

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. B. No. 348

Senator Reineke

A BILL

To amend sections 3309.01, 3309.47, 3309.48, and 1
3309.571 and to enact sections 3309.231 and 2
3309.52 of the Revised Code to establish a 3
School Employees Retirement System membership 4
determination procedure and to limit the amount 5
that the retirement system can charge for late 6
contributions. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3309.01, 3309.47, 3309.48, and 8
3309.571 be amended and sections 3309.231 and 3309.52 of the 9
Revised Code be enacted to read as follows: 10

Sec. 3309.01. As used in this chapter: 11

(A) "Employer" or "public employer" means boards of 12
education, school districts, joint vocational districts, 13
governing authorities of community schools established under 14
Chapter 3314. of the Revised Code, a science, technology, 15
engineering, and mathematics school established under Chapter 16
3326. of the Revised Code, educational institutions, technical 17
colleges, state, municipal, and community colleges, community 18
college branches, universities, university branches, other 19

educational institutions, or other agencies within the state by 20
which an employee is employed and paid, including any 21
organization using federal funds, provided the federal funds are 22
disbursed by an employer as determined by the above. In all 23
cases of doubt, the school employees retirement board shall 24
determine whether any employer is an employer as defined in this 25
chapter, and its decision shall be final. 26

(B) "Employee" means all of the following: 27

(1) Any person employed by a public employer in a position 28
for which the person is not required to have a registration, 29
certificate, or license issued pursuant to sections 3319.22 to 30
3319.31 of the Revised Code; 31

(2) Any person who performs a service common to the normal 32
daily operation of an educational unit even though the person is 33
employed and paid by one who has contracted with an employer to 34
perform the service, and the contracting board or educational 35
unit shall be the employer for the purposes of administering the 36
provisions of this chapter; 37

(3) Any person, not a faculty member, employed in any 38
school or college or other institution wholly controlled and 39
managed, and wholly or partly supported by the state or any 40
political subdivision thereof, the board of trustees, or other 41
managing body of which shall accept the requirements and 42
obligations of this chapter. 43

In all cases of doubt, the school employees retirement 44
board shall determine under this section or under section 45
3309.231 of the Revised Code whether any person is an employee, 46
as defined in this division, and its decision is final. 47

(C) "Prior service" means all service rendered prior to 48

September 1, 1937:	49
(1) As an employee as defined in division (B) of this section;	50 51
(2) As an employee in a capacity covered by the public employees retirement system or the state teachers retirement system;	52 53 54
(3) As an employee of an institution in another state, service credit for which was procured by a member under the provisions of section 3309.31 of the Revised Code.	55 56 57
Prior service, for service as an employee in a capacity covered by the public employees retirement system or the state teachers retirement system, shall be granted a member under qualifications identical to the laws and rules applicable to service credit in those systems.	58 59 60 61 62
Prior service shall not be granted any member for service rendered in a capacity covered by the public employees retirement system, the state teachers retirement system, and this system in the event the service credit has, in the respective systems, been received, waived by exemption, or forfeited by withdrawal of contributions, except as provided in this chapter.	63 64 65 66 67 68 69
If a member who has been granted prior service should, subsequent to September 16, 1957, and before retirement, establish three years of contributing service in the public employees retirement system, or one year in the state teachers retirement system, then the prior service granted shall become, at retirement, the liability of the other system, if the prior service or employment was in a capacity that is covered by that system.	70 71 72 73 74 75 76 77

The provisions of this division shall not cancel any prior 78
service granted a member by the school employees retirement 79
board prior to August 1, 1959. 80

(D) "Total service," "total service credit," or "Ohio 81
service credit" means all contributing service of a member of 82
the school employees retirement system, and all prior service, 83
computed as provided in this chapter, and all service 84
established pursuant to sections 3309.31, 3309.311, and 3309.33 85
of the Revised Code. In addition, "total service" includes any 86
period, not in excess of three years, during which a member was 87
out of service and receiving benefits from the state insurance 88
fund, provided the injury or incapacitation was the direct 89
result of school employment. 90

(E) "Member" means any employee, except an SERS retirant 91
or other system retirant as defined in section 3309.341 of the 92
Revised Code, who has established membership in the school 93
employees retirement system. "Member" includes a disability 94
benefit recipient. 95

(F) "Contributor" means any person who has an account in 96
the employees' savings fund. When used in the sections listed in 97
division (B) of section 3309.82 of the Revised Code, 98
"contributor" includes any person participating in a plan 99
established under section 3309.81 of the Revised Code. 100

(G) "Retirant" means any former member who retired and is 101
receiving a retirement allowance under section 3309.36 or 102
3309.381 or former section 3309.38 of the Revised Code. 103

(H) "Beneficiary" or "beneficiaries" means the estate or a 104
person or persons who, as the result of the death of a 105
contributor or retirant, qualifies for or is receiving some 106

right or benefit under this chapter. 107

(I) "Interest," as specified in division (E) of section 108
3309.60 of the Revised Code, means interest at the rates for the 109
respective funds and accounts as the school employees retirement 110
board may determine from time to time. 111

(J) "Accumulated contributions" means the sum of all 112
amounts credited to a contributor's account in the employees' 113
savings fund together with any regular interest credited thereon 114
at the rates approved by the retirement board prior to 115
retirement. 116

(K) "Final average salary" means the sum of the annual 117
compensation for the three highest years of compensation for 118
which contributions were made by the member, divided by three. 119
If the member has a partial year of contributing service in the 120
year in which the member terminates employment and the partial 121
year is at a rate of compensation that is higher than the rate 122
of compensation for any one of the highest three years of annual 123
earnings, the board shall substitute the compensation earned for 124
the partial year for the compensation earned for a similar 125
fractional portion in the lowest of the three high years of 126
annual compensation before dividing by three. If a member has 127
less than three years of contributing membership, the final 128
average salary shall be the total compensation divided by the 129
total number of years, including any fraction of a year, of 130
contributing service. 131

(L) "Annuity" means payments for life derived from 132
contributions made by a contributor and paid from the annuity 133
and pension reserve fund as provided in this chapter. All 134
annuities shall be paid in twelve equal monthly installments. 135

(M) (1) "Pension" means annual payments for life derived	136
from appropriations made by an employer and paid from the	137
employers' trust fund or the annuity and pension reserve fund.	138
All pensions shall be paid in twelve equal monthly installments.	139
(2) "Disability retirement" means retirement as provided	140
in section 3309.40 of the Revised Code.	141
(N) "Retirement allowance" means the pension plus the	142
annuity.	143
(O) (1) "Benefit" means a payment, other than a retirement	144
allowance or the annuity paid under section 3309.344 of the	145
Revised Code, payable from the accumulated contributions of the	146
member or the employer, or both, under this chapter and includes	147
a disability allowance or disability benefit.	148
(2) "Disability allowance" means an allowance paid on	149
account of disability under section 3309.401 of the Revised	150
Code.	151
(3) "Disability benefit" means a benefit paid as	152
disability retirement under section 3309.40 of the Revised Code,	153
as a disability allowance under section 3309.401 of the Revised	154
Code, or as a disability benefit under section 3309.35 of the	155
Revised Code.	156
(P) "Annuity reserve" means the present value, computed	157
upon the basis of mortality tables adopted by the school	158
employees retirement board, of all payments to be made on	159
account of any annuity, or benefit in lieu of any annuity,	160
granted to a retirant.	161
(Q) "Pension reserve" means the present value, computed	162
upon the basis of mortality tables adopted by the school	163
employees retirement board, of all payments to be made on	164

account of any pension, or benefit in lieu of any pension, 165
granted to a retirant or a beneficiary. 166

(R) "Year" means the year beginning the first day of July 167
and ending with the thirtieth day of June next following. 168

(S) "Local district pension system" means any school 169
employees' pension fund created in any school district of the 170
state prior to September 1, 1937. 171

(T) "Employer contribution" means the amount paid by an 172
employer as determined under section 3309.49 of the Revised 173
Code. 174

(U) "Fiduciary" means a person who does any of the 175
following: 176

(1) Exercises any discretionary authority or control with 177
respect to the management of the system, or with respect to the 178
management or disposition of its assets; 179

(2) Renders investment advice for a fee, direct or 180
indirect, with respect to money or property of the system; 181

(3) Has any discretionary authority or responsibility in 182
the administration of the system. 183

(V) (1) Except as otherwise provided in this division, 184
"compensation" means all salary, wages, and other earnings paid 185
to a contributor by reason of employment. The salary, wages, and 186
other earnings shall be determined prior to determination of the 187
amount required to be contributed to the employees' savings fund 188
under section 3309.47 of the Revised Code and without regard to 189
whether any of the salary, wages, or other earnings are treated 190
as deferred income for federal income tax purposes. 191

