

1 ENGROSSED SENATE
2 BILL NO. 897

By: Paxton and Garvin of the
Senate

3 and

4 Boles and Hill of the House

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6
7 An Act relating to firefighter retirement; amending
8 11 O.S. 2011, Sections 29-102, as amended by Section
9 1, Chapter 281, O.S.L. 2014, 49-100.1, as last
10 amended by Section 2, Chapter 388, O.S.L. 2013, and
11 49-135, as last amended by Section 1, Chapter 146,
12 O.S.L. 2019 (11 O.S. Supp. 2020, Sections 29-102, 49-
13 100.1 and 49-135), which relate to fire chief duties,
14 definitions and employment; specifying service
15 requirements for certain fire chiefs; specifying that
16 fire chiefs are exempt from retirement system;
17 specifying that fire chiefs may join system in
18 certain circumstances; specifying that fire chief may
19 receive certain benefits in certain circumstances;
20 modifying definition of member; exempting fire chiefs
21 from certain employment requirements.

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

23 SECTION 1. AMENDATORY 11 O.S. 2011, Section 29-102, as
24 amended by Section 1, Chapter 281, O.S.L. 2014 (11 O.S. Supp. 2020,
Section 29-102), is amended to read as follows:

Section 29-102. A. All cities having a paid fire department
shall have one full-time fire chief who shall supervise and
administer the fire department in accordance with the policies and
procedures prescribed by the governing body or by the city manager.

1 The fire department shall be under the direction and control of the
2 fire chief who shall not serve as fire chief and also as police
3 chief, city manager, mayor or any other position that impairs the
4 ability to perform the duties of a fire chief.

5 B. The fire chief, whether permanent or interim, of any paid
6 municipal fire department shall have had at least three (3) years'
7 actual experience as a paid ~~fire fighter~~ firefighter before assuming
8 the position of fire chief. The fire chief, whether permanent or
9 interim, of a fire department with both paid firefighters and
10 volunteer firefighters shall have had at least three (3) years'
11 actual experience as either a paid firefighter or volunteer
12 firefighter, or any combination thereof, before assuming the
13 position of fire chief.

14 C. The fire chief of any participating municipality may be
15 exempt from membership in the Oklahoma Firefighters Pension and
16 Retirement System or may become a member, provided he or she is not
17 a retired member and any other requirements for employment are met
18 at the time of employment.

19 D. A member of the System who has attained his or her normal
20 retirement date may elect to terminate employment and retire as a
21 member of the System and make an election to receive distributions
22 from the System. If a retired member is reemployed by a
23 participating municipality in the position of fire chief, he or she
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1 shall still receive in-service distributions of the member's accrued
2 monthly retirement benefit from the System.

3 E. It shall be the duty of the fire chief to file the
4 appropriate activity report forms with the Office of the State Fire
5 Marshal in Oklahoma City on an annual basis. The activity report
6 forms shall be designed by the State Fire Marshal and shall include,
7 but not be limited to, the amount of property and vehicle fire loss,
8 types of fires, inspections and investigations. The report shall
9 include notification of all fire-related civilian deaths and
10 injuries in the respective jurisdiction and of ~~fire fighter~~
11 firefighter deaths in the line of duty and of ~~fire fighter~~
12 firefighter injuries in the line of duty requiring the services of a
13 hospital or physician or both.

14 SECTION 2. AMENDATORY 11 O.S. 2011, Section 49-100.1, as
15 last amended by Section 2, Chapter 388, O.S.L. 2013 (11 O.S. Supp.
16 2020, Section 49-100.1), is amended to read as follows:

17 Section 49-100.1. As used in this article:

18 1. "System" means the Oklahoma Firefighters Pension and
19 Retirement System and all predecessor municipal firefighters pension
20 and retirement systems;

21 2. "Article" means Article 49 of this title;

22 3. "State Board" means the Oklahoma Firefighters Pension and
23 Retirement Board;

1 4. "Local board" means the local firefighters pension and
2 retirement boards;

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

5 6. "Member" means all eligible firefighters of a participating
6 municipality or a fire protection district who perform the essential
7 functions of fire suppression, prevention, and life safety duties in
8 a fire department. The term "member" shall include but not be
9 limited to the person serving as fire chief of any participating
10 municipality, ~~provided that a person serving as fire chief of a~~
11 ~~participating municipality shall meet the age, agility, physical and~~
12 ~~other eligibility requirements required by law at the time said~~
13 ~~person becomes a member of the System~~ except as provided in Section
14 1 of this act. Effective July 1, 1987, a member does not include a
15 "leased employee". The term "leased employee" means any person
16 (other than an employee of the recipient) who pursuant to an
17 agreement between the recipient and any other person ("leasing
18 organization") has performed services for the recipient (or for the
19 recipient and related persons determined in accordance with Section
20 414(n)(6) of the Internal Revenue Code of 1986, as amended) on a
21 substantially full-time basis for a period of at least one (1) year,
22 and such services are performed under primary direction or control
23 by the recipient. Contributions or benefits provided a leased
24 employee by the leasing organization which are attributable to

