

As Introduced

**127th General Assembly
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H. B. No. 152

Representative Widener

Cosponsors: Representatives Seitz, Flowers, Combs

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A B I L L

To amend sections 3105.80, 3305.01, 3305.03, 3305.04, 1
3305.05, 3305.052, 3305.053, 3305.06, 3305.061, 2
3305.07, 3307.01, and 3309.01 of the Revised Code 3
to require school boards to establish alternative 4
retirement plans for teachers and school 5
employees. 6

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

Section 1. That sections 3105.80, 3305.01, 3305.03, 3305.04, 7
3305.05, 3305.052, 3305.053, 3305.06, 3305.061, 3305.07, 3307.01, 8
and 3309.01 of the Revised Code be amended to read as follows: 9

Sec. 3105.80. As used in this section and sections 3105.81 to 10
3105.90 of the Revised Code: 11

(A) "Alternate payee" means a party in an action for divorce, 12
legal separation, annulment, or dissolution of marriage who is to 13
receive one or more payments from a benefit or lump sum payment 14
under an order issued under section 3105.171 or 3105.65 of the 15
Revised Code that is in compliance with sections 3105.81 to 16
3105.90 of the Revised Code. 17

(B) "Benefit" means a periodic payment under a pension, 18
annuity, allowance, or other type of benefit, other than a 19

survivor benefit, that has been or may be granted to a participant 20
under sections 742.01 to 742.61 or Chapter 145., 3307., 3309., or 21
5505. of the Revised Code or any payment that is to be made under 22
a contract a participant has entered into for the purposes of an 23
alternative retirement plan. "Benefit" also includes all amounts 24
received or to be received under a plan of payment elected under 25
division (B)(4) of section 145.46, division (B) of section 26
3307.60, or division (B)(4) of section 3309.46 of the Revised 27
Code. 28

(C) "Lump sum payment" means a payment of accumulated 29
contributions standing to a participant's credit under sections 30
742.01 to 742.61 or Chapter 145., 3307., 3309., or 5505. of the 31
Revised Code or pursuant to a contract a participant has entered 32
into for the purposes of an alternative retirement plan and any 33
other payment made or that may be made to a participant under 34
those sections or chapters on withdrawal of a participant's 35
contributions. "Lump sum payment" includes a lump sum payment 36
under section 145.384, 742.26, 3307.352, or 3309.344 of the 37
Revised Code. 38

(D) "Participant" means a member, contributor, retirant, or 39
disability benefit recipient who is or will be entitled to a 40
benefit or lump sum payment under sections 742.01 to 742.61 or 41
Chapter 145., 3307., 3309., or 5505. of the Revised Code or an 42
electing employee ~~who elects to participate in an alternative~~ 43
~~retirement plan under Chapter 3305. as defined in section 3305.01~~ 44
of the Revised Code. 45

(E) "Personal history record" has the same meaning as in 46
sections 145.27, 742.41, 3305.20, 3307.20, 3309.22, and 5505.04 of 47
the Revised Code. 48

(F) "Public retirement program" means the public employees 49
retirement system, Ohio police and fire pension fund, school 50
employees retirement system, state teachers retirement system, 51

state highway patrol retirement system, or an entity providing an 52
alternative retirement plan under Chapter 3305. of the Revised 53
Code. 54

Sec. 3305.01. As used in this chapter: 55

(A) "Public institution of higher education" means a state 56
university as defined in section 3345.011 of the Revised Code, the 57
northeastern Ohio universities college of medicine, or a 58
university branch, technical college, state community college, 59
community college, or municipal university established or 60
operating under Chapter 3345., 3349., 3354., 3355., 3357., or 61
3358. of the Revised Code. 62

(B) "School board" means the board of education of a city, 63
local, exempted village, or joint vocational school district, the 64
governing board of an educational service center, or the governing 65
authority of a community school established under Chapter 3314. of 66
the Revised Code. 67

(C) "Employer" means a school board or the board of trustees 68
of a public institution of higher education. 69

(D) "State retirement system" means the public employees 70
retirement system created under Chapter 145. of the Revised Code, 71
the state teachers retirement system created under Chapter 3307. 72
of the Revised Code, or the school employees retirement system 73
created under Chapter 3309. of the Revised Code. 74

~~(C)~~(E) "Eligible employee" means any all of the following: 75

(1) Any person employed as a full-time employee of a public 76
institution of higher education; 77