(2) Compensation does not include any of the following: 192

(a) Payments for accrued but unused sick leave or personal leave, including payments made under a plan established pursuant to section 124.39 of the Revised Code or any other plan established by the employer;	193 194 195 196
(b) Payments made for accrued but unused vacation leave, including payments made pursuant to section 124.13 of the Revised Code or a plan established by the employer;	197 198 199
(c) Payments made for vacation pay covering concurrent periods for which other salary or compensation is also paid or during which benefits are paid under this chapter;	200 201 202
(d) Amounts paid by the employer to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage, or other insurance for the contributor or the contributor's family, or amounts paid by the employer to the contributor in lieu of providing the insurance;	203 204 205 206 207 208
(e) Incidental benefits, including lodging, food, laundry, parking, or services furnished by the employer, use of the employer's property or equipment, and reimbursement for job-related expenses authorized by the employer, including moving and travel expenses and expenses related to professional development;	209 210 211 212 213 214
(f) Payments made to or on behalf of a contributor that are in excess of the annual compensation that may be taken into account by the retirement system under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401(a)(17), as amended. For a contributor who first establishes membership before July 1, 1996, the annual compensation that may be taken into account by the retirement	215 216 217 218 219 220 221

system shall be determined under division (d) (3) of section	222
13212 of the "Omnibus Budget Reconciliation Act of 1993," Pub.	223
L. No. 103-66, 107 Stat. 472;	224
(g) Payments made under division (B), (C), or (E) of	225
section 5923.05 of the Revised Code, Section 4 of Substitute	226
Senate Bill No. 3 of the 119th general assembly, Section 3 of	227
Amended Substitute Senate Bill No. 164 of the 124th general	228
assembly, or Amended Substitute House Bill No. 405 of the 124th	229
general assembly;	230
(h) Anything of value received by the contributor that is	231
based on or attributable to retirement or an agreement to	232
retire, except that payments made on or before January 1, 1989,	233
that are based on or attributable to an agreement to retire	234
shall be included in compensation if both of the following	235
apply:	236
(i) The payments are made in accordance with contract	237
provisions that were in effect prior to January 1, 1986.	238
(ii) The employer pays the retirement system an amount	239
specified by the retirement board equal to the additional	240
liability from the payments.	241
(3) The retirement board shall determine by rule whether	242
any form of earnings not enumerated in this division is to be	243
included in compensation, and its decision shall be final.	244
(W) "Disability benefit recipient" means a member who is	245
receiving a disability benefit.	246
(X) "Actuary" means an individual who satisfies all of the	247
following requirements:	248
(1) Is a member of the American academy of actuaries;	249

- (2) Is an associate or fellow of the society of actuaries; 250
- (3) Has a minimum of five years' experience in providing 251
actuarial services to public retirement plans. 252

Sec. 3309.231. An individual may request that the school 253
employees retirement board determine whether the individual is 254
an employee for purposes of this chapter. An individual shall 255
make the request not later than five years after the individual 256
begins to provide personal services to a public employer, unless 257
the individual demonstrates to the board's satisfaction through 258
medical records that at the time the five-year period ended, the 259
individual was physically or mentally incapacitated and unable 260
to request a determination. 261

On receipt of an individual's request made under this 262
section, the board shall determine whether the individual is an 263
employee for the purposes of this chapter. If the board 264
determines the individual is not an employee for the services, 265
for the purposes of this chapter, the individual is not 266
considered an employee with regard to the services in question. 267
The board's determination is final. 268

The board shall notify the individual and the employer of 269
the board's determination. The determination applies to services 270
performed before, on, or after the effective date of this 271
section for the same employer in the same capacity. 272

The board may adopt rules under section 3309.04 of the 273
Revised Code to implement this section. 274

Sec. 3309.47. Each school employees retirement system 275
contributor shall contribute eight per cent of the contributor's 276
compensation to the employees' savings fund, except that the 277
school employees retirement board may raise the contribution 278

rate to a rate not greater than ten per cent of compensation. 279

The contributions by the direction of the school employees 280
retirement board shall be deducted by the employer from the 281
compensation of each contributor on each payroll of such 282
contributor for each payroll period and shall be an amount equal 283
to the required per cent of such contributor's compensation. On 284
a finding by the board that an employer has failed or refused to 285
deduct contributions for any employee during any year and to 286
transmit such amounts to the retirement system, the retirement 287
board may, subject to section 3309.52 of the Revised Code, make 288
a determination of the amount of the delinquent contributions, 289
including interest at a rate set by the retirement board, from 290
the end of each year, and certify to the employer the amounts 291
for collection. If the amount is not paid by the employer, it 292
may be certified for collection in the same manner as payments 293
due the employers' trust fund. Any amounts so collected shall be 294
held in trust pending receipt of a report of contributions for 295
the employee for the period involved as provided by law and, 296
thereafter, the amount in trust shall be transferred to the 297
employee's savings fund to the credit of the employee. Any 298
amount remaining after the transfer to the employees' savings 299
fund shall be transferred to the employers' trust fund as a 300
credit of the employer. 301

Additional deposits may be made to a member's account. At 302
retirement, the amount deposited with interest may be used to 303
provide additional annuity income. The additional deposits may 304
be refunded to the member before retirement, and shall be 305
refunded if the member withdraws the member's refundable amount. 306
The deposits may be refunded to the beneficiary or estate if the 307
member dies before retirement, and the board shall determine 308
whether regular interest shall be credited to deposits thus 309

refunded. 310

Sec. 3309.48. Any employee who left the service of an 311
employer after attaining age sixty-five or over and such 312
employer had failed or refused to deduct and transmit to the 313
school employees retirement system the employee contributions as 314
required by section 3309.47 of the Revised Code during any year 315
for which membership was compulsory as determined by the school 316
employees retirement board, shall be granted service credit 317
without cost, which shall be considered as total service credit 318
for the purposes of meeting the qualifications for service 319
retirement provided by the law in effect on and retroactive to 320
the first eligible retirement date following the date such 321
employment terminated, but shall not be paid until formal 322
application for such allowance on a form provided by the 323
retirement board is received in the office of the retirement 324
system. The total service credit granted under this section 325
shall not exceed ten years for any such employee. 326

The liability incurred by the retirement board because of 327
the service credit granted under this section shall be 328
determined by the retirement board, the cost of which, subject 329
to section 3309.52 of the Revised Code, shall be equal to an 330
amount that is determined by applying the combined employee and 331
employer rates of contribution against the compensation of such 332
employee at the rates of contribution and maximum salary 333
provisions in effect during such employment for each year for 334
which credit is granted, together with interest at the rate to 335
be credited accumulated contributions at retirement, compounded 336
annually from the first day of the month payment was due the 337
retirement system to and including the month of deposit, the 338
total amount of which shall be collected from the employer. Such 339
amounts shall be certified by the retirement board to the 340

superintendent of public instruction, who shall deduct the 341
amount due the system from any funds due the affected school 342
district under Chapter 3317. of the Revised Code. The 343
superintendent shall certify to the director of budget and 344
management the amount due the system for payment. The total 345
amount paid shall be deposited into the employers' trust fund, 346
and shall not be considered as accumulated contributions of the 347
employee in the event of the employee's death or withdrawal of 348
funds. 349

Sec. 3309.52. If the school employees retirement board 350
finds that an employer has failed or refused to transmit to the 351
school employees retirement system the contributions required by 352
this chapter for any service performed by an employee described 353
in division (B)(2) of section 3309.01 of the Revised Code, both 354
of the following apply: 355

(A) In determining the total amount of delinquent 356
contributions to be certified for collection under section 357
3309.47, 3309.48, or 3309.51 of the Revised Code, or under any 358
other provision of this chapter, the board shall reduce that 359
amount by an amount equal to any taxes that were paid for old 360
age, survivors, and disability insurance pursuant to sections 361
3101(a) and 3111(a) of the "Federal Insurance Contributions 362
Act," 26 U.S.C. 3101(a) and 3111(a), for service the employee 363
performed during any period for which membership was compulsory 364
as determined by the board; 365

(B) In computing years of total service, regardless of 366
whether the reduction requirement described in division (A) of 367
this section applies with respect to service the employee 368
performed during any period for which membership was compulsory 369
as determined by the board, the board shall grant the employee 370

full service credit for that service. 371

Sec. 3309.571. ~~The~~ (A) Subject to division (B) of this 372
section, the school employees retirement system shall impose the 373
following penalties, which may be collected in the same manner 374
as described in division (B) of section 3309.51 of the Revised 375
Code: 376

~~(A)~~ (1) For a failure to transmit contributions withheld 377
from employees not later than the date specified under rules 378
adopted by the school employees retirement board, one hundred 379
dollars per day for each day the employer fails to transmit the 380
contributions; 381

~~(B)~~ (2) For a failure to transmit any amount due the 382
~~employer's~~ employers' trust fund not later than the date 383
specified under rules adopted by the board, one hundred dollars 384
per day for each day the employer fails to transmit the amounts; 385

~~(C)~~ (3) Except for a statement required by section 3309.28 386
of the Revised Code, for a failure to submit a payroll report or 387
other report required under this chapter not later than the date 388
specified under rules adopted by the board, one hundred dollars 389
per day for each day the employer fails to submit the report, 390
except that the penalty shall not exceed one thousand five 391
hundred dollars; 392

~~(D)~~ (4) For a failure to submit a record in the form of a 393
statement required by section 3309.28 of the Revised Code, fifty 394
dollars per record for each month the record is not filed, 395
except that the penalty shall not exceed three hundred dollars. 396

(B) If the board imposes any penalties or charges any 397
interest as a penalty against an employer under this section or 398
under any other provision of this chapter for any of the reasons 399

described in division (A) of this section, the penalty amount 400
shall not exceed five per cent of the total amount of delinquent 401
contributions that the employer failed or refused to transmit to 402
the retirement system. 403

Section 2. That existing sections 3309.01, 3309.47, 404
3309.48, and 3309.571 of the Revised Code are hereby repealed. 405