



**Sub. S.B. 270\***

123rd General Assembly

(As Reported by H. Health, Retirement and Aging)

Sens. Drake, Blessing, Herington, DiDonato, McLin, Spada, Prentiss, Brady, Mumper, Carnes

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**BILL SUMMARY**

- Increases the percentages of final average salary used to calculate service retirement allowances and disability benefits for School Employees Retirement System (SERS) members who retire or are disabled on or after the bill's effective date.
- Modifies the method of calculating benefits paid to qualified survivors of members who die on or after the bill's effective date.
- Requires the SERS Board to recalculate and pay based on the bill's provisions retirement, disability, and survivor benefits that became effective on or after January 1, 2000, and to make a one-time payment as if the bill had gone into effect on that date.
- Requires the SERS Board to calculate and pay a benefit to the surviving spouse of a member who died on or after January 1, 2000, but before the bill's effective date if the spouse becomes a qualified spouse under the bill's provisions and has not received a refund of the member's contributions and to make a one-time payment to such a surviving spouse.
- Increases the SERS reimbursement for coverage under Medicare Part B and provides for a one-time payment retroactive to January 1, 1993, of the difference between the new reimbursement amount and the amount that was reimbursed, adjusting for any amount the recipient was eligible to receive due to prior legislation that covers any of the same period.

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\* *This analysis was prepared before the report of the House Health, Retirement and Aging Committee appeared in the House Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

- Requires the SERS Board to establish a defined contribution plan for retirement benefits.
- Modifies the formula for determining the additional amount employers are required to contribute to SERS for each employee whose compensation is less than the minimum annual compensation determined to be necessary to fund future health care benefits.
- Makes other changes to the law governing SERS.

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## CONTENT AND OPERATION

### INCREASES IN RETIREMENT ALLOWANCES AND DISABILITY AND SURVIVOR BENEFITS

#### Changes in service retirement and disability benefits

##### Current law--calculation of benefits

(secs. 3309.36, 3309.381, 3309.40, and 3309.401)

**Service retirement.** A member of the School Employees Retirement System (SERS) may be granted service retirement if the member has five years of service credit and is at least age 60, 25 years of service credit and at least age 55, or 30 years of service credit regardless of age. There are several ways of calculating a service retirement allowance, but in most cases an SERS member's annual single lifetime allowance is determined by multiplying the member's total service credit by 2.1% of the member's final average salary for each of the first 30 years and 2.5% for each year in excess of 30 years.<sup>1</sup>

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<sup>1</sup> "Total service credit" means credit for service for which a member contributed, plus other types of credit such as free or purchased military credit and purchased credit for public service not covered by SERS.

"Final average salary" is generally determined by dividing by three the sum of the member's annual compensation for the three highest years of compensation for which the member has made contributions.



**Disability allowances converted to service retirement.** Under current law, an SERS member who is receiving a disability allowance may apply to have the allowance converted to a service retirement benefit. The annual benefit is equal to the sum of the following amounts:

(1) The greater of a service retirement benefit calculated as described above, excluding years for which the member received a disability allowance, or the product obtained by multiplying the member's total service credit, including the years the member received a disability allowance, by 2.1% of the member's final average salary, not exceeding 45% of the member's final average salary.

(2) An amount equal to the cost-of-living increase the member would have received had the member retired on service retirement.

**Disability benefits.** SERS members who joined the system prior to July 30, 1992, had a choice to be covered by either the original disability plan or the revised disability program. Members who joined SERS on or after July 30, 1993, are covered under the revised plan.

**--Disability retirement (original plan).** An SERS member who qualifies for a disability benefit and has disability coverage under the original plan, is entitled to receive disability retirement consisting of the sum of the following:

(1) An annuity having a reserve equal to the amount of the member's accumulated contributions;

(2) A pension equal to the difference between the member's annuity and an annual amount determined by multiplying the member's total service credit, including years between the date of the member's disability retirement and attaining age 60, assuming continuous service, by the greater of (a) \$86 or (b) 2.1% of the member's final average salary.

The amount of disability retirement cannot be less than 30% nor more than 75% of the member's final average salary.

