

ENROLLED SENATE
BILL NO. 639

By: Corn of the Senate

and

Brannon of the House

An Act relating to retirement; amending 11 O.S. 2001, Sections 49-100.1, as amended by Section 1, Chapter 398, O.S.L. 2002, 49-106, as amended by Section 3, Chapter 398, O.S.L. 2002, 49-106.1, 49-106.2, 49-106.3, 49-116, as amended by Section 5, Chapter 398, O.S.L. 2002, 49-117.1, as amended by Section 6, Chapter 398, O.S.L. 2002, 49-117.3, as amended by Section 7, Chapter 398, O.S.L. 2002 (11 O.S. Supp. 2002, Sections 49-100.1, 49-106, 49-116, 49-117.1, and 49-117.3), which relate to the Oklahoma Firefighters Pension and Retirement System; conforming statutes to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"); deleting references to repealed and revised provisions; clarifying language to include certain in-service distributions; clarifying language concerning certain employment after termination from a covered position; amending benefit limitation to comply with EGTRRA; eliminating certain benefit floor amount; amending applicable mortality table; deleting provisions related to repealed Section 415(e) of the Internal Revenue Code of 1986 as amended; providing for treatment of certain distributions; amending definition of "Eligible Retirement Plan"; amending reference; allowing second physical performance/agility testing; providing condition prior to approval of membership application; allowing certain trustee-to-trustee transfers; 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. 2001, Section 49-100.1, as amended by Section 1, Chapter 398, O.S.L. 2002 (11 O.S. Supp. 2002, 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;
4. "Local board" means the local firefighters pension and retirement boards;
5. "Fund" means the Oklahoma Firefighters Pension and Retirement Fund;
6. "Member" means all eligible firefighters of a participating municipality or a fire protection district who perform the essential functions of fire suppression, prevention, and life safety duties in a fire department. The term "member" shall include but not be limited to the person serving as fire chief of any participating municipality, provided that a person serving as fire chief of a participating municipality shall meet the age, agility, physical and other eligibility requirements required by law at the time said person becomes a member of the System. Effective July 1, 1987, a member does not include a "leased employee". The term "leased employee" means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Internal Revenue Code of 1986, as amended) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. A leased employee shall not be considered an employee of the recipient if the requirements of the safe harbor provisions of Section 414(n)(5) of the Internal Revenue Code of 1986, as amended, are satisfied. Effective July 1, 1999, any individual who agrees with the participating municipality that the individual's services are to be performed as a leased employee or an independent contractor shall not be a member regardless of any classification as a common law employee by the Internal Revenue Service or any other governmental agency, or any court of competent jurisdiction;
7. "Normal retirement date" means the date at which the member is eligible to receive the unreduced payments of the member's accrued retirement benefit. Such date shall be the first day following the date the member completes twenty (20) years of credited service. If the member's employment continues past the normal retirement date of the member, the actual retirement date of the member shall be the first day following the date the member terminates employment with more than twenty (20) years of credited service;
8. "Credited service" means the period of service used to determine the eligibility for and the amount of benefits payable to a member. Credited service shall consist of the period during which the member participated in the System or the predecessor municipal systems as an active employee in an eligible membership

classification, plus any service prior to the establishment of the predecessor municipal systems which was credited under the predecessor municipal systems; provided however, "credited service" for members from a fire protection district shall not begin accruing before July 1, 1982;

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

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

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

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

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

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

In addition to other applicable limitations, and notwithstanding any other provision to the contrary, for plan years beginning on or after July 1, ~~1996~~ 2002, the annual gross salary of each "Noneligible Member" taken into account under the System shall not exceed the ~~Omnibus Budget~~ Economic Growth and Tax Relief Reconciliation Act of 1993 (OBRA '93) 2001 ("EGTRRA") annual salary limit. The ~~OBRA '93~~ EGTRRA annual salary limit is ~~One Hundred Fifty~~

~~Thousand Dollars (\$150,000.00)~~ 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 salary limit in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which salary is determined ("determination period") beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the ~~OBRA '93 EGTRRA~~ salary limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12). For purposes of this subsection, a "Noneligible Member" is any member who first became a member during a plan year commencing on or after July 1, 1996.

