

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 609

By: Corn

AS INTRODUCED

An Act relating to retirement; amending 11 O.S. 2001, Sections 50-101, as last amended by Section 1, Chapter 137, O.S.L. 2003, and 50-115, as last amended by Section 6, Chapter 551, O.S.L. 2004 (11 O.S. Supp. 2004, Sections 50-101 and 50-115), which relate to the Oklahoma Police Pension and Retirement System; providing definition; deleting definitions; deleting provisions relating to percentage impairment disability benefits; deleting certain conditions required for disability benefit; providing in-line-of-duty and not-in-line-of-duty disability benefits; providing for restoration and cessation of disability benefits; providing for certain offset; deleting certain provisions relating to disability benefit based upon type of disability and years of service; 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 50-101, as last amended by Section 1, Chapter 137, O.S.L. 2003 (11 O.S. Supp. 2004, Section 50-101), is amended to read as follows:

Section 50-101. As used in this article:

1. "System" means the Oklahoma Police Pension and Retirement System and all predecessor municipal Police Pension and Retirement Systems;
2. "Article" means Article 50 of this title;
3. "State Board" means the Oklahoma Police Pension and Retirement Board;
4. "Fund" means the Oklahoma Police Pension and Retirement Fund;
5. "Officer" means any duly appointed and sworn full-time officer of the regular police department of a municipality whose duties are to preserve the public peace, protect life and property,

prevent crime, serve warrants, enforce all laws and municipal ordinances of this state, and any political subdivision thereof, and who is authorized to bear arms in the execution of such duties;

6. "Member" means all eligible officers of a participating municipality and any person hired by a participating municipality who is undergoing police training to become a permanent police officer of the municipality. Effective July 1, 1987, a member does not include a "leased employee" as defined under Section 414(n)(2) of the Internal Revenue Code of 1986, as amended. 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. A member shall include eligible commissioned officers of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma State Bureau of Investigation, and the Alcoholic Beverage Laws Enforcement Commission who elect to participate in the System pursuant to Section 50-111.5 of this title;

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 of the month coinciding with or 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 of the month after 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 or credited service granted by the State Board;

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

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

~~11. "Permanent partial disability" means permanent disability which is less than permanent total disability as defined in this section. The member must be declared no greater than ninety-nine percent (99%) impaired as defined by the "American Medical Association's Guides to the Evaluation of Permanent Impairment" on the basis of a physical medical examination by a physician licensed to practice medicine in this state, as selected by the State Board;~~

~~12. "Permanent in-line disability" means incapacity to earn any wages as a certified, commissioned police officer due to accidental~~

~~injury or occupational disease, incurred while in, and in consequence of, the performance of duty as an officer~~ "Disability" means the complete inability of the police officer to perform any and every duty of his or her regular occupation;

~~13.~~ 11. "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 member for the thirty (30) continuous months immediately preceding the member's death, provided a surviving spouse of a member who died while in, and as a consequence of, the performance of the member's duty for a participating municipality, shall not be subject to the thirty-month marriage requirement 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 police officer 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;

~~14.~~ 12. "Executive Director" means the managing officer of the System employed by the State Board;

~~15.~~ 13. "Eligible employer" means any municipality with a municipal police department;

~~16.~~ 14. "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;

~~17.~~ 15. "Final average salary" means the average paid base salary of the member for normally scheduled hours over the highest salaried thirty (30) consecutive months of the last sixty (60) months of credited service.

- a. Base salary shall not include payment for accumulated sick and annual leave upon termination of employment or any uniform allowances. Provided, for purposes of determining the normal disability benefit, final average salary shall be based on the member's total service if less than thirty (30) months. Base 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 January 1, 1988, base salary shall include any amount of elective salary reduction under Section 125 of the Internal Revenue Code of 1986, as amended. Effective July 1, 1998, gross salary shall include any amount of elective salary reduction not includable in the gross income of the member under Section 132(f)(4) of the Internal Revenue Code of 1986, as amended. Only salary on which required contributions have been made may be used in computing the final average salary.
- b. 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 months in the determination period, and the denominator of which is twelve (12). For purposes of this section, a "Noneligible Member" is any member who first became a member during a plan year commencing on or after July 1, 1996.

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

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

~~19.~~ 17. "Normal disability benefit" means two and one-half percent (2 1/2%) of the member's final average salary multiplied by twenty (20) years;

~~20.~~ 18. "Limitation year" means the year used in applying the limitations of Section 415 of the Internal Revenue Code of 1986, as amended, which year shall be the calendar year;

~~21.~~ 19. "Paid base salary" means, effective May 1, 2002, all compensation that shall include longevity, educational allowances, and normal compensation paid on a regularly scheduled pay period of which said pay period shall include holidays, annual leave and sick leave. Paid base salary shall not include overtime, shall not include payment for accumulated sick and annual leave upon termination of employment, and shall not include any uniform allowance or any other compensation for reimbursement of out-of-pocket expenses; and

~~22.~~ 20. "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 2. AMENDATORY 11 O.S. 2001, Section 50-115, as last amended by Section 6, Chapter 551, O.S.L. 2004 (11 O.S. Supp. 2004, Section 50-115), is amended to read as follows:

Section 50-115. A. The State Board is authorized to pay a disability benefit to a member of the System or a pension to the beneficiaries of such member eligible as hereinafter provided, not exceeding the accrued retirement benefit of the member, except as otherwise provided in this article. Such disability benefit shall be payable immediately upon determination of eligibility. ~~Any preexisting condition identified at the time of any initial or subsequent membership shall be used to offset the percentage of impairment to the whole person in determining any disability benefit. Once the initial disability benefit has been awarded by the Board on the basis of the percentage of impairment to the whole person, the member shall have no further recourse to increase the awarded percentage of impairment.~~

B. In order for any member to be eligible for any disability benefit, or the member's beneficiaries to be eligible for a pension, the member must have complied with any agreement as to contributions by the member and other members to any funds of the System where said agreement has been made as provided by this article; ~~and the State Board must find:~~

~~1. That the member incurred a permanent total disability or a permanent partial disability or died while in, and in consequence of, the performance of duty as an officer; or~~

~~2. That such member has served ten (10) years and incurred a permanent total disability or a permanent partial disability or has died from any cause.~~

C. In the event of the death of any member who has been awarded a disability benefit or is eligible ~~therefor~~ therefore as provided in this article, the member's beneficiary shall be paid the benefit.

D. As of the date of determination by the State Board that a member has incurred ~~a permanent~~ an in-line disability as a result of physical or mental causes, which prevent the effective performance of the police officer's duties, the member shall be awarded a benefit ~~as follows~~ to be equal to the greater of:

~~1% to 49% impairment to~~

~~whole person = 50% of the normal disability benefit~~

~~50% to 74% impairment to~~

~~whole person = 75% of the normal disability benefit~~

~~75% to 99% impairment to~~

~~whole person = 100% of the normal disability benefit.~~

1. Fifty percent (50%) of the average monthly salary which was paid to the police officer during the last thirty (30) months of the police officer's service; or

2. Two and one-half percent (2 1/2%) of the police officer's final average salary multiplied by the member's years of credited service, not to exceed thirty (30) years, provided such police

officer has completed twenty (20) or more years of credited service; provided, that whenever such disability shall cease such disability pension shall cease; provided further, that if the disability ceases within two (2) years from the date of the police officer's disability retirement and before the police officer's normal retirement date, the formerly disabled person shall be restored to active service at the salary attached to the rank the police officer held at the time of the police officer's disability retirement provided the police officer is capable of performing the duties of a police officer; provided further, that if a police officer participates in the Oklahoma Police Deferred Option Plan pursuant to Section 50-111.3 of this title, the police officer's disability pension provided pursuant to this subsection shall be reduced to account for the police officer's participation in the Oklahoma Police Deferred Option Plan.

E. Whenever any police officer, who has served in any capacity in a regularly constituted police department of a municipality of the state, and who has served less than the police officer's normal retirement date, shall become so physically or mentally disabled from causes not arising in the line of duty as to prevent the effective performance of the police officer's duties, the police officer shall be entitled to a pension during the continuance of such disability based upon the police officer's service period which shall be fifty percent (50%) of the average monthly salary which was paid to the police officer during the last sixty (60) months of the police officer's service.

F. If the participating municipality denies a disabled member the option of continuing employment instead of retiring on a disability pension, then the burden of proof rests with the participating municipality to show cause to the State Board that there is no position as a sworn officer within the police department of that municipality which the member can fill.

~~F. Upon determination by the State Board that a member is physically or mentally disabled and that the disability is permanent and total and that the member has completed ten (10) years of credited service and is disabled by any cause, the member shall receive a disability benefit on the basis of the member's accrued retirement benefit.~~

~~G. Upon determination by the State Board that a member is physically or mentally disabled and that the disability is permanent and partial and that the member has completed ten (10) years of credited service as a member and is disabled from any cause, the member shall be awarded a disability benefit on the basis of the member's years of credited service as a member and the percentage of impairment to the whole person, as defined by the most current standards of the impairment as outlined in the "American Medical Association's Guides to the Evaluation of Permanent Impairment", on the basis of the following table:~~

~~1% to 24% impaired = 25% of accrued retirement benefit~~

~~25% to 49% impaired = 50% of accrued retirement benefit~~

~~50% to 74% impaired = 75% of accrued retirement benefit~~

~~75% to 99% impaired = 90% of accrued retirement benefit.~~

~~H. G. Before making a finding as to the disability of a member, the State Board shall require that, if the member is able, the member shall make a certificate as to the disability which shall be subscribed and sworn to by the member. It shall also require a certificate as to such disability to be made by some physician licensed to practice in this state as selected by the State Board. The State Board may require other evidence of disability before making the disability benefit. The salary of any such member shall continue while the member is so necessarily confined to such hospital bed or home and necessarily requires medical care or professional nursing on account of such sickness or disability for a period of not more than six (6) months, after which said period the~~

other provisions of this article may apply. The State Board, in making disability benefits, shall act upon the written request of the member or without such request, if it deem it for the good of the police department. Any disability benefits shall cease when the member receiving same shall be restored to active service at a salary not less than three-fourths (3/4) of the member's average monthly salary.

~~F.~~ H. Any member of a police department of any municipality who, in the line of duty, has been exposed to hazardous substances, including but not limited to chemicals used in the manufacture of a controlled dangerous substance or chemicals resulting from the manufacture of a controlled dangerous substance, or to blood-borne pathogens and who is later disabled from a condition that was the result of such exposure and that was not revealed by the physical examination passed by the member upon entry into the System shall be presumed to have incurred such disability while performing the officer's duties unless the contrary is shown by competent evidence. The presumption created by this subsection shall have no application whatever to any workers' compensation claim or claims, and it shall not be applied or be relied upon in any way in workers' compensation proceedings. All compensation or benefits due to any member pursuant to the presumption created by this subsection shall be paid solely by the system.

SECTION 3. This act shall become effective July 1, 2005.

SECTION 4. 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.