**--Disability allowances (revised plan).** An SERS member who qualifies for a disability benefit and has disability coverage established after July 30, 1992, is entitled to receive a disability allowance in an amount equal to the greater of (1) 45% of the member's final average salary or (2) the product obtained by multiplying the member's total service credit by 2.1% of final average salary, not exceeding 60% of the member's final average salary.

**The bill--increases in service retirement benefits and disability allowances**

The bill modifies the formula for calculating service retirement benefits and disability allowances by increasing the percentage of final average salary used in the calculation.

**Service retirement.** Under the bill, for each of the first 30 years of service, the percentage of final average salary is increased to 2.2% (from 2.1%).

**Disability allowances and conversions to service retirement.** The bill increases to 2.2% (from 2.1%) the percentage of final average salary used in the calculation of a disability retirement or allowance under the original and revised plan and a disability allowance that is converted to a service retirement.

**Limit on annual single lifetime retirement allowance**

(sec. 3309.36)

Current law limits the annual single lifetime allowance a retirant may receive under service retirement to 90% of the member's final average salary or the limit established under federal law. Under the bill, the limit is 100% of final average salary, but the federal limits continue to apply.

**Survivor benefits**

(sec. 3309.45)

Under current law, if a deceased member had at least one and one-half years of credit for Ohio service, with at least one quarter year of Ohio contributing service credit within the two and one-half years prior to the date of death, or was receiving a disability benefit at the time of death, qualified survivors may, instead of receiving a return of the member's contribution, elect to receive monthly benefits determined by the following chart.<sup>2</sup>

Number of qualified	Annual benefit as a Per	Or Monthly Benefit shall
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<sup>2</sup> An exception is that a qualified spouse is to be paid an amount of not less than \$106 per month determined for the first qualifying survivor if the deceased member had ten or more years of Ohio service credit and all other qualified survivors are to share equally in the benefit or remaining portion thereof.

survivors affecting the benefit	Cent of the Decedent's Final Average Salary	not be less than
1	25%	\$ 96
2	40	186
3	50	236
4	55	236
5 or more	60	236

The bill establishes the possibility of qualified survivors receiving a greater benefit if the deceased member had 20 or more years of service as shown in the following chart:

Years of service	Annual Benefit as a Per Cent of Member's Final Average Salary
20	29%
21	33
22	37
23	41
24	45
25	48
26	51
27	54
28	57
29 or more	60

Under the bill, a monthly survivor benefit is calculated under both charts and the qualified survivors receive the greater amount. If the benefit is paid based on a calculation under the second chart, all qualifying survivors share equally in the benefit, except that if there is a surviving spouse the surviving spouse is to receive an amount of not less than the greater of \$106 per month or the amount determined for the first qualifying survivor under the first chart.

**Final average salary used in calculating benefits for a survivor or beneficiary of a disability benefit recipient**

(sec. 3309.45)



The bill provides for an adjustment of a deceased member's final average salary used to determine the monthly benefit payable to a survivor or beneficiary of a disability benefit recipient. Under current law, when a disability benefit recipient dies, the final average salary used to determine a survivor benefit is the recipient's final average salary at the time the disability benefit began.

Under the bill, the final average salary is to be adjusted for each year between the disability benefit's effective date and the recipient's date of death by the lesser of 3% or the actual average percentage increase in the Consumer Price Index.

**Recalculation and one-time payments based on the increases in allowances and benefits under the bill**

(sec. 3309.374; Section 3)

The bill requires the SERS Board to recalculate the amount of retirement allowances and disability and survivor benefits that became effective on or after January 1, 2000, but before the bill's effective date. If the recalculated amount is greater than the amount prior to the recalculation, the system must do both of the following:

(1) Pay the recalculated amount beginning on the first day of the month immediately following the date of the recalculation;

(2) Make a one-time payment to each recipient receiving an allowance or benefit on the bill's effective date. The payment is to be an amount equal to the difference between the amounts paid to the recipient between (a) January 1, 2000, and the date of the payment and (b) the increased amount that would have been paid had the bill gone into effect January 1, 2000.

Any increase is included in the calculation of any cost-of-living increases granted the recipient in the future.