For plan years beginning on or after July 1, ~~1996~~ 2002, any reference to the annual salary limit under Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall mean the ~~OBRA '93 EGTRRA~~ salary limit set forth in this subsection.

~~If gross salary for any prior determination period is taken into account in determining a Noneligible Member's benefits accruing in the current plan year, the gross salary for that prior determination period is subject to the OBRA '93 annual salary limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after July 1, 1996, the OBRA '93 annual salary limit is One Hundred Fifty Thousand Dollars (\$150,000.00).~~

~~Effective July 1, 1989, through June 30, 1997, in determining the gross salary of a member for purposes of this limitation, the rules of Section 414(q)(6) of the Internal Revenue Code of 1986, as amended, shall apply, except in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the member who have not attained age nineteen (19) years before the close of the year. If, as a result of the application of such rules, the adjusted annual salary limitation is exceeded, then the limitation shall be prorated among the affected individuals in proportion to each such individual's gross salary as determined under this subsection prior to the application of this limitation;~~

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

16. "Beneficiary" means a member's surviving spouse or any surviving children, including biological and adopted children, at the time of the member's death. The surviving spouse must have been married to the 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. "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 any amount contributed by the municipality or state and any amount contributed by the municipality or state; and

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

SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-106, as amended by Section 3, Chapter 398, O.S.L. 2002 (11 O.S. Supp. 2002, Section 49-106), is amended to read as follows:

Section 49-106. A. Any firefighter who reaches the firefighter's normal retirement date shall be entitled, upon written request, to retire from such service and be paid from the System a monthly pension equal to the member's accrued retirement benefit; provided, that the pension shall cease during any period of time the member may thereafter serve for compensation in any municipal fire department in the state. If such a member is reemployed by a participating municipality in a position which is not covered by the System, retirement shall also include receipt by such member of in-service distributions from the System.

B. With respect to distributions under the System made for calendar years beginning on or after January 1, 2001, the System will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, that were proposed in January 2001, notwithstanding any provision of the System to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, or such other date as may be specified in guidance published by the Internal Revenue Service. Furthermore, to the extent applicable, distributions shall be made in accordance with the Proposed Income Tax Regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the minimum distribution incidental benefit requirements of the Proposed Income Tax Regulations. Effective July 1, 1989, notwithstanding any other provision contained herein to the contrary, in no event shall commencement of distribution of the accrued retirement benefit of a

member be delayed beyond April 1 of the calendar year following the later of:

1. The calendar year in which the member reaches seventy and one-half (70 1/2) years of age; or

2. The actual retirement date of the member.

SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-106.1, is amended to read as follows:

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

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

C. The duration of participation in the Oklahoma Firefighters Deferred Option Plan for active fire fighters shall not exceed five (5) years. At the conclusion of a member's participation in the Oklahoma Firefighters Deferred Option Plan, the member shall terminate employment with all participating municipalities as a fire fighter, and shall start receiving the member's accrued monthly retirement benefit from the System. Such a member may be reemployed by a participating municipality but only in a position not covered under the System, and receive in-service distributions of such member's accrued monthly retirement benefit from the System.

D. When a member begins participation in the Oklahoma Firefighters Deferred Option Plan, the contribution of the employee shall cease. The employer contributions shall continue to be paid in accordance with subsection B of Section 49-122 of this title. Municipal contributions for employees who elect the Oklahoma Firefighters Deferred Option Plan shall be credited equally to the Oklahoma Firefighters Pension and Retirement System and to the Oklahoma Firefighters Deferred Option Plan. The monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the Oklahoma Firefighters Deferred Option Plan account.

