



SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO

300 E. BROAD ST., SUITE 100 • COLUMBUS, OHIO 43215-3746
614-222-5853 • Toll-Free 800-878-5853 • www.ohsers.org

Testimony Before the Senate Finance Committee House Bill 96 School Employees Retirement System of Ohio June 5, 2025

Chairman Cirano, Vice Chairman Chavez, Ranking Member Hicks-Hudson, and members of the Senate Finance Committee, thank you for the opportunity to provide testimony on amendments to House Bill 96, the FY26/27 State Operating Budget.

As you know, SERS is a statewide defined benefit pension plan that provides retirement, disability, and survivor benefits to non-teaching employees of Ohio's public schools including vocational, technical, and community schools, and community colleges.

SERS members' positions range from bus drivers, custodians, administrative assistants, food service providers, and educational aides to treasurers and business administrators.

There are a few provisions within Amended Substitute House Bill 96 that are of concern to SERS.

Our primary concern is a provision added by the House that defines state retirement systems as "state agencies" for the purpose of remote work policies.

Whether through other sections of the Revised Code, case law, and/or Attorney General opinions that exempts them, Ohio's public retirement systems are ***not*** considered state agencies.

SERS operates under the guidance of an independent board comprised of nine members: four elected by active employee members; two elected by retired members; and three appointed investment expert members. One investment expert is appointed by the Governor, one by the State Treasurer, and one by the Speaker of the House and President of the Senate. The SERS Board meets monthly, except in January and August.

All of the Board members take an oath of strict fiduciary responsibility to the system and its members.

Maintaining the Board's independence is of utmost importance, and preserving distinct lines of management and governance responsibilities is vital for SERS'



SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO

300 E. BROAD ST., SUITE 100 • COLUMBUS, OHIO 43215-3746
614-222-5853 • Toll-Free 800-878-5853 • www.ohsers.org

Board and staff to fulfill their fiduciary duty. Ultimately that is what allows us to be successful at our mission in serving those who serve our schools.

Ohio's retirement systems are highly regulated by state and federal laws and regulations and are subject to the oversight of the Ohio Retirement Study Council (ORSC).

The ORSC at its most recent meeting voted to recommend that this provision of HB 96 be amended to remove the inclusion of the state retirement systems in the definition of "state agency."

Therefore, we request an amendment to reflect that recommendation and maintain the independence of SERS and the other retirement systems.

Another requirement added to HB 96 in the Senate Substitute bill of concern is a provision that states that individuals working for a third-party contractor providing health services to a child with a disability under an Individualized Education Program (IEP) at a school district are not members of SERS.

Language regarding third-party contractors was added to Chapter 3309 of the Revised Code in November 1965. The statutory language, now found in R.C. 3309.01(B)(2), provides that a person performing services common to the normal daily operation of an educational unit contribute to SERS even if they are employed and paid by a company who has contracted with the school to provide the service. The language was added because of litigation.

In December 1962, the issue of whether school bus drivers hired by a bus owner who had a contract with a school board to transport students were employees of the school board for purposes of SERS was decided by the Ohio Supreme Court. (*State ex rel. Board of Education of North Canton Exempted Village School District v. Holt*, 174 Ohio St. 55) SERS argued that contract bus drivers were employees and relied on a 1949 Board Resolution providing that drivers of school buses owned by a contractor were employees for purposes of SERS. The school board disagreed and argued that the Resolution was an invalid rule because it had not been properly promulgated.

The Ohio Supreme Court agreed that the Resolution was not a proper rule but went on to find that where a board of education contracts with a bus owner for student transportation to and from school in buses operated by drivers whom the bus owner hires and pays, the drivers are employees of the board of education under R.C. 3309.01(B) for the purpose of membership in SERS.



SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO

300 E. BROAD ST., SUITE 100 • COLUMBUS, OHIO 43215-3746
614-222-5853 • Toll-Free 800-878-5853 • www.ohsers.org

Similar court holdings are found in other SERS bus driver cases such as, Bd of Ed. Of City School Dist. of City of Cincinnati v. Rhodes (1959, 10th Dist.) 109 Ohio App. 415 and Brown & Bartlett v. United States, U.S.D.C., N. Dist. of Ohio, W. Div (unreported), Civ. No. 8698, June 25, 1965.

Because the existence of an employer-employee relationship turns on the particular terms of each contract, the definition of "employee" was amended in R.C. 3309.01(B) to include contract employees who perform services common to the normal daily operation of an educational unit so that membership of individuals employed in particular positions would be uniform/predictable. That has been the standard for membership determination ever since.

In Ohio Administrative Code Section 3309-1-11, SERS has defined "service common to the normal daily operation of an educational unit" to mean:

- (a) Any service that an educational unit is required, by law, statute, or rule, to provide on a regular continuous basis;
- (b) Any service necessary on a regular continuous basis to the efficient operation of an educational unit; or
- (c) Any service which, through custom and usage, has become a service commonly provided or procured by an educational unit on a regular continuous basis.

The SERS Board has previously determined that health services provided to children with a disability under an IEP at a school are services common to the normal daily operation of a school, and that individuals providing such services through a third-party contractor should contribute to SERS.

Were this provision to remain a part of the budget bill we anticipate it would impact approximately 600 members currently contributing to SERS (that we know of) with a loss of approximately \$2.4 million in contributions that would weaken the solvency and sustainability of the fund, not to mention hinder our ability to identify any additional individuals who should have been contributing under the law.

Therefore, we request that this provision be removed from the Senate version of the budget bill in order to preserve the membership status of those currently contributing to the system.

Thank you for your consideration of our concerns.