(2) Any person described in division (B)(1), (2), (3), or (4) 78
of section 3307.01 of the Revised Code; 79

(3) Any person described in division (B)(1) or (2) of section 80
3309.01 of the Revised Code. 81

In all cases of doubt, the ~~board of trustees of the public~~ 82
~~institution of higher education~~ employer shall determine whether 83
any person is an eligible employee for purposes of this chapter, 84
and the ~~board's~~ employer's decision shall be final. 85

~~(D)~~(F) "Electing employee" means any eligible employee who 86
elects, pursuant to section 3305.05 or 3305.051 of the Revised 87
Code, to participate in an alternative retirement plan provided 88
pursuant to this chapter or an eligible employee who is required 89
to participate in an alternative retirement plan pursuant to 90
division (C)(4) of section 3305.05 or division (F) of section 91
3305.051 of the Revised Code. 92

~~(E)~~(G) "Compensation," for purposes of an electing employee, 93
has the same meaning as the applicable one of the following: 94

(1) If the electing employee would be subject to Chapter 145. 95
of the Revised Code had the employee not made an election pursuant 96
to section 3305.05 or 3305.051 of the Revised Code, "earnable 97
salary" as defined in division (R) of section 145.01 of the 98
Revised Code; 99

(2) If the electing employee would be subject to Chapter 100
3307. of the Revised Code had the employee not made an election 101
pursuant to section 3305.05 or 3305.051 of the Revised Code, 102
"compensation" as defined in division (L) of section 3307.01 of 103
the Revised Code; 104

(3) If the electing employee would be subject to Chapter 105
3309. of the Revised Code had the employee not made an election 106
pursuant to section 3305.05 or 3305.051 of the Revised Code, 107
"compensation" as defined in division (V) of section 3309.01 of 108
the Revised Code. 109

~~(F)~~(H) "Provider" means an entity designated under section 110
3305.03 of the Revised Code as a provider of investment options 111
for an alternative retirement plan. 112

Sec. 3305.03. (A) The department of insurance shall designate 113
three or more entities to provide investment options under 114
alternative retirement plans established ~~by public institutions of~~ 115
~~higher education~~ in accordance with this chapter. An entity shall 116
be designated a provider under this section if the entity meets 117
both of the following requirements: 118

(1) It is authorized to conduct business in this state with 119
regard to the investment options to be offered under an 120
alternative retirement plan; 121

(2) It provides the same or similar investment options to be 122
offered under alternative retirement plans, as group or individual 123
contracts, or a combination thereof, in at least ten other states. 124

(B) In designating a provider under this section, the 125
department of insurance shall consider all of the following: 126

(1) The experience of the provider in providing investment 127
options under alternative retirement programs in other states; 128

(2) The potential effectiveness of the provider in recruiting 129
eligible employees to enter into contracts and in retaining those 130
contracts; 131

(3) The nature and extent of the rights and benefits to be 132
provided under the investment options; 133

(4) The relationship between the rights and benefits under 134
the investment options and the amount of the contributions made 135
under those options; 136

(5) The suitability of the rights and benefits under the 137
investment options to the needs and interests of eligible 138
employees; 139

(6) The capability of the provider to provide the rights and 140
benefits under the investment options; 141

(7) Any other matters it considers relevant. 142

(C) The department of insurance shall periodically review 143
each provider designated under division (A) of this section and 144
the investment options being offered to ensure that the 145
requirements and purposes of this chapter are being met. If the 146
department finds that the provider is not in compliance with any 147
requirement of this chapter or the provider is not satisfactorily 148
meeting the purposes of this chapter, the department may rescind 149
the provider's designation. 150

(D) Notwithstanding sections 125.01 to 125.11 of the Revised 151
Code, designation of a provider or the execution of any contract 152
under this chapter is not subject to competitive bidding under 153
those sections. 154

Sec. 3305.04. ~~The board of trustees of each public~~ 155
~~institution of higher education~~ Each employer subject to this 156
chapter shall adopt an alternative retirement plan in accordance 157
with this chapter. ~~Each public institution of higher education~~ The 158
employer shall enter into a contract with each provider designated 159
pursuant to section 3305.03 of the Revised Code that is willing to 160
provide investment options under ~~an~~ the employer's alternative 161
retirement plan ~~at that public institution. Each.~~ 162

Each contract entered into under this section shall provide 163
for termination of the contract if the provider ceases to be a 164
designated provider. 165