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

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

F. A participant in the plan shall receive at the option of the participant, a lump sum payment from the account equal to the payments to the account, or an annuity based upon the account of the participant or may elect any other method of payment if approved by the Board of Trustees.

G. If a member dies while maintaining an account balance in the plan the System shall pay to the designated recipient or recipients of the member, or if there is no designated recipient or if the designated recipient predeceases the member, to the estate of the member a lump sum payment equal to the account balance of the member. If a designated recipient is the surviving spouse of the member, the surviving spouse shall receive his or her portion of the account balance of the member pursuant to subsection F of this section.

SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-106.2, is amended to read as follows:

Section 49-106.2 A. Notwithstanding any other provision contained herein to the contrary, the benefits payable to a member in the System shall be subject to the limitations of Section 415 of the Internal Revenue Code of 1986 in accordance with the provisions of subsections B and C of this section.

B. Except as provided in paragraphs 3 through 7 of this subsection, any accrued retirement benefit payable to a member shall not exceed the lesser of:

1. ~~Ninety Thousand Dollars (\$90,000.00)~~ One Hundred Sixty Thousand Dollars (\$160,000.00), adjusted for increases in the cost of living, as prescribed by the Secretary of the Treasury or his delegate, effective January 1 of each calendar year and applicable to the limitation year ending with or within such calendar year; or

2. For limitation years beginning prior to January 1, 1995, one hundred percent (100%) of the average earnings of the member for the three (3) consecutive calendar years, while a member in the System, in which the member's earnings were the highest. For purposes of this paragraph, earnings for any limitation year shall be the earned income of the member, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with a participating municipality, provided such amounts are actually paid or includable in gross income during such year. Earnings shall exclude the following:

- a. contributions by a participating municipality to a plan of deferred compensation which are not included in the gross income of the member for the taxable year in which contributed or any distributions from a funded plan of deferred compensation, and
- b. other amounts which received special tax benefits, or contributions made by a participating municipality, whether or not under a salary reduction agreement,

towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code of 1986, whether or not the amounts are actually excludable from the gross income of the member;

3. Except as provided in paragraph 5 of this subsection, the limitations specified in paragraphs 1 and 2 of this subsection shall not be applicable with respect to any member whose total annual accrued retirement benefit payable from the System is less than Ten Thousand Dollars (\$10,000.00) and who has not at any time participated in any contribution plan, within the meaning of Section 415(k) of the Internal Revenue Code of 1986, maintained by a participating municipality;

4. If a member has less than ten (10) years of participation in the System and all predecessor municipal firefighter pension and retirement systems, the dollar limitation otherwise applicable under paragraph 1 of this subsection shall be reduced by multiplying such limitation by a fraction, the numerator of which is the number of the years of participation in the System of the member, but never less than one (1), and the denominator of which is ten (10). This paragraph, to the extent required by the Secretary of the Treasury, shall be applied separately to each change in benefit structure hereunder;

5. Effective for limitation years beginning on or after January 1, 1995, if a member has been credited with less than ten (10) years of credited service, the dollar amount otherwise applicable under paragraph 3 of this subsection shall be reduced by multiplying such dollar amount by a fraction, the numerator of which is the number of the years of credited service of the member, but never less than one (1), and the denominator of which is ten (10);

6. The limitations specified in this section shall apply to a straight life annuity with no ancillary benefits and to an annuity that constitutes a qualified joint and survivor annuity. If payment is in a different form, the amount thereof shall be adjusted to be the actuarial equivalent of a single life annuity and the limitations shall be applied to such adjusted amount. Such adjustment shall be based on the mortality tables and interest rates described in divisions (1) ~~and~~, (2) and (3) of subparagraph a of this paragraph.

