

SENATE FLOOR VERSION

February 18, 2021

SENATE BILL NO. 743

By: Weaver

An Act relating to police retirement; amending 11 O.S. 2011, Sections 50-101, as amended by Section 1, Chapter 346, O.S.L. 2016 and 50-115, as last amended by Section 3, Chapter 120, O.S.L. 2020 (11 O.S. Supp. 2020, Sections 50-101 and 50-115), which relate to definitions and disability benefit; modifying definitions of permanent in-line disability and normal disability benefit; modifying disability benefits received by certain disabled officers; updating statutory language; and modifying permanent impairment guidelines.

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

SECTION 1. AMENDATORY 11 O.S. 2011, Section 50-101, as amended by Section 1, Chapter 346, O.S.L. 2016 (11 O.S. Supp. 2020, 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;

1 4. "Fund" means the Oklahoma Police Pension and Retirement
2 Fund;

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

9 6. "Member" means all eligible officers of a participating
10 municipality and any person hired by a participating municipality
11 who is undergoing police training to become a permanent police
12 officer of the municipality. Effective July 1, 1987, a member does
13 not include a "leased employee" as defined under Section 414(n)(2)
14 of the Internal Revenue Code of 1986, as amended. Effective July 1,
15 1999, any individual who agrees with the participating municipality
16 that the individual's services are to be performed as a leased
17 employee or an independent contractor shall not be a member
18 regardless of any classification as a common law employee by the
19 Internal Revenue Service or any other governmental agency, or any
20 court of competent jurisdiction. A member shall include eligible
21 commissioned officers of the Oklahoma State Bureau of Narcotics and
22 Dangerous Drugs Control, the Oklahoma State Bureau of Investigation,
23 and the Alcoholic Beverage Laws Enforcement Commission who elect to
24

1 participate in the System pursuant to Section 50-111.5 of this
2 title;

3 7. "Normal retirement date" means the date at which the member
4 is eligible to receive the unreduced payments of the member's
5 accrued retirement benefit. Such date shall be the first day of the
6 month coinciding with or following the date the member completes
7 twenty (20) years of credited service. If the member's employment
8 continues past the normal retirement date of the member, the actual
9 retirement date of the member shall be the first day of the month
10 after the member terminates employment with more than twenty (20)
11 years of credited service;

12 8. "Credited service" means the period of service used to
13 determine the eligibility for and the amount of benefits payable to
14 a member. Credited service shall consist of the period during which
15 the member participated in the System or the predecessor municipal
16 systems as an active employee in an eligible membership
17 classification, plus any service prior to the establishment of the
18 predecessor municipal systems which was credited under the
19 predecessor municipal systems or credited service granted by the
20 State Board;

21 9. "Participating municipality" means a municipality which is
22 making contributions to the System on behalf of its officers. The
23 Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the
24 Oklahoma State Bureau of Investigation, and the Alcoholic Beverage

1 Laws Enforcement Commission shall be treated in the same manner as a
2 participating municipality only regarding those members who elect to
3 participate in the System pursuant to Section 50-111.5 of this
4 title;

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

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

21 12. "Permanent in-line disability" means ~~incapacity to earn any~~
22 ~~wages as a certified, commissioned police officer due to accidental~~
23 ~~injury or occupational disease, incurred while in, and in~~
24 ~~consequence of, the performance of duty as an officer~~ when a police

1 officer serving in any capacity at a regular police department of a
2 participating municipality becomes so physically or mentally
3 disabled, as determined by an independent medical examiner,
4 psychiatrist or psychologist selected by the State Board, while in,
5 and in consequence of, the performance of authorizing activities
6 while on duty as an officer that he or she is unable to perform the
7 required duties of a police officer;

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

1 consequence of the performance of the member's duty as a police
2 officer shall not be subject to the thirty-month adoption
3 requirement. This definition of beneficiary shall be in addition to
4 any other requirement set forth in this article;

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

7 15. "Eligible employer" means any municipality with a municipal
8 police department;

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

12 17. "Final average salary" means the average paid base salary
13 of the member for normally scheduled hours over the highest salaried
14 thirty (30) consecutive months of the last sixty (60) months of
15 credited service. Effective July 1, 2016, the following shall apply
16 in computing final average salary:

17 a. only paid base salary on which required contributions
18 have been made shall be used in computing a member's
19 final average salary,

20 b. for purposes of determining the normal disability
21 benefit only, final average salary shall be based on
22 the member's total service if less than thirty (30)
23 months,

24

1 c. in addition to other applicable limitations, and
2 notwithstanding any other provision to the contrary,
3 for plan years beginning on or after July 1, 2002, the
4 annual compensation of each "Noneligible Member" taken
5 into account under the System shall not exceed the
6 Economic Growth and Tax Relief Reconciliation Act of
7 2001 (EGTRRA) annual compensation limit. The EGTRRA
8 annual compensation limit is Two Hundred Thousand
9 Dollars (\$200,000.00), as adjusted by the Commissioner
10 for increases in the cost of living in accordance with
11 Section 401(a)(17)(B) of the Internal Revenue Code of
12 1986, as amended. The annual compensation limit in
13 effect for a calendar year applies to any period, not
14 exceeding twelve (12) months, over which compensation
15 is determined ("determination period") beginning in
16 such calendar year. If a determination period
17 consists of fewer than twelve (12) months, the EGTRRA
18 annual compensation limit will be multiplied by a
19 fraction, the numerator of which is the number of
20 months in the determination period, and the
21 denominator of which is twelve (12). For purposes of
22 this section, a "Noneligible Member" is any member who
23 first became a member during a plan year commencing on
24 or after July 1, 1996,

- 1 d. for plan years beginning on or after July 1, 2002, any
2 reference in the System to the annual compensation
3 limit under Section 401(a)(17) of the Internal Revenue
4 Code of 1986, as amended, shall mean the EGTRRA annual
5 compensation limit set forth in this provision, and
6 e. effective January 1, 2008, back pay, within the
7 meaning of Section 1.415(c)-2(g)(8) of the Income Tax
8 Regulations, shall be treated as paid base salary for
9 the limitation year to which the back pay relates to
10 the extent the back pay represents wages and
11 compensation that would otherwise be included in this
12 definition;

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

16 19. "Normal disability benefit" means the greater of:

- 17 a. two and one-half percent (2 1/2%) of the member's
18 final average salary multiplied by twenty (20) years,
19 notwithstanding the years of actual credit service, or
20 b. two and one-half percent (2 1/2%) of the member's
21 final average salary multiplied by the years of
22 credited service of the member, not to exceed thirty
23 (30) years, if the officer has more than twenty (20)
24 years of credited service;

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

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

7 a. Paid base salary shall include only:

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

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

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

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

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

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- 1 (5) any amount of elective salary reduction under
2 Section 401(k) of the Internal Revenue Code of
3 1986, as amended, that would have been treated as
4 paid base salary but for the salary deferral
5 reduction agreement,
- 6 (6) any amount of nonelective salary reduction under
7 Section 414(h) of the Internal Revenue Code of
8 1986, as amended,
- 9 (7) educational allowances paid to obtain training
10 certification or pursue an advanced degree,
- 11 (8) longevity payments made to members based upon a
12 standardized plan which recognizes length of
13 service to the participating municipality,
- 14 (9) paid base salary shall also include base salary,
15 as described in divisions (1) through (8) of this
16 subparagraph, for services, but paid by the later
17 of two and one-half (2 1/2) months after a
18 member's severance from employment or the end of
19 the calendar year that includes the date the
20 member terminated employment, if it is a payment
21 that, absent a severance from employment, would
22 have been paid to the member while the member
23 continued in employment with the participating
24 municipality,

- 1 (10) any payments not described in divisions (1)
2 through (9) of this subparagraph shall not be
3 considered paid base salary if paid after
4 severance from employment, even if they are paid
5 by the later of two and one-half (2 1/2) months
6 after the date of severance from employment or
7 the end of the calendar year that includes the
8 date of severance from employment, except
9 payments to an individual who does not currently
10 perform services for the participating
11 municipality by reason of qualified military
12 service within the meaning of Section 414(u) (5)
13 of the Internal Revenue Code of 1986, as amended,
14 to the extent these payments do not exceed the
15 amounts the individual would have received if the
16 individual had continued to perform services for
17 the participating municipality rather than
18 entering qualified military service,
- 19 (11) back pay, within the meaning of Section 1.415(c)-
20 2(g) (8) of the Income Tax Regulations, shall be
21 treated as paid base salary for the limitation
22 year to which the back pay relates to the extent
23 the back pay represents wages and compensation
24

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

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

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

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

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

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

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

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

3 (5) overtime compensation,

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

9 (7) payments made in error to a member,

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

15 (9) severance pay,

16 (10) unemployment payments, and

17 (11) uniform and equipment allowances; and

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

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1 SECTION 2. AMENDATORY 11 O.S. 2011, Section 50-115, as
2 last amended by Section 3, Chapter 120, O.S.L. 2020 (11 O.S. Supp.
3 2020, Section 50-115), is amended to read as follows:

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

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

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

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

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

10 D. 1. As of the date of determination by the State Board that
11 a member ~~is physically or mentally disabled and that the disability~~
12 ~~is permanent and partial or permanent and total as was incurred~~
13 ~~while in, and in consequence of, the performance or duty as an~~
14 ~~officer~~ has a permanent in-line disability, the member shall be
15 awarded a normal disability benefit ~~on the basis of the percentage~~
16 ~~of impairment to the whole person, as defined by the most current~~
17 ~~standards of the impairment as outlined in the "American Medical~~
18 ~~Association's Guides to the Evaluation of Permanent Impairment", as~~
19 ~~provided in the following table or as prescribed by paragraph 2 of~~
20 ~~this subsection with respect to injuries sustained as a result of a~~
21 ~~violent act:~~

22 1% to 49% impairment to whole person - 50% of the normal
23 _____ disability benefit
24

1 ~~50% to 74% impairment to whole person = 75% of the normal~~
2 ~~disability benefit~~
3 ~~75% to 100% impairment to whole person = 100% of the normal~~
4 ~~disability benefit, as defined in Section 50-101 of this title.~~

5 2. If an injury to a member results from a violent act as
6 defined by this paragraph while in the performance of his or her
7 duties as a police officer, the State Board shall make a
8 determination that the member has sustained a one-hundred-percent
9 disability and shall make the benefit award in accordance with that
10 standard. As used in this paragraph, "violent act" means a violent
11 attack upon the member by means of a dangerous weapon, including,
12 but not limited to, a firearm, knife, automobile, explosive device
13 or other dangerous weapon.

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

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

1 retirement benefit. A permanent and total impairment equates to one
2 hundred percent (100%) of accrued retirement benefit.

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

13 ~~1% to 24% impaired = 25% of accrued retirement benefit~~
14 ~~25% to 49% impaired = 50% of accrued retirement benefit~~
15 50% to 74% impaired = 75% of accrued retirement benefit
16 75% to 99% impaired = ~~90%~~ 100% of accrued retirement benefit.

17 H. Before making a finding as to the disability of a member,
18 the State Board shall require that, if the member is able, the
19 member shall make a certificate as to the disability which shall be
20 subscribed and sworn to by the member. It shall also require a
21 certificate as to such disability to be made by some physician
22 licensed to practice in this state as selected by the State Board.
23 The State Board may require other evidence of disability before
24 making the disability benefit. The salary of any such member shall

1 continue while the member is so necessarily confined to such
2 hospital bed or home and necessarily requires medical care or
3 professional nursing on account of such sickness or disability for a
4 period of not more than six (6) months, after which ~~said~~ the period
5 the other provisions of this article may apply. The State Board, in
6 making disability benefits, shall act upon the written request of
7 the member or without such request, if it deem it for the good of
8 the police department. Any disability benefits shall cease when the
9 member receiving same shall be restored to active service at a
10 salary not less than three-fourths (3/4) of the member's average
11 monthly salary.

12 I. Any member of a police department of any municipality who,
13 in the line of duty, has been exposed to hazardous substances,
14 including but not limited to chemicals used in the manufacture of a
15 controlled dangerous substance or chemicals resulting from the
16 manufacture of a controlled dangerous substance, or to blood-borne
17 pathogens and who is later disabled from a condition that was the
18 result of such exposure and that was not revealed by the physical
19 examination passed by the member upon entry into the System shall be
20 presumed to have incurred such disability while performing the
21 officer's duties unless the contrary is shown by competent evidence.
22 The presumption created by this subsection shall have no application
23 whatever to any workers' compensation claim or claims, and it shall
24 not be applied or be relied upon in any way in workers' compensation

1 proceedings. All compensation or benefits due to any member
2 pursuant to the presumption created by this subsection shall be paid
3 solely by the system.

4 J. If the requirements of Section 50-114.4 of this title are
5 satisfied, a member who, by reason of disability, is separated from
6 service as a public safety officer with the member's participating
7 municipality, may elect to have payment made directly to the
8 provider for qualified health insurance premiums by deduction from
9 his or her monthly disability benefit, after December 31, 2006, in
10 accordance with Section 402(1) of the Internal Revenue Code of 1986,
11 as amended.

12 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
13 February 18, 2021 - DO PASS
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