**ESTABLISHMENT OF A DEFINED CONTRIBUTION PLAN IN SERS**

**Background**

Under current law, SERS provides its members a retirement benefit under a plan that is often called a "defined benefit plan." The plan provides, to those who meet the age and service requirements, a retirement benefit based on a formula: a percentage of final average salary multiplied by the member's years of service credit. In a "defined contribution plan," the member and employer contribute to the plan a specified percentage of the member's compensation. These contributions are held in account and invested, usually at the direction of the

member. At retirement or on withdrawal of contributions, the benefit payable to the member is determined by the amount, including investment earnings, in the member's account.

**Establishment of defined contribution plan**

(secs. 3309.60, 3309.61, 3309.80, 3309.81, 3309.811, 3309.812, and 3309.813)

The bill requires the SERS Board to establish one or more plans consisting of benefit options that provide for an individual account for each participating member and under which benefits are based solely on the amounts that have accumulated in the account. Each plan may include options under which a participating member receives definitely determinable benefits. The plan may include life insurance, annuities, variable annuities, regulated investment trusts, pooled investment funds, or other forms of investment. The SERS Board may administer the plans, enter into contracts with other entities to administer the plans, or both.

Under the bill, each plan must meet the bill's requirements and be a qualified retirement plan under section 401(a) of the Internal Revenue Code.<sup>3</sup> In addition, each plan must meet the requirements of the Internal Revenue Code that are necessary to qualify as a retirement system maintained by a state or local government entity and each participant in a plan must qualify as a member of that system.<sup>4</sup> Each plan must qualify as a "governmental plan" under the provisions of the Internal Revenue Code that allow employers to "pick-up" employee contributions (see "**Employer pick-up**" below).<sup>5</sup> Each plan must require the SERS Board, or the entity that administers the plan pursuant to a contract entered into with the Board, to provide for the maintenance of an individual account for each member participating in a plan. A plan may include deposits to the Defined Contribution Fund created by the bill or to the Employees' Savings Fund in

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<sup>3</sup> A qualified retirement plan is a retirement plan that meets certain requirements specified in federal law and, if the requirements are met, contributions to and amounts earned under the plan are not subject to federal and state income tax until distributed to the employee (100 Stat. 2085, 26 U.S.C.A. 401(a), as amended).

<sup>4</sup> The plan's status as a retirement plan maintained by a state or local government entity exempts members from requirements that employees and employers contribute to Social Security (100 Stat. 2085, 26 U.S.C.A. 3121(b)(7)(F), as amended).

<sup>5</sup> (100 Stat. 2085, 26 U.S.C.A. 414(d), as amended).

accordance with the provisions of current law that permit members to make additional deposits to SERS.<sup>6</sup>

The Board is to adopt rules to implement any plan established under the bill.

### **Election to participate in a defined contribution plan**

(secs. 3309.25, 3309.251, 3309.252, and 3309.253)

Under the bill, new SERS members and certain current members are eligible to make an election to participate in a defined contribution plan.

#### **New members**

An individual who becomes an SERS member on or after the date on which the SERS Board establishes a defined contribution plan must make an election not later than 180 days after the date on which employment begins. If an election is not on file with the employer at the end of that period, the individual is deemed to have elected to participate in the existing defined benefit plan.

An individual is ineligible to make an election if one of the following applies:

(1) At the time employment begins, the individual is a member or contributor participating in the existing defined benefit plan or an SERS retiree;<sup>7</sup>

(2) An election to participate in the alternative retirement plan available to academic or administrative employees of public institutions of higher education under Revised Code Chapter 3305. is in effect for employment covered by SERS.

#### **Existing members**

A member of SERS who, as the last day of the month immediately preceding the date on which the system establishes a defined contribution plan, has less than five years of total service credit may make an election to participate

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<sup>6</sup> *The Employees' Savings Fund is the fund in which are accumulated the contributions by members participating in the defined benefit plan; however, a member may make additional deposits to this fund and, at the time of retirement, receive an annuity or cash refund (See "**Interest earned and credited on additional deposits**" below).*

<sup>7</sup> *Under the bill, "SERS retiree" means a former member receiving from the system a retirement allowance under the defined benefit plan or under the defined contribution plan (Revised Code section 3309.341).*

in the plan not later than 180 days after the date on which the Board first establishes a defined contribution plan. If an election is not made, a member is deemed to have elected to continue participating in the existing defined benefit plan.