- a. If payment begins before the member reaches sixty-two (62) years of age, the limitation in paragraph 1 of this subsection shall be reduced on an actuarially equivalent basis; ~~provided however, if such payment begins after the member reaches fifty-five (55) years of age, the reduced limit shall not be less than Seventy-five Thousand Dollars (\$75,000.00) and, if payment begins prior to the member reaching fifty-five (55) years of age, the reduced limit shall not be less than the actuarial equivalent of the Seventy-five Thousand Dollar (\$75,000.00) limit for age fifty-five (55); provided further, that in no event shall such amount be reduced below Fifty Thousand Dollars (\$50,000.00), adjusted for increases in the cost of~~

~~living, as prescribed by the Secretary of Treasury, or his delegate.~~

- (1) For limitation years beginning before January 1, 1999, the interest rate to be used to determine such actuarial equivalent amount in this subparagraph shall be the rate specified in the actuarial tables adopted by the State Board; however, the interest rate used in determining an actuarially equivalent pre-age-sixty-two (62) amount shall not be less than five percent (5%).
 - (2) Effective for limitation years beginning on or after January 1, 1999, the actuarial equivalent adjustments in this subparagraph shall be determined using the prevailing Commissioner's standard table (described in Section 807(d)(5)(A) of the Internal Revenue Code of 1986), without regard to any other subparagraph of Section 807(d)(5) of the Internal Revenue Code of 1986, used to determine reserves for group annuity contracts issued on the date as of which the payment is being determined. ~~(The current table is set forth in Revenue Ruling 95-6 and is based upon a fixed blend of fifty percent (50%) of the male mortality rates and fifty percent (50%) of the female mortality rates from the 1983 Group Annuity Mortality Table.)~~ The interest rate shall be five percent (5%). Notwithstanding any other System provisions to the contrary, for distributions with annuity starting dates on or after December 31, 2002, the applicable mortality table used for purposes of adjusting any benefit or limitation under Sections 415(b)(2)(B), (C) or (D) of the Internal revenue Code of 1986, as amended, is the table described in Rev. Rul. 2001-62.
 - (3) For limitation years beginning on or after January 1, 1997, if payment begins before the member reaches age sixty-two (62), the reductions in the limitations in this subparagraph shall not apply to a member who is a "qualified participant" as defined in Section 415(b)(2)(H) of the Internal Revenue Code of 1986.
- b. If payment begins after the member reaches sixty-five (65) years of age, the limitation in paragraph 1 of this subsection shall be the actuarial equivalent of such amount otherwise applicable at the member reaching sixty-five (65) years of age.
- (1) For limitation years beginning before January 1, 1999, the interest rate to be used to determine such actuarial equivalent amount in this subparagraph shall be the rate specified in the actuarial tables adopted by the State Board;

however, the interest rate used in determining an actuarially equivalent post-age-sixty-five (65) amount shall not be greater than five percent (5%).

- (2) Effective for limitation years beginning on or after January 1, 1999, the actuarial equivalent adjustments in this subparagraph shall use the mortality and interest rate basis provided in division (2) of subparagraph a of this paragraph.

7. In no event shall the maximum annual accrued retirement benefit of a member allowable under this section be less than the annual amount of such accrued retirement benefit, including early pension and qualified joint and survivor annuity amounts, duly accrued by the member as of the last day of the limitation year beginning in 1982, or as of the last day of the limitation year beginning in 1986, whichever is greater, disregarding any plan changes or cost-of-living adjustments occurring after July 1, 1982, as to the 1982 accrued amount, and May 5, 1986, as to the 1986 accrued amount.

8. For limitation years beginning on or after January 1, 1995, paragraphs 4, 5 and 6 of this subsection shall not apply to a benefit paid under the System as a result of the member becoming disabled by reason of personal injuries or sickness, or amounts received by the beneficiaries, survivors or estate of the member as a result of the death of the member.

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

- a. treating the accrued benefit derived from such contributions as an annual benefit under paragraph 1 of this subsection, or
- b. treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code of 1986, as amended.