In accordance with this chapter, each ~~board~~ employer may 166
perform such functions and provide as necessary for the 167
administration of its alternative retirement plan. 168

Sec. 3305.05. (A) As used in this section and section 169
3305.051 of the Revised Code, "academic or administrative 170
employee" means any full-time employee not receiving any benefit, 171

allowance, or other payment granted on the employee's account from 172
a state retirement system who, before ~~the effective date of this~~ 173
~~section~~ August 1, 2005, met one of the following requirements: 174

(1) The employee was a member of the faculty of a public 175
institution of higher education. 176

(2) The employee was a member of the administrative staff of 177
a public institution of higher education serving in a position in 178
the unclassified civil service pursuant to section 124.11 of the 179
Revised Code. 180

(3) If section 124.11 of the Revised Code did not apply to 181
the public institution of higher education, the employee was a 182
member of the administrative staff of a public institution of 183
higher education serving in a position comparable to a position in 184
the unclassified civil service. 185

In all cases of doubt, the board of trustees of the public 186
institution of higher education shall determine whether any person 187
is an academic or administrative employee for purposes of this 188
chapter, and the board's decision shall be final. 189

(B)(1) Each person who, on ~~the effective date of this section~~ 190
August 1, 2005, is an eligible employee of a public institution of 191
higher education and has accrued less than five years of service 192
credit in a state retirement system may, not later than one 193
hundred twenty days after ~~the effective date of this section~~ 194
August 1, 2005, make an election to participate in an alternative 195
retirement plan available at the employing public institution, 196
unless, prior to ~~the effective date of this section~~ August 1, 197
2005, the person had an opportunity pursuant to former section 198
3305.05 of the Revised Code to make such an election as an 199
academic or administrative employee of that public institution of 200
higher education. 201

(2) An eligible employee whose employment with a public 202

institution of higher education commences on or after ~~the~~ 203
~~effective date of this section~~ August 1, 2005, may, not later than 204
one hundred twenty days after the starting date of the employment, 205
make an election to participate in an alternative retirement plan 206
available at the employing public institution. 207

(3) Each person who on the effective date of this amendment 208
is an eligible employee employed by a school board may, not later 209
than one hundred twenty days after the employee's employer adopts 210
an alternative retirement plan, make an election to participate in 211
that plan if, on the day immediately preceding the effective date 212
of this amendment, the employee has accrued less than five years 213
of service credit in a state retirement system. 214

(4) An eligible employee whose employment by a school board 215
commences on or after the effective date of this amendment may, 216
not later than one hundred twenty days after the later of the 217
starting date of the employment or the employer's establishment of 218
an alternative retirement plan, make an election to participate in 219
an alternative retirement plan established by the school board. 220

(5) An eligible employee who, on or after ~~the effective date~~ 221
of this section August 1, 2005, terminates employment at ~~one~~ 222
~~public institution of higher education~~ and subsequently is 223
employed by another ~~public institution of higher education~~ 224
employer in a position for which an alternative retirement plan is 225
available may, not later than one hundred twenty days after the 226
starting date of the employment, elect to participate in an 227
alternative retirement plan available at ~~with~~ that ~~public~~ 228
~~institution~~ employer. 229

(C)(1) An eligible employee who makes an election under 230
division (B) of this section shall submit the election in writing 231
to the designated officer of the ~~employee's employing public~~ 232
~~institution of higher education~~ employer. Once submitted, the 233
election is irrevocable while the eligible employee continues to 234

be employed by the ~~public institution of higher education~~ 235
~~employer~~. Not later than ten days after the election becomes 236
irrevocable, the officer shall file a certified copy of the 237
election with the state retirement system to which, apart from the 238
election, the employee's employment would be subject. 239

Each ~~public institution of higher education employer~~ that 240
employs a person eligible to make an election under division (B) 241
of this section shall notify in writing, within ten days of the 242
person's employment, the state retirement system that applies to 243
that employment in the manner specified by that state retirement 244
system. The notice shall include the person's name and address. 245

(2) Elections made under division (B) of this section take 246
effect as follows: 247

(a) An election under division (B)(1) or (3) of this section 248
is effective as of the date on which the employee's election to 249
participate in the alternative retirement plan becomes 250
irrevocable. 251

(b) An election under division (B)(2) ~~or (3), (4), or (5)~~ of 252
this section is effective as of the electing employee's starting 253
date of employment. 254