### **Election process**

Under the bill, SERS is required to inform a new member of the right to make an election and the process for doing so. An election must be made in writing on a form provided by SERS and, in the case of a new member, filed with the personnel officer of the employer or, in the case of an existing member, with SERS. Not later than ten days after receiving an election from a member, the employer is to transmit to SERS a copy of the election that includes a statement certifying that it is a true and accurate copy of the original record. In the case of a new member, an election to participate is effective on the date employment begins and is irrevocable on receipt by the employer. In the case of an existing SERS member, an election to participate is irrevocable on receipt by the system.

On receipt of a election by an existing member who chooses to switch to the defined contribution plan, SERS is to do both of the following:

(1) Credit to the account of the member in the Defined Contribution Fund the accumulated contributions standing to the member's credit in the Employees' Savings Fund;

(2) Cancel all service credit and eligibility for any payment, benefit, or right under the defined benefit plan.

An SERS member who elects to participate in a defined contribution plan is ineligible for any benefits or payments under the provisions of the existing defined benefit plan and is forever barred from claiming or purchasing service credit with any state retirement system for service covered by the election.

### **Participation in a defined contribution plan**

(secs. 3309.91 and 3309.98)

Under the bill, the right of each member participating in a defined contribution plan to a retirement, disability, survivor, or death benefit, to health or long-term care insurance, or to a withdrawal of any amounts that have accumulated on a member's behalf is governed by the plan selected by the member.<sup>8</sup> Contributions to a defined contribution plan established under the bill

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<sup>8</sup> *SERS members are exempt from participation in Social Security and, therefore, generally are not eligible for Social Security survivor or disability benefits. There may*

cease on death, termination of employment, or for any other reason specified by the plan selected by the member.

### **The "Defined Contribution Fund"**

(sec. 3309.60)

The bill creates the "Defined Contribution Fund," the fund in which is accumulated the contributions deducted from the compensation of members participating in a defined contribution plan together with any earnings and employer contributions credited to the member's account. It is the fund from which all benefits under a defined contribution plan are paid.

### **Contributions to a defined contribution plan**

(secs. 3309.60, 3309.85, 3309.86, 3309.87, and 3309.88)

#### **Member and employer contributions**

Each member participating in a defined contribution plan must contribute to SERS a percentage of the member's compensation equal to the percentage contributed by members participating in the current defined benefit plan.<sup>9</sup> Contributions must be made in accordance with current law governing member contributions to SERS.

For each member participating in a defined contribution plan, an employer must contribute a percentage of the member's compensation to SERS equal to the percentage contributed on behalf of members participating in the defined benefit plan.<sup>10</sup>

Except for the amount transferred to the Employers' Trust Fund, amounts contributed by members and employers, and any earnings on those amounts, are to be deposited and credited in accordance with the defined contribution plan selected by the member (see below).

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*be benefit options under the defined contribution plan that do not offer survivor or disability benefits. Therefore, there may be some members who do not have survivor or disability coverage.*

<sup>9</sup> *Each SERS member contributes 9% of the member's compensation.*

<sup>10</sup> *An employer contributes 14% on behalf of an SERS member.*

### **Employer contributions to Employers' Trust Fund**

For each member participating in a defined contribution plan, SERS is required to transfer to the Employers' Trust Fund a portion of the employer contribution.<sup>11</sup> The portion equals the percentage of compensation of participating members for whom the contributions are being made that is determined by an actuary appointed by the SERS Board to be necessary to mitigate any negative financial impact on the system of participation in a defined contribution plan.

The SERS Board must have prepared annually an actuarial study to determine whether the percentage transferred should be changed to reflect a change in the level of negative financial impact resulting from participation of members in a defined contribution plan. The percentage transferred is to be increased or decreased to reflect the amount needed to mitigate the negative financial impact, if any, on the system, as determined by the actuarial study. An increase or decrease takes effect on the first day of the year following the date the conclusions of the actuarial study are reported to the Board.

SERS is required to make the transfer until the unfunded actuarial accrued liability for all benefits, except health care benefits provided under the defined benefit plan and benefit increases granted after the bill's effective date to members and former members participating in the defined benefit plan, is fully amortized, as determined by the annual actuarial valuation prepared under current SERS law.

### **Deposits to and withdrawals of individual accounts**

(sec. 3309.97)

Each defined contribution plan established under the bill must permit a participating member to do all of the following:

- (1) Maintain on deposit with SERS, or the entity administering the plan, any amounts that have accumulated on behalf of the member;
- (2) If the member has withdrawn the amounts described in division (1), redeposit with the system or the entity administering the plan the amounts withdrawn;
- (3) Make additional deposits as permitted by the Internal Revenue Code.

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<sup>11</sup> *The Employers' Trust Fund is the fund in which the amounts contributed by employers are accumulated.*

### **Spousal consent**

(sec. 3309.92)

Under the bill, if a member participating in a defined contribution plan is married at the time any benefits under the plan commence, before making any payment SERS or the entity administering the plan must obtain the consent of the member's spouse to the form of payment selected by the member.

Each plan established under the bill must include requirements for consent that are the same as the requirements specified in the Internal Revenue Code.<sup>12</sup> A plan may provide for waiver of consent if the spouse cannot be located or for any other reason specified in the regulations adopted under the Code. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

### **Vesting**

(sec. 3309.95)

The bill specifies that, with certain exceptions, the right of a member participating in a defined contribution plan to any payment or benefit accruing from contributions made by or on behalf of the member vests as follows:

(1) A member's right to any payment or benefit that is based on the member's contributions is nonforfeitable.

(2) A member's right to any payment or benefit that is based on contributions by the member's employer is nonforfeitable as specified by the plan selected by the member.

Exceptions are for members who retire and return to public employment within a specified time period, for members who are found guilty of theft in office or certain felony sex offenses, and for members who are subject to withholding orders for child-support obligations.

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<sup>12</sup> (100 Stat. 2085, 26 U.S.C.A. 417(a)(2), as amended).

**Changes to accommodate a defined contribution plan**

(secs. 3309.01(F), 3309.031, 3309.05, 3309.07, 3309.341, 3309.49, 3309.53, 3309.54, 3309.57, 3309.59, and 3309.66)

The bill specifies that SERS administers the defined benefit plan and any defined contribution plans established under the bill. Each member of the system, regardless of the plan selected, is subject to the provisions that exist in current SERS law with respect to membership in and the administration and management of SERS.

**Applicability of SERS law to a defined contribution plan**

(sec. 3309.82)

The bill specifies that, with certain exceptions, the provisions of current SERS law applicable to the existing defined benefit plan do not apply to a defined contribution plan established under the bill.<sup>13</sup> However, a defined contribution plan may incorporate any of those provisions as specified in the plan document.

The following chart lists the provisions of SERS law applicable to the defined benefit plan that also apply to a defined contribution plan established under the bill:

<b>Revised Code Section</b>	<b>Description</b>
3309.19	Trustee and employee interest in funds
3309.21	Actuarial reports
3309.22	Records open to the public
3309.23	Exemptions from membership
3309.24	Membership by petition
3309.25	Notice of opportunity to make election
3309.251	Election to participate in defined contribution plan
3309.252	Election by existing members
3309.253	Effect of election
3309.28	Monthly statement to the Board by each department
3309.29	Verification of statement

<sup>13</sup> (R.C. 3309.02, 3309.021, 3309.022, and 3309.18 to 3309.70.)

<b>Revised Code Section</b>	<b>Description</b>
3309.341	Reemployed retirants
3309.3712	Excess benefit arrangements
3309.47	Employee contributions
3309.471	Payment of contributions during disability
3309.49	Employer contributions
3309.51	Payments to Employers' Trust Fund
3309.53	Statement of employee duties and obligations
3309.54	Names of employees certified to the Board
3309.55	Board advised of employee changes
3309.56	Deductions and statements
3309.57	Payments to the Board transmitted monthly
3309.571	Penalty for failure to transmit contributions
3309.58	Delinquent contributions
3309.59	Levy of additional taxes
3309.60	Funds
3309.61	Funds are separate legal entities
3309.62	Expenses of administering SERS
3309.66	Exemptions from tax; execution; garnishment
3309.661	Vesting
3309.67	Withholding orders for restitution
3309.68	Payments from state treasury
3309.70	Recovery of erroneous payments

## **OTHER CHANGES**

### **Survivors**

#### **Qualified spouse**

(sec. 3309.45(B)(3)(a))

Under current law, for purposes of eligibility for survivor benefits a surviving spouse of a deceased member is a qualified spouse if the surviving



spouse is (1) age 62, (2) age 50 if the deceased member had ten or more years of Ohio service credit, or (3) regardless of age if caring for a surviving child or adjudged physically or mentally incompetent.