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

C. ~~For distributions made in limitation years beginning prior to January 1, 2000, if a member also participates, or has participated, in one or more defined contribution plans, within the meaning of Section 415(k) on or after January 1, 2000, the combined limit of repealed Section 415(e) of the Internal Revenue Code of~~

~~1986, maintained by a participating municipality, the sum of the defined benefit plan fraction and defined contribution plan fraction, as defined in paragraphs 1 and 2 of this subsection, shall not exceed one. If, in any limitation year, the sum of the defined benefit plan fraction and the defined contribution plan fraction for a member would exceed one without adjustment of the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to subsection B of this section, the amount of the maximum annual accrued retirement benefit that can be paid to such member pursuant to subsection B of this section shall be reduced to the extent necessary to reduce the sum of the defined benefit plan fraction and the defined contribution plan fraction for the member to one, or the State Board may take such other action as will cause the sum to equal one or less. As used in this subsection:~~

~~1. "Defined benefit fraction" means a fraction:~~

- ~~a. the numerator of which is the projected annual accrued retirement benefit of the member from the System, determined as of the close of the limitation year, and~~
- ~~b. the denominator of which is the lesser of one hundred twenty-five percent (125%) of the dollar limitation under Section 415(b)(1)(A) of the Internal Revenue Code of 1986 or one hundred forty percent (140%) of the percentage limitation under Section 415(b)(1)(B) of the Internal Revenue Code of 1986 for the year of determination, taking into account the effect of Section 235(g)(4) of the Tax Equity and Fiscal Responsibility Act of 1982;~~

~~2. "Defined contribution fraction" means a fraction:~~

- ~~a. the numerator of which is the sum of the annual additions, as defined in Section 415(c)(2) of the Internal Revenue Code of 1986, to the accounts of the member under all defined contribution plans maintained by the participating municipalities as of the close of the limitation year, subject to reduction to the extent permitted under the transition rule in Section 235(g)(3) of the Tax Equity and Fiscal Responsibility Act of 1982, and~~
- ~~b. the denominator of which is the sum of the lesser of one hundred twenty-five percent (125%) of the dollar limitation under Section 415(c)(1)(A) of the Internal Revenue Code of 1986 or one hundred forty percent (140%) of the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code of 1986, for such limitation year and for all prior limitation years during which the member was employed by an eligible employer. At the option of the State Board, the denominator may be increased by using for limitation years ending prior to January 1, 1983, an amount equal to the denominator in effect for the limitation year ending in 1982, multiplied by the transition fraction provided in Section 415(c)(6)(B)~~

of the Internal Revenue Code of 1986 as amended, shall not apply.

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

SECTION 5. AMENDATORY 11 O.S. 2001, Section 49-106.3, is amended to read as follows:

Section 49-106.3 A. For distributions made on or after January 1, 1993, and notwithstanding any provision of the System to the contrary that would otherwise limit a Distributee's election hereunder, a Distributee may elect, at the time and in the manner prescribed by the State Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

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

1. "Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code of 1986; and the portion of any distribution that is not includable in gross income. Provided, however, that, effective January 1, 2002, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax member contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code of 1986, as amended, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended, that agrees to separately account for amounts so transferred, including separate accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable;

2. "Eligible Retirement Plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code of 1986, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code of 1986, an annuity plan described in Section 403(a) of the Internal Revenue Code of 1986, or a qualified trust described in Section 401(a) of the Internal Revenue Code of 1986, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, Effective January 1, 2002, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. An Eligible Retirement Plan does not include a Roth IRA under Section 408(a) shall also mean an annuity contract described

in Section 403(b) of the Internal Revenue Code of 1986, as amended, and an eligible plan under Section 457(b) of the Internal Revenue Code of 1986, as amended, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the System. Effective January 1, 2002, the definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee to a qualified domestic order as defined in subsection B of Section 49-126 of this title. An Eligible Retirement Plan does not include a Roth IRA under Section 408(a) of the Internal Revenue Code of 1986, as amended;

3. "Distributee" means a member whether or not said member is an active firefighter. In addition, effective June 7, 1993, the member's surviving spouse and the member's spouse or former spouse who is an alternate payee under a qualified domestic order, as provided in subsection B of Section 49-126 of this title, are Distributees with regard to the interest of the spouse or former spouse; and

4. "Direct Rollover" means a payment by the ~~Plan~~ System to the Eligible Retirement Plan specified by the Distributee.

C. At least thirty (30) days and not less than ninety (90) days before the date of distribution, the Distributee must be provided with a notice of rights which satisfies Section 402(f) of the Internal Revenue Code of 1986, as to rollover options and tax effects. Such distribution may commence less than thirty (30) days after the notice is given, provided that:

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

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

SECTION 6. AMENDATORY 11 O.S. 2001, Section 49-116, as amended by Section 5, Chapter 398, O.S.L. 2002 (11 O.S. Supp. 2002, Section 49-116), is amended to read as follows:

Section 49-116. A. All candidates being considered for a position of a paid firefighter shall pass the required pre-employment offer physical performance/agility test based on standards established by the State Board; provided that the time between the administration of the physical performance/agility test approval for membership in the System by the Executive Director and the candidate's actual hire date by the participating municipality is less than twelve (12) months, provided further that a volunteer firefighter who passes an agility test at the time he or she is enrolled as a firefighter in a combination paid and volunteer fire department shall not be required to take a second agility test at the time of appointment as a paid firefighter in the same fire department. After review of a candidate's physical

performance/agility test presented to the System by a participating municipality or its fire department, the Executive Director may require that a second physical performance/agility test be administered to said candidate by and under the supervision of the Executive Director. Successful completion of the second physical performance/agility test shall be required before said candidate's application for membership in the System can be approved.

B. The State Board shall require that any candidate applying for entrance as a member of the System, who has been offered a position of a paid firefighter and before entering the employment of a participating municipality as a paid firefighter, must successfully complete a physical examination, as promulgated by the administrative rules established by the State Board, in order to participate and qualify to receive any benefits from the System; provided that when the System receives all the information necessary for entrance into the System, including written notice from the System's physician that the candidate has met the minimum medical requirements for entrance, the Executive Director shall have the authority to approve an entrance date for the candidate no earlier than the date all the necessary information for entrance is received or the actual hire date whichever is later; provided that the time between the administration of the physical examination approval for membership in the System by the Executive Director and the candidate's actual hire date by the participating municipality is less than six (6) months. All candidates shall be of good moral character, free from deformities, mental or physical conditions, disease and alcohol or drug addiction, which would prohibit a candidate from performing duties as a firefighter. The State Board shall have the authority to deny or revoke the membership of a candidate submitting false information in such candidate's membership application and shall have final authority in determining eligibility for membership pursuant to the provisions of this article. This subsection shall not apply to any person who terminates employment with a participating municipality as a paid firefighter and is reemployed by the participating municipality or employed by another participating municipality within six (6) months of such termination, unless such person was terminated for medical reasons.

C. Any person retired for disability under this article may be summoned before the State Board herein provided for, any time hereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of the State Board with reference thereto; and all members of the fire department, who may be retired under the provisions of this article, shall report to some physician designated by the State Board when so retired, as required by the State Board.

SECTION 7. AMENDATORY 11 O.S. 2001, Section 49-117.1, as amended by Section 6, Chapter 398, O.S.L. 2002 (11 O.S. Supp. 2002, Section 49-117.1), is amended to read as follows:

Section 49-117.1 A member who terminates service before normal retirement date, other than by death or disability shall, upon application filed with the State Board, be refunded from the Fund an amount equal to the accumulated contributions the member has made to

the Fund, but excluding any interest or any amount contributed by the municipality or state. If a member has completed ten (10) years of credited service at the date of termination, the member may elect a vested benefit in lieu of receiving the member's accumulated contributions.

If the member who has completed ten (10) or more years of credited service elects the vested benefit, the member shall be entitled to a monthly retirement annuity commencing on the date the member reaches fifty (50) years of age or the date the member would have had twenty (20) years of credited service had the member's employment continued uninterrupted, whichever is later. The annual amount of such retirement annuity shall be equal to two and one-half percent (2 1/2%) of final average salary multiplied by the number of years of credited service. The death benefits provided for in this article shall not apply to any member retiring under the provisions of this section.

If a member who terminates employment and elects a vested benefit dies prior to being eligible to receive benefits, the member's beneficiary shall be entitled to the member's normal monthly retirement benefit on the date the deceased member would have been eligible to receive the benefit.

If a member terminates employment and withdraws the member's accumulated contributions and then subsequently rejoins the System, he may pay to the System the sum of the accumulated contributions he has withdrawn plus five percent (5%) annual interest from the date of withdrawal and shall receive the same benefits as if he had never withdrawn his contributions; however, effective January 1, 1991, the rate of interest provided herein shall be ten percent (10%) per annum.

Effective January 1, 2002, lump-sum payments for repayment of any amounts received because of a member's prior termination with interest, may be repaid by a trustee-to-trustee transfer from a ~~governmental~~ Code Section 403(b) annuity ~~or~~, a governmental Code Section 457 plan, and/or a Code Section 401(a) qualified plan.

A fire fighter shall not be permitted to withdraw from the System while employed as a fire fighter in a participating municipality.

SECTION 8. AMENDATORY 11 O.S. 2001, Section 49-117.3, as amended by Section 7, Chapter 398, O.S.L. 2002 (11 O.S. Supp. 2002, Section 49-117.3), is amended to read as follows:

Section 49-117.3 A. The State Board shall adopt rules for computation of the purchase price for transferred credited service. These rules shall base the purchase price for each year purchased on the actuarial cost of the incremental projected benefits to be purchased. The purchase price shall represent the present value of the incremental projected benefits discounted according to the member's age at the time of purchase. Incremental projected benefits shall be the difference between the projected benefit said member would receive without purchasing the transferred credited service and the projected benefit after purchase of the transferred

credited service computed as of the earliest age at which the member would be able to retire. Said computation shall assume an unreduced benefit and be computed using interest and mortality assumptions consistent with the actuarial assumptions adopted by the Board of Trustees for purposes of preparing the annual actuarial evaluation.

B. In the event that the member is unable to pay the purchase price provided for in this section by the due date, the State Board shall permit the members to amortize the purchase price over a period not to exceed sixty (60) months. Said payments shall be made by payroll deductions unless the State Board permits an alternate payment source. The amortization shall include interest in an amount not to exceed the actuarially assumed interest rate adopted by the State Board for investment earnings each year. Any member who ceases to make payment, terminates, retires or dies before completing the payments provided for in this section shall receive prorated service credit for only those payments made, unless the unpaid balance is paid by said member, his or her estate or successor in interest within six (6) months after said member's death, termination of employment or retirement, provided no retirement benefits shall be payable until the unpaid balance is paid, unless said member or beneficiary affirmatively waives the additional six-month period in which to pay the unpaid balance. The State Board shall promulgate such rules as are necessary to implement the provisions of this subsection.

C. Effective January 1, 2002, payment of the purchase price may be made by a trustee-to-trustee transfer from a ~~governmental~~ Code Section 403(b) annuity ~~or~~, a governmental Code Section 457 plan, and/or a Code Section 401(a) qualified plan. Members amortizing the purchase price and making payments by payroll deduction on or after January 1, 2002, shall have the option of making a lump-sum payment for the balance of the remaining payments by a trustee-to-trustee transfer from a ~~governmental~~ Code Section 403(b) annuity ~~or~~, a governmental Code Section 457 plan, and/or a Code Section 401(a) qualified plan.

SECTION 9. This act shall become effective July 1, 2003.

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

Passed the Senate the 6th day of March, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 15th day of April, 2003.

Presiding Officer of the House
of Representatives

