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 3309.571 and to enact sections 3309.231 and 3309.52 of the Revised Code to establish a School Employees Retirement System membership determination procedure and to limit the amount that the retirement system can charge for late contributions.

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

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

Sec. 3309.01. As used in this chapter:

(A) "Employer" or "public employer" means boards of education, school districts, joint vocational districts, governing authorities of community schools established under Chapter 3314. of the Revised Code, a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code, educational institutions, technical colleges, state, municipal, and community colleges, community college branches, universities, university branches, other educational institutions, or other agencies within the state by which an employee is employed and paid, including any organization using federal funds, provided the federal funds are disbursed by an employer as determined by the above. In all cases of doubt, the school employees retirement board shall determine whether any employer is an employer as defined in this chapter, and its decision shall be final.

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

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

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

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

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

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

September 1, 1937:

(1) As an employee as defined in division (B) of this section;

(2) As an employee in a capacity covered by the public employees retirement system or the state teachers retirement system;

(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.

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.

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.

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.

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

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

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

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

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

(H) "Beneficiary" or "beneficiaries" means the estate or a person or persons who, as the result of the death of a contributor or retirant, qualifies for or is receiving some right or benefit under this chapter.

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

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

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

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

(M)(1) "Pension" means annual payments for life derived from appropriations made by an employer and paid from the employers' trust fund or the annuity and pension reserve fund. All pensions shall be paid in twelve equal monthly installments.

(2) "Disability retirement" means retirement as provided in section 3309.40 of the Revised Code.

(N) "Retirement allowance" means the pension plus the annuity.

(O)(1) "Benefit" means a payment, other than a retirement allowance or the annuity paid under section 3309.344 of the Revised Code, payable from the accumulated contributions of the member or the employer, or both, under this chapter and includes a disability allowance or disability benefit.

(2) "Disability allowance" means an allowance paid on account of disability under section 3309.401 of the Revised Code.

(3) "Disability benefit" means a benefit paid as disability retirement under section 3309.40 of the Revised Code, as a disability allowance under section 3309.401 of the Revised Code, or as a disability benefit under section 3309.35 of the Revised Code.

(P) "Annuity reserve" means the present value, computed upon the basis of mortality tables adopted by the school employees retirement board, of all payments to be made on account of any annuity, or benefit in lieu of any annuity, granted to a retirant.

(Q) "Pension reserve" means the present value, computed upon the basis of mortality tables adopted by the school employees retirement board, of all payments to be made on account of any pension, or benefit in lieu of any pension, granted to a retirant or a beneficiary.

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

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

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

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

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

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

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

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

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

(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;

(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;

(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;

(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;

(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;

(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 system shall be determined under division (d)(3) of section 13212 of the "Omnibus Budget Reconciliation Act of 1993," Pub. L. No. 103-66, 107 Stat. 472;

(g) Payments made under division (B), (C), or (E) of section 5923.05 of the Revised Code, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, Section 3 of Amended Substitute Senate Bill No. 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly;

(h) Anything of value received by the contributor that is based on or attributable to retirement or an agreement to retire, except that payments made on or before January 1, 1989, that are based on or attributable to an agreement to retire shall be included in compensation if both of the following apply:

(i) The payments are made in accordance with contract provisions that were in effect prior to January 1, 1986.

(ii) The employer pays the retirement system an amount specified by the retirement board equal to the additional liability from the payments.

(3) The retirement board shall determine by rule whether any form of earnings not enumerated in this division is to be included in compensation, and its decision shall be final.

(W) "Disability benefit recipient" means a member who is receiving a disability benefit.

(X) "Actuary" means an individual who satisfies all of the following requirements:

(1) Is a member of the American academy of actuaries;

(2) Is an associate or fellow of the society of actuaries;

(3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

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

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

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

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

Sec. 3309.47. Each school employees retirement system contributor shall contribute eight per cent of the contributor's compensation to the employees' savings fund, except that the school employees retirement board may raise the contribution rate to a rate not greater than ten per cent of compensation.

The contributions by the direction of the school employees retirement board shall be deducted by the employer from the compensation of each contributor on each payroll of such contributor for each payroll period and shall be an amount equal to the required per cent of such contributor's compensation. On a finding by the board that an employer has failed or refused to deduct contributions for any employee during any year and to transmit such amounts to the retirement system, the retirement board may<u>, subject to section 3309.52 of the Revised Code,</u> make a determination of the amount of the delinquent contributions, including interest at a rate set by the retirement board, from the end of each year, and certify to the employer the amounts for collection. If the amount is not paid by the employer, it may be certified for collection in the same manner as payments due the employers' trust fund. Any amounts so collected shall be held in trust pending receipt of a report of contributions for the employee for the period involved as provided by law and, thereafter, the amount in trust shall be transferred to the employee's savings fund to the credit of the employee. Any amount remaining after the transfer to the employees' savings fund shall be transferred to the employers' trust fund as a credit of the employer.

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

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

The liability incurred by the retirement board because of the service credit granted under this section shall be determined by the retirement board, the cost of which, subject to section 3309.52 of the Revised Code, shall be equal to an amount that is determined by applying the combined employee and employer rates of contribution against the compensation of such employee at the rates of contribution and maximum salary provisions in effect during such employment for each year for which credit is granted, together with interest at the rate to be credited accumulated contributions at retirement, compounded annually from the first day of the month payment was due the retirement system to and including the month of deposit, the total amount of which shall be collected from the employer. Such amounts shall be certified by the retirement board to the superintendent of public instruction, who shall deduct the amount due the system from any funds due the affected school district under Chapter 3317. of the Revised Code. The superintendent shall certify to the director of budget and management the amount due the system for payment. The total amount paid shall be deposited into the employers' trust fund, and shall not be considered as accumulated contributions of the employee in the event of the employee's death or withdrawal of funds.

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

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

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

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

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

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

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

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

(B) If the board imposes any penalties or charges any interest as a penalty against an employer under this section or under any other provision of this chapter for any of the reasons described in division (A) of this section, the penalty amount shall not exceed five per cent of the total amount of delinquent contributions that the employer failed or refused to transmit to the retirement system.

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