(3) An eligible employee's election under division (B) of 255
this section applies to the employee's employment in all positions 256
~~at with~~ that ~~public institution employer~~, unless the employee 257
terminates employment ~~at with~~ the ~~public institution employer~~ and 258
does not return to employment in any position ~~at with~~ that ~~public~~ 259
~~institution employer~~ prior to one year after the date of 260
termination. 261

(4) An eligible employee who makes an election under division 262
(B) of this section is forever barred from claiming or purchasing 263
service credit under any state retirement system for the period of 264
employment while the election is in effect. 265

(D)(1) An eligible employee who fails to make an election 266
under division (B) of this section within the ~~one hundred twenty~~ 267
~~day~~ election period shall be deemed to have elected to participate 268
in the state retirement system that applies to the employee's 269
employment. 270

(2) An eligible employee who fails to make an election under 271
division (B) of this section shall not be permitted to make an 272
election for employment in any other position ~~at~~ with the ~~public~~ 273
~~institution of higher education~~ employer while employed ~~at~~ by that 274
~~public institution~~ employer, unless the employee terminates 275
employment ~~at~~ with the ~~public institution~~ employer and does not 276
return to employment in any position ~~at~~ with the ~~public~~ 277
~~institution~~ employer prior to one year after the date of 278
termination. 279

Sec. 3305.052. (A) The state retirement system that covers 280
the position held by an eligible employee ~~of a public institution~~ 281
~~of higher education~~ who makes an election under division (B)(2) ~~or~~ 282
~~(3), (4), or (5)~~ of section 3305.05 or division (B) of section 283
3305.051 of the Revised Code to participate in the ~~public~~ 284
~~institution's~~ employer's alternative retirement plan shall, not 285
later than thirty days after the date on which the certified copy 286
of the employee's election is filed with the state retirement 287
system under that section, do one of the following: 288

(1) If the employee was participating in a defined benefit 289
plan as provided in sections 145.201 to 145.79, sections 3307.50 290
to 3307.79, or sections 3309.18 to 3309.76 of the Revised Code, 291
pay to the provider of the investment option selected by the 292
employee any employee and employer contributions made to the 293
retirement system by or on behalf of that employee for the period 294
beginning on the employee's starting day of employment and ending 295
on the day before the day on which contributions commence under an 296

alternative retirement plan, less the amount due the retirement 297
system pursuant to division (D) of section 3305.06 of the Revised 298
Code for that period. 299

(2) If the employee was participating in a defined 300
contribution plan as provided in section 145.81, 3307.81, or 301
3309.81 of the Revised Code, pay to the provider of the investment 302
option selected by the employee the amount on deposit in the 303
employee's individual account for the period beginning on the 304
employee's starting day of employment and ending on the day before 305
the day on which contributions commence under an alternative 306
retirement plan. 307

(B) The state retirement system that covers the position held 308
by an employee ~~of a public institution of higher education~~ who 309
makes an election under division (B)(1) or (3) of section 3305.05 310
or division (C) of section 3305.051 of the Revised Code to 311
participate in the ~~public institution's~~ employer's alternative 312
retirement plan shall, not later than thirty days after the date 313
on which a certified copy of the employee's election is filed with 314
the state retirement system under that section, do one of the 315
following: 316

(1) If the employee was participating in a defined benefit 317
plan as provided in sections 145.201 to 145.79, sections 3307.50 318
to 3307.79, or sections 3309.18 to 3309.70 of the Revised Code, 319
pay to the provider of the investment option selected by the 320
employee any employee and employer contributions made to the 321
retirement system by or on behalf of that employee for any period 322
commencing after the date on which the election becomes 323
irrevocable under division (C)(1) of section 3305.05 of the 324
Revised Code or the applicable date described in division 325
(C)(2)(a) or (b) of section 3305.051 of the Revised Code and 326
ending on the day before the day on which contributions commence 327
under an alternative retirement plan, less the amount due the 328

retirement system pursuant to division (D) of section 3305.06 of 329
the Revised Code for that period. 330

(2) If the employee was participating in a defined 331
contribution plan as provided in section 145.81, 3307.81, or 332
3309.81 of the Revised Code, pay to the provider of the investment 333
option selected by the employee the amount on deposit in the 334
employee's individual account for the period commencing after the 335
date on which the election becomes irrevocable under division 336
(C)(1) of section 3305.05 of the Revised Code and ending on the 337
day before the day on which contributions commence under an 338
alternative retirement plan. 339