1 services performed for the recipient employer shall be treated as
2 provided by the recipient employer. A leased employee shall not be
3 considered an employee of the recipient if the requirements of the
4 safe harbor provisions of Section 414(n)(5) of the Internal Revenue
5 Code of 1986, as amended, are satisfied. Effective July 1, 1999,
6 any individual who agrees with the participating municipality that
7 the individual's services are to be performed as a leased employee
8 or an independent contractor shall not be a member regardless of any
9 classification as a common law employee by the Internal Revenue
10 Service or any other governmental agency, or any court of competent
11 jurisdiction;

12 7. "Normal retirement date" means the date at which the member
13 is eligible to receive the unreduced payments of the member's
14 accrued retirement benefit. Such date shall be the first day
15 following the date the member completes twenty (20) years of
16 credited service. For a member whose first employment with a
17 participating employer of the System occurs on or after November 1,
18 2013, such date shall be the first day following the date the member
19 completes twenty-two (22) years of credited service and has attained
20 the age of at least fifty (50) years. If the member's employment
21 continues past the normal retirement date of the member, the actual
22 retirement date of the member shall be the first day following the
23 date the member terminates employment with more than twenty (20)
24 years of credited service, or with respect to members who are

1 required to complete twenty-two (22) years of service, the first day
2 following the date the member terminates employment with more than
3 twenty-two (22) years of service and who has also attained the age
4 of at least fifty (50) years;

5 8. "Credited service" means the period of service used to
6 determine the eligibility for and the amount of benefits payable to
7 a member. Credited service shall consist of the period during which
8 the member participated in the System or the predecessor municipal
9 systems as an active employee in an eligible membership
10 classification, plus any service prior to the establishment of the
11 predecessor municipal systems which was credited under the
12 predecessor municipal systems; provided, however, "credited service"
13 for members from a fire protection district shall not begin accruing
14 before July 1, 1982;

15 9. "Participating municipality" means a municipality, county
16 fire department organized pursuant to subsection D of Section 351 of
17 Title 19 of the Oklahoma Statutes, or fire protection district which
18 is making contributions to the System on behalf of its firefighters.
19 All participating municipalities shall appoint a fire chief who
20 shall supervise and administer the fire department;

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

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

5 12. "Eligible employer" means any municipality with a municipal
6 fire department, any county fire department organized pursuant to
7 subsection D of Section 351 of Title 19 of the Oklahoma Statutes or
8 any fire protection district with an organized fire department;

9 13. "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 14. "Final average salary" means the average paid gross salary
13 of the firefighter for normally scheduled hours over the highest
14 salaried thirty (30) consecutive months of the last sixty (60)
15 months of credited service. Gross salary shall not include payment
16 for accumulated sick or annual leave upon termination of employment,
17 any uniform allowances or any other compensation for reimbursement
18 of out-of-pocket expenses. Only salary on which the required
19 contributions have been made may be used in computing the final
20 average salary. Effective January 1, 1988, gross salary shall
21 include any amount of elective salary reduction under Section 125 of
22 the Internal Revenue Code of 1986, as amended. Gross salary shall
23 include any amount of elective salary reduction under Section 457 of
24 the Internal Revenue Code of 1986, as amended, and any amount of

1 nonelective salary reduction under Section 414(h) of the Internal
2 Revenue Code of 1986, as amended. Effective July 1, 1998, for
3 purposes of determining a member's compensation, any contribution by
4 the member to reduce the member's regular cash remuneration under
5 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be
6 treated as if the member did not make such an election. Only salary
7 on which required contributions have been made may be used in
8 computing final average salary.

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

1 of this subsection, a "Noneligible Member" is any member who first
2 became a member during a plan year commencing on or after July 1,
3 1996.

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

8 Effective June 9, 2010, gross salary shall also include gross
9 salary, as described above, for services, but paid by the later of
10 two and one-half (2 1/2) months after a firefighter's severance from
11 employment or the end of the calendar year that includes the date
12 the firefighter terminated employment, if it is a payment that,
13 absent a severance from employment, would have been paid to the
14 firefighter while the firefighter continued in employment with the
15 participating municipality.

16 Effective June 9, 2010, any payments not described above shall
17 not be considered gross salary if paid after severance from
18 employment, even if they are paid by the later of two and one-half
19 (2 1/2) months after the date of severance from employment or the
20 end of the calendar year that includes the date of severance from
21 employment, except payments to an individual who does not currently
22 perform services for the participating municipality by reason of
23 qualified military service within the meaning of Section 414(u)(5)
24 of the Internal Revenue Code of 1986, as amended, to the extent

1 these payments do not exceed the amounts the individual would have
2 received if the individual had continued to perform services for the
3 participating municipality rather than entering qualified military
4 service.

5 Effective June 9, 2010, back pay, within the meaning of Section
6 1.415(c)-2(g)(8) of the Income Tax Regulations, shall be treated as
7 gross salary for the year to which the back pay relates to the
8 extent the back pay represents wages and compensation that would
9 otherwise be included in this definition.

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

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

16 16. "Beneficiary" means a member's surviving spouse or any
17 surviving children, including biological and adopted children, at
18 the time of the member's death. The surviving spouse must have been
19 married to the firefighter for the thirty (30) continuous months
20 preceding the firefighter's death, provided a surviving spouse of a
21 member who died while in, or as a consequence of, the performance of
22 the member's duty for a participating municipality, shall not be
23 subject to the marriage limitation for survivor benefits. A
24 surviving child of a member shall be a beneficiary until reaching

1 | eighteen (18) years of age or twenty-two (22) years of age if the
2 | child is enrolled full time and regularly attending a public or
3 | private school or any institution of higher education. Any child
4 | adopted by a member after the member's retirement shall be a
5 | beneficiary only if the child is adopted by the member for the
6 | thirty (30) continuous months preceding the member's death. Any
7 | child who is adopted by a member after the member's retirement and
8 | such member dies accidentally or as a consequence of the performance
9 | of the member's duty as a firefighter shall not be subject to the
10 | thirty-month adoption requirement. This definition of beneficiary
11 | shall be in addition to any other requirement set forth in this
12 | article;

13 | 17. "Accumulated contributions" means the sum of all
14 | contributions made by a member to the System and includes both
15 | contributions deducted from the compensation of a member and
16 | contributions of a member picked up and paid by the participating
17 | municipality of the member. Accumulated contributions shall not
18 | include any interest on the contributions of the member, interest on
19 | any amount contributed by the municipality or state and any amount
20 | contributed by the municipality or state; and

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

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1 SECTION 3. AMENDATORY 11 O.S. 2011, Section 49-135, as
2 last amended by Section 1, Chapter 146, O.S.L. 2019 (11 O.S. Supp.
3 2020, Section 49-135), is amended to read as follows:

4 Section 49-135. A. No person shall be employed in a fire
5 department who has reached the age of forty-five (45) years, unless
6 it appears he or she shall become eligible for retirement at the age
7 of sixty-five (65) years, or at the age of sixty-seven (67) years
8 for a firefighter whose first service with a participating employer
9 of the System occurs on or after November 1, 2013, or unless he or
10 she be retired from a municipal fire department in ~~the State of~~
11 ~~Oklahoma~~ this state. This section shall not apply to professional
12 engineers, ~~or to~~ persons employed as technical specialists on a
13 temporary basis or to persons employed as a fire chief pursuant to
14 Section 29-102 of this title. The State Board shall be authorized
15 to establish the maximum age, within the limits herein prescribed,
16 over which an applicant may not be considered for initial
17 employment, but no person shall be prohibited from making
18 application for reemployment and having such reemployment
19 application considered merely because of his or her age, provided
20 that such person be under the age of forty-five (45) years, and
21 provided further, that such reemployment shall be with the consent
22 of the fire chief of such municipality.

23 B. On or after ~~the effective date of this act~~ November 1, 2015,
24 a person who performs volunteer services as a firefighter, who has

1 attained the age of forty-five (45) or more years as of the first
2 date such volunteer services are performed, for a municipality or a
3 county shall not be eligible to be a member of the Oklahoma
4 Firefighters Pension and Retirement System for any purpose, shall
5 not be eligible for any benefit payable by the System and shall not
6 receive any form of service credit from the System resulting from
7 such volunteer services. The person responsible for decisions
8 regarding the performance of firefighting services having
9 jurisdiction, which in the absence of any other requirement to the
10 contrary shall be the ~~Fire Chief~~ fire chief, shall make the final
11 determination on applicants for positions that would involve the
12 performance of volunteer firefighting services if the applicant is
13 over the age of forty-five (45) years based on local rules,
14 regulations, ordinances, guidelines and standard operating
15 procedures.

16 C. Notwithstanding the requirements of subsections C and H of
17 Section 49-106.1 of this title to terminate employment with all
18 participating municipalities as a firefighter, a person receiving an
19 accrued retirement benefit pursuant to Section 49-106 of this title
20 may perform volunteer firefighting services for a volunteer
21 department pursuant to subsection B of this section and continue to
22 receive the member's accrued retirement benefit; provided, that the
23 pension shall cease during any period of time the member may
24 thereafter serve for compensation in any municipal fire department