The bill removes the age requirement for a surviving spouse to be a qualified spouse if the deceased member had ten or more years of Ohio service credit.

**One-time payment to surviving spouses who become qualified spouses under the bill**

(Section 5)

Under the bill, if the surviving spouse of a member who died on or after January 1, 2000, but before the bill's effective date becomes a qualified spouse under the provisions of the bill that apply to qualified spouses and has not taken the payment of the member's accumulated account, SERS is to calculate the benefit payable to the surviving spouse as of the bill's effective date and do both of the following:

(1) Begin payment to the surviving spouse on the first day of the month immediately following the date the calculation is made;

(2) Make a one-time payment to each surviving spouse eligible to receive payment under (1). The payment is to be an amount equal to the sum of the monthly benefits that would have been paid to the surviving spouse had the bill gone into effect on January 1, 2000.

**Qualified child**

(sec. 3309.45(B)(3)(b))

Under current law, a "qualified child" for the purpose of qualifying for a survivor benefit is any unmarried child (1) under age 18, (2) under age 22 if attending an institution of learning or training pursuant to a program designed to complete in each school year the equivalent of at least two-thirds of the institution's full-time curriculum requirements, or (3) regardless of age if adjudged physically or mentally incompetent.

Under the bill to be a qualified child, a child must never have been married. In addition, under the bill a child adjudged physically or mentally incompetent is a qualified child only if the incompetence existed prior to the member's death and prior to the child attaining age 18 (or age 22 if attending an educational institution described above).

## **Medicare Part B**

(sec. 3309.69; Section 4)

The SERS Board makes a monthly payment to each recipient of a service retirement allowance, or a disability or survivor benefit, who has health care coverage under Medicare Part B.<sup>14</sup> The payment reimburses part of the amount the recipient pays the federal government for the coverage. Under current law, the reimbursement is equal to the amount of the basic premium in effect on January 1, 1992.

The bill makes the payment equal to the amount of the basic premium in effect on January 1, 1999.

For persons who, as of the bill's effective date, are recipients of service retirement or a disability or survivor benefit from SERS, the bill provides for a one-time payment by SERS. The payment is an amount equal to the sum of the differences between each monthly payment the recipient was eligible to receive during the period commencing on January 1, 1993, and ending on the bill's effective date and the amount of the monthly payment the person would have been paid had the bill gone into effect on January 1, 1993. SERS is to subtract from the one-time payment any amount the recipient was eligible to receive under Section 3 of Am. Sub. H.B. 673 of the 122nd General Assembly.<sup>15</sup>

## **Additional amounts paid by employers**

(sec. 3309.491)

### **Current law**

Under current law, an actuary employed by the SERS Board determines the minimum annual compensation for each member that will be needed to fund the cost of providing future health care benefits at retirement. This is the "minimum

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<sup>14</sup> *Medicare has two parts: Part A, the hospital portion of the coverage, and Part B, which covers medical services, including doctors' services. Persons eligible for Social Security benefits receive Medicare Part A without charge. SERS is required to provide equivalent coverage without charge to retirants and other benefit recipients who are not eligible for Part A (R.C. 3309.375).*

<sup>15</sup> *Am. Sub. H.B. 673 of the 122nd General Assembly increased the reimbursement rate for Medicare Part B to the amount of the basic premium in effect on January 1, 1992 (from that in effect on January 1, 1988). Section 3 provided for a one-time payment similar to that described above. The one-time payment provided under the bill is in addition to that received under H.B. 673.*

compensation amount." For each member whose compensation is less than the minimum compensation amount, the secretary of the SERS Board determines an amount, based on a formula provided in statute, that an employer must pay in addition to the employer contribution already paid on behalf of the member. This amount is the "employer minimum compensation contribution" (also referred to as the "employer surcharge").

The employer minimum compensation contribution is an amount determined by the following formula for each member whose compensation is less than the minimum compensation amount:

(1) Subtract the member's compensation for the prior year from the minimum compensation amount;

(2) Multiply the remainder obtained under (1) by one or, if the member earned less than a year's service credit for the prior year, by the same fraction as the fraction of a year's service credit credited to the member;

(3) Multiply the product obtained under (2) by the employer contribution rate in effect for the year the service credit was earned.

The current minimum compensation amount is \$12,400. Therefore, if a member's annual compensation for service for which the member receives a full year of credit is less than \$12,400, the employer must pay the employer minimum compensation contribution on the difference between \$12,400 and the member's annual compensation. If the member earns less than a year's credit, the amount the employer must pay is based on the fraction of a year that the member worked.

### **The bill**

The bill modifies the formula so that the total employer minimum compensation contribution for each employer is the lesser of (1) two per cent of the compensation of all members employed by the employer during the prior year or (2) the total of the amounts determined under the formula described above for each member who earns less than the minimum compensation amount. In addition, the bill provides that if the statewide total of the employer minimum compensation contributions exceeds one and one-half per cent of the compensation of all SERS members employed by employers required to pay the additional amount, the SERS Board must reduce the amount determined for each employer so that the statewide total amount paid to SERS does not exceed the one and one-half per cent. Any reduction is to be applied to each employer in the same proportion as the employer's additional contribution bears to the statewide total employer minimum compensation contribution.

### **Legal entities authorized to act on behalf of the SERS Board**

(secs. 3309.03 and 3309.15)

Under current law, to facilitate investment of funds, the SERS Board may establish a partnership, trust, limited liability company, corporation including a corporation exempt from taxation under federal law, or any other legal entity authorized to transact business in this state. The Board may also authorize a nominee to facilitate ownership and transfer of investments. Under the bill, the legal entities established by the SERS Board are not limited to facilitating the investment of funds. Likewise, Board nominees may be authorized under the bill to transact business, invest funds, draw warrants for money, make payments, and hold property on behalf of the Board.

### **Actions by the Board to avoid income taxes**

(sec. 3309.03)

The bill authorizes the SERS Board to take all appropriate action to avoid payment by the systems or its members of federal or state income taxes on contributions to the system or amounts earned on those contributions.

### **Rulemaking procedures**

(sec. 3309.04)

Under current law, the Attorney General is required to prescribe procedures for adoption of rules by the SERS Board. The procedures are to be consistent with the provisions of the Administrative Procedure Act that do not require a public hearing, and all rules must be filed under the procedures in order to be effective.<sup>16</sup>

The bill eliminates this requirement and instead requires the SERS Board to adopt rules in accordance with the provisions of the Administrative Procedure Act that do not require a public hearing.

### **Disposition of delinquent employee contributions**

(sec. 3309.47)

Under current law, on a finding by the SERS Board that an employer has failed or refused to deduct and transmit to SERS contributions for any employees during any year, the Board is authorized to determine the amount of the delinquent

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<sup>16</sup> These provisions are in R.C. 111.15.

contributions, including interest from the end of each year at a rate set by the Board, and to 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.

The bill provides that any amounts so collected are to be held in trust pending receipt of a report of contributions for the employee for the period involved and, thereafter, the amount in trust is to be transferred to the Employees' Savings Fund to the credit of the employee. Any amount remaining after the transfer is transferred to the Employers' Trust Fund as a credit to the employer.

**Technical changes**

(secs. 3307.58, 3309.12, 3309.17, 3309.22, 3309.32, 3309.47, 3309.53, 3309.54, 3309.55, 3309.57, and 3309.59; 3309.58, sec. repealed by the bill)

The bill makes several technical changes to Revised Code sections.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	03-21-00	p. 1482
Reported, S. Ways & Means	05-18-00	p. 1756
Passed Senate (32-1)	05-23-00	pp. 1781-1782
Reported, H. Health, Retirement & Aging	---	---

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