. 2015 (47 O.S. Supp. 2020, Section 2-300), which relates to definitions; updating language to conform with Internal Revenue Service Code and Treasury Regulations; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 2-300, as amended by Section 1, Chapter 383, O.S.L. 2015 (47 O.S. Supp. 2020, Section 2-300), is amended to read as follows:

Section 2-300. As used in Section 2-300 et seq. of this title:

1. "System" means the Oklahoma Law Enforcement Retirement System;
2. "Act" means Section 2-300 et seq. of this title;
3. "Board" means the Oklahoma Law Enforcement Retirement Board of the System;
4. "Executive Director" means the managing officer of the System employed by the Board;

1 5. "Fund" means the Oklahoma Law Enforcement Retirement Fund;

2 6. a. "Member" means:

3 (1) all commissioned law enforcement officers of the
4 Oklahoma Highway Patrol Division of the
5 Department of Public Safety who have obtained
6 certification from the Council on Law Enforcement
7 Education and Training, and all cadets of a
8 Patrol Academy of the Department of Public
9 Safety,

10 (2) law enforcement officers and criminalists of the
11 Oklahoma State Bureau of Investigation,

12 (3) law enforcement officers of the Oklahoma State
13 Bureau of Narcotics and Dangerous Drugs Control
14 designated to perform duties in the investigation
15 and prevention of crime and the enforcement of
16 the criminal laws of this state,

17 (4) law enforcement officers of the Oklahoma
18 Alcoholic Beverage Laws Enforcement Commission
19 designated to perform duties in the investigation
20 and prevention of crime and the enforcement of
21 the criminal laws of this state,

22 (5) employees of the Communications Section of the
23 Oklahoma Highway Patrol Division, radio
24 technicians, and tower technicians of the

1 Department of Public Safety, who are employed in
2 any such capacity as of June 30, 2008, and who
3 remain employed on or after July 1, 2008, until a
4 termination of service, or until a termination of
5 service with an election of a vested benefit from
6 the System, or until retirement. Effective July
7 1, 2008, a person employed for the first time as
8 an employee of the Department of Public Safety in
9 the Communications Division as an information
10 systems telecommunication technician of the
11 Department of Public Safety shall not be a member
12 of the System,

13 (6) park rangers of the Oklahoma Tourism and
14 Recreation Department and any park manager or
15 park supervisor of the Oklahoma Tourism and
16 Recreation Department, who was employed in such a
17 position prior to July 1, 1985, and who elects on
18 or before September 1, 1996, to participate in
19 the System, and

20 (7) inspectors of the Board of Pharmacy.

21 b. Effective July 1, 1987, a member does not include a
22 "leased employee" as defined under Section 414(n) (2)
23 of the Internal Revenue Code of 1986, as amended.
24 Effective July 1, 1999, any individual who agrees with

1 the participating employer that the individual's
2 services are to be performed as a leased employee or
3 an independent contractor shall not be a member
4 regardless of any classification as a common-law
5 employee by the Internal Revenue Service or any other
6 governmental agency, or any court of competent
7 jurisdiction.

8 c. All persons who shall be offered a position of a
9 commissioned law enforcement officer as an employee of
10 one of the agencies described in subparagraph a of
11 this paragraph shall participate in the System upon
12 the person meeting the requisite post-offer-pre-
13 employment physical examination standards which shall
14 be subject to the following requirements:

15 (1) all such persons shall be of good moral
16 character, free from deformities, mental or
17 physical conditions, or disease and alcohol or
18 drug addiction which would prohibit the person
19 from performing the duties of a law enforcement
20 officer,

21 (2) the physical-medical examination shall pertain to
22 age, sight, hearing, agility and other conditions
23 the requirements of which shall be established by
24 the Board,

1 (3) the person shall be required to meet the
2 conditions of this subsection prior to the
3 beginning of actual employment but after an offer
4 of employment has been tendered by a
5 participating employer,

6 (4) the Board shall have authority to deny or revoke
7 membership of any person submitting false
8 information in such person's membership
9 application, and

10 (5) the Board shall have final authority in
11 determining eligibility for membership in the
12 System, pursuant to the provisions of this
13 subsection;

14 7. "Normal retirement date" means the date at which the member
15 is eligible to receive the unreduced payments of the member's
16 accrued retirement benefit. Such date shall be the first day of the
17 month coinciding with or following the date the member:

- 18 a. completes twenty (20) years of vesting service, or
- 19 b. attains sixty-two (62) years of age with ten (10)
20 years of vesting service, or

21 c. attains sixty-two (62) years of age, if:

- 22 (1) the member has been transferred to this System
23 from the Oklahoma Public Employees Retirement
24 System on or after July 1, 1981, and

1 (2) the member would have been vested had the member
2 continued to be a member of the Oklahoma Public
3 Employees Retirement System.

4 With respect to distributions under the System made for calendar
5 years beginning on or after January 1, 2005, the System shall apply
6 the minimum distribution incidental benefit requirements, incidental
7 benefit requirements, and minimum distribution requirements of
8 Section 401(a)(9) of the Internal Revenue Code of 1986, as amended,
9 in accordance with the final regulations under Section 401(a)(9) of
10 the Internal Revenue Code of 1986, as amended, ~~which were issued in~~
11 ~~April 2002 and June 2004~~ including Treasury Regulations Sections
12 1.401(a)(9)-1 through 1.401(a)(9)-9; provided, however, that for
13 distributions required to be made after December 31, 2019, for
14 individuals who attain seventy and one-half (70 1/2) years of age
15 after that date, the distributions shall reflect that age seventy
16 and one-half (70 1/2) was stricken and age seventy-two (72) was
17 inserted in Sections 401(a)(9)(B)(iv)(I), 401(a)(9)(C)(i)(I) and
18 401(a)(9)(C)(ii)(I) of the Internal Revenue Code of 1986, as
19 amended, notwithstanding any provision of the System to the
20 contrary. With respect to distributions under the System made for
21 calendar years beginning on or after January 1, 2001, through
22 December 31, 2004, the System shall apply the minimum distribution
23 requirements and incidental benefit requirements of Section
24 401(a)(9) of the Internal Revenue Code of 1986, as amended, in

1 accordance with the regulations under Section 401(a)(9) of the
2 Internal Revenue Code of 1986, as amended, which were proposed in
3 January 2001, notwithstanding any provision of the System to the
4 contrary.

5 Effective July 1, 1989, notwithstanding any other provision
6 contained herein to the contrary, in no event shall commencement of
7 distribution of the accrued retirement benefit of a member be
8 delayed beyond April 1 of the calendar year following the later of:
9 (1) the calendar year in which the member reaches seventy and one-
10 half (70 1/2) years of age for a member who attained this age before
11 January 1, 2020, or, effective for distributions required to be made
12 after December 31, 2019, the calendar year in which the member
13 reaches seventy-two (72) years of age for a member who attains age
14 seventy and one-half (70 1/2) after December 31, 2019; or (2) the
15 actual retirement date of the member. ~~The preceding sentence does~~
16 ~~not allow deferral of~~ A member electing to defer the commencement of
17 retirement benefits pursuant to Section 2-308.1 of this title may
18 not defer the benefit commencement beyond the age of sixty-five
19 (65).

20 Effective September 8, 2009, notwithstanding anything to the
21 contrary of the System, the System, which as a governmental plan
22 (within the meaning of Section 414(d) of the Internal Revenue Code
23 of 1986, as amended), is treated as having complied with Section
24 401(a)(9) of the Internal Revenue Code of 1986, as amended, for all

1 years to which Section 401(a)(9) of the Internal Revenue Code of
2 1986, as amended, applies to the System if the System complies with
3 a reasonable and good faith interpretation of Section 401(a)(9) of
4 the Internal Revenue Code of 1986, as amended.

5 A member who was required to join the System effective July 1,
6 1980, because of the transfer of the employing agency from the
7 Oklahoma Public Employees Retirement System to the System, and was
8 not a member of the Oklahoma Public Employees Retirement System on
9 the date of such transfer shall be allowed to receive credit for
10 prior law enforcement service rendered to this state, if the member
11 is not receiving or eligible to receive retirement credit or
12 benefits for such service in any other public retirement system,
13 upon payment to the System of the employee contribution the member
14 would have been subject to had the member been a member of the
15 System at the time, plus five percent (5%) interest. Service credit
16 received pursuant to this paragraph shall be used in determining the
17 member's retirement benefit, and shall be used in determining years
18 of service for retirement or vesting purposes;

19 8. "Actual paid base salary" means the salary received by a
20 member, excluding payment for any accumulated leave or uniform
21 allowance. Salary shall include any amount of nonelective salary
22 reduction under Section 414(h) of the Internal Revenue Code of 1986;

23 9. "Final average salary" means the average of the highest
24 thirty (30) consecutive complete months of actual paid gross salary.

1 Gross salary shall include any amount of elective salary reduction
2 under Section 457 of the Internal Revenue Code of 1986, as amended,
3 and any amount of nonelective salary reduction under Section 414(h)
4 of the Internal Revenue Code of 1986, as amended. Effective July 1,
5 1992, gross salary shall include any amount of elective salary
6 reduction under Section 125 of the Internal Revenue Code of 1986, as
7 amended. Effective July 1, 1998, gross salary shall include any
8 amount of elective salary reduction not includable in the gross
9 income of the member under Section 132(f)(4) of the Internal Revenue
10 Code of 1986, as amended. Effective July 1, 1998, for purposes of
11 determining a member's compensation, any contribution by the member
12 to reduce his or her regular cash remuneration under Section
13 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be
14 treated as if the member did not make such an election. Only salary
15 on which required contributions have been made may be used in
16 computing the final average salary. Gross salary shall not include
17 severance pay.

18 In addition to other applicable limitations, and notwithstanding
19 any other provision to the contrary, for plan years beginning on or
20 after July 1, 2002, the annual gross salary of each "Noneligible
21 Member" taken into account under the System shall not exceed the
22 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")
23 annual salary limit. The EGTRRA annual salary limit is Two Hundred
24 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for

1 increases in the cost of living in accordance with Section
2 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The
3 annual salary limit in effect for a calendar year applies to any
4 period, not exceeding twelve (12) months, over which salary is
5 determined ("determination period") beginning in such calendar year.
6 If a determination period consists of fewer than twelve (12) months,
7 the EGTRRA salary limit will be multiplied by a fraction, the
8 numerator of which is the number of months in the determination
9 period, and the denominator of which is twelve (12). For purposes
10 of this section, a "Noneligible Member" is any member who first
11 became a member during a plan year commencing on or after July 1,
12 1996.

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

17 Effective January 1, 2008, gross salary for a plan year shall
18 also include gross salary, as described above, for services, but
19 paid by the later of two and one-half (2 1/2) months after a
20 member's severance from employment or the end of the calendar year
21 that includes the date the member terminated employment, if it is a
22 payment that, absent a severance from employment, would have been
23 paid to the member while the member continued in employment with the
24 employer.

1 Effective January 1, 2008, any payments not described above
2 shall not be considered gross salary if paid after severance from
3 employment, even if they are paid by the later of two and one-half
4 (2 1/2) months after the date of severance from employment or the
5 end of the calendar year that includes the date of severance from
6 employment, except payments to an individual who does not currently
7 perform services for the employer by reason of qualified military
8 service within the meaning of Section 414(u)(5) of the Internal
9 Revenue Code of 1986, as amended, to the extent these payments do
10 not exceed the amounts the individual would have received if the
11 individual had continued to perform services for the employer rather
12 than entering qualified military service.

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

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

21 10. "Credited service" means the period of service used to
22 determine the amount of benefits payable to a member. Credited
23 service shall consist of the period during which the member
24 participated in the System or the predecessor Plan as an active

1 employee in an eligible membership classification, plus any service
2 prior to the establishment of the predecessor Plan which was
3 credited under the predecessor Plan and for law enforcement officers
4 and criminalists of the Oklahoma State Bureau of Investigation and
5 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control
6 who became members of the System on July 1, 1980, any service
7 credited under the Oklahoma Public Employees Retirement System as of
8 June 30, 1980, and for members of the Communications and Lake Patrol
9 Divisions of the Oklahoma Department of Public Safety, who became
10 members of the System on July 1, 1981, any service credited under
11 the predecessor Plan or the Oklahoma Public Employees Retirement
12 System as of June 30, 1981, and for law enforcement officers of the
13 Alcoholic Beverage Laws Enforcement Commission who became members of
14 the System on July 1, 1982, any service credited under the Oklahoma
15 Public Employees Retirement System as of June 30, 1982, and for park
16 rangers of the Oklahoma Tourism and Recreation Department who became
17 members of the System on July 1, 1985, any service credited under
18 the Oklahoma Public Employees Retirement System as of June 30, 1985,
19 and for inspectors of the Oklahoma State Board of Pharmacy who
20 became members of the System on July 1, 1986, any service credited
21 under the Oklahoma Public Employees Retirement System as of June 30,
22 1986, for law enforcement officers of the Oklahoma Capitol Patrol
23 Division of the Department of Public Safety who became members of
24 the System effective July 1, 1993, any service credited under the

1 Oklahoma Public Employees Retirement System as of June 30, 1993, and
2 for all commissioned officers in the Gunsmith/Ammunition Reloader
3 Division of the Department of Public Safety who became members of
4 the System effective July 1, 1994, any service credited under the
5 Oklahoma Public Employees Retirement System as of June 30, 1994, and
6 for the park managers or park supervisors of the Oklahoma Tourism
7 and Recreation Department who were employed in such a position prior
8 to July 1, 1985, and who elect to become members of the System
9 effective September 1, 1996, any service transferred pursuant to
10 subsection C of Section 2-309.6 of this title and any service
11 purchased pursuant to subsection B of Section 2-307.2 of this title.
12 Effective August 5, 1993, an authorized leave of absence shall
13 include a period of absence pursuant to the Family and Medical Leave
14 Act of 1993;

15 11. "Disability" means a physical or mental condition which, in
16 the judgment of the Board, totally and presumably permanently
17 prevents the member from engaging in the usual and customary duties
18 of the occupation of the member and thereafter prevents the member
19 from performing the duties of any occupation or service for which
20 the member is qualified by reason of training, education or
21 experience. A person is not under a disability when capable of
22 performing a service to the employer, regardless of occupation,
23 providing the salary of the employee is not diminished thereby;

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

4 13. "Line of duty" means any action which a member whose
5 primary function is crime control or reduction or enforcement of the
6 criminal law is obligated or authorized by rule, regulations,
7 condition of employment or service, or law to perform, including
8 those social, ceremonial, or athletic functions to which the member
9 is assigned, or for which the member is compensated, by the agency
10 the member serves;

11 14. "Personal injury" or "injury" means any traumatic injury as
12 well as diseases which are caused by or result from such an injury,
13 but not occupational diseases;

14 15. "Catastrophic nature" means consequences of an injury that
15 permanently prevent an individual from performing any gainful work;

16 16. "Traumatic injury" means a wound or a condition of the body
17 caused by external force, including injuries inflicted by bullets,
18 explosives, sharp instruments, blunt objects or other physical
19 blows, chemicals, electricity, climatic conditions, infectious
20 diseases, radiation, and bacteria, but excluding stress and strain;
21 and

22 17. "Beneficiary" means the individual designated by the member
23 on a beneficiary designation form supplied by the Oklahoma Law
24 Enforcement Retirement System, or, if there is no designated

1 beneficiary or if the designated beneficiary predeceases the member,
2 the estate of the member. If the member's spouse is not designated
3 as the sole primary beneficiary, the member's spouse must sign a
4 consent.

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

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