Sec. 3305.053. ~~The board of trustees of a public institution~~ 340
~~of higher education employer~~ shall permit an employee who makes an 341
election under section 3305.05 or 3305.051 of the Revised Code to 342
do all of the following: 343

(A) Select, from among the providers that have entered into a 344
contract with the ~~public institution of higher education employer~~ 345
under section 3305.04 of the Revised Code, the provider of an 346
investment option for that employee; 347

(B) Except as permitted under division (C) of this section, 348
contract with only one provider in any plan year; 349

(C) Change the provider selected under division (A) of this 350
section at the following times: 351

(1) Once during the first payroll period in any plan year; 352

(2) Any time the provider that the employee selected ceases, 353
under division (C) of section 3305.03 of the Revised Code, to be 354
designated. 355

(D) If under division (C) of this section an employee changes 356
providers, the provider shall transfer to the new provider the 357
employee's account balance either in whole or in part, as directed 358

by the employee, except that the provider is not required to 359
immediately transfer any part of the account invested at the 360
employee's election in a fixed annuity account if the contract 361
under which the investment was made permits the provider to make 362
such a transfer over a period of time not exceeding ten years and 363
the contract was filed with and approved by the department of 364
insurance pursuant to section 3911.011 of the Revised Code. 365

Sec. 3305.06. (A) Each electing employee shall contribute an 366
amount, which shall be a certain percentage of the employee's 367
compensation, to the provider of the investment option the 368
employee has selected. This percentage shall be the percentage the 369
electing employee would have otherwise been required to contribute 370
to the state retirement system that applies to the employee's 371
position, except that the percentage shall not be less than three 372
per cent. Employee contributions under this division may be 373
treated as employer contributions in accordance with Internal 374
Revenue Code 414(h). 375

(B) ~~Each public institution of higher education employing~~ The 376
employer of an electing employee shall contribute a percentage of 377
the employee's compensation to the provider of the investment 378
option the employee has selected. This percentage shall be equal 379
to the percentage that the ~~public institution of higher education~~ 380
employer would otherwise contribute on behalf of that employee to 381
the state retirement system that would otherwise cover that 382
employee's position, less the percentage contributed by the ~~public~~ 383
~~institution of higher education~~ employer under division (D) of 384
this section. 385

(C)(1) In no event shall the amount contributed by the 386
electing employee pursuant to division (A) of this section and on 387
the electing employee's behalf pursuant to division (B) of this 388
section be less than the amount necessary to qualify the plan as a 389

state retirement system pursuant to Internal Revenue Code 390
3121(B)(7) and the regulations adopted thereunder. 391

(2) The full amount of the electing employee's contribution 392
under division (A) of this section and the full amount of the 393
employer's contribution made on behalf of that employee under 394
division (B) of this section shall be paid to the appropriate 395
provider for application to the electing employee's investment 396
option. 397

(D) ~~Each public institution of higher education employing~~ The 398
employer of an electing employee shall contribute on behalf of 399
that employee to the state retirement system that otherwise 400
applies to the electing employee's position a percentage of the 401
electing employee's compensation to mitigate any negative 402
financial impact of the alternative retirement program on the 403
state retirement system. The percentage shall be six per cent, 404
except that the percentage may be adjusted by the Ohio retirement 405
study council to reflect the determinations made by actuarial 406
studies conducted under section 171.07 of the Revised Code. Any 407
adjustment shall become effective on the first day of the second 408
month following submission of the actuarial study to the board of 409
regents under section 171.07 of the Revised Code. 410

Contributions on behalf of an electing employee shall 411
continue in accordance with this division until the occurrence of 412
the following: 413

(1) If the electing employee would be subject to Chapter 145. 414
of the Revised Code had the employee not made an election pursuant 415
to section 3305.05 or 3305.051 of the Revised Code, until the 416
unfunded actuarial accrued liability for all benefits, except 417
health care benefits provided under section 145.325 or 145.58 of 418
the Revised Code and benefit increases provided after March 31, 419
1997, is fully amortized, as determined by the annual actuarial 420
valuation prepared under section 145.22 of the Revised Code; 421

(2) If the electing employee would be subject to Chapter 422
3307. of the Revised Code had the employee not made an election 423
pursuant to section 3305.05 or 3305.051 of the Revised Code, