

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 743

By: Weaver

AS INTRODUCED

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;

1           3. "State Board" means the Oklahoma Police Pension and  
2 Retirement Board;

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

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

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

1 and the Alcoholic Beverage Laws Enforcement Commission who elect to  
2 participate in the System pursuant to Section 50-111.5 of this  
3 title;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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,

- 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.  
24

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:

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~~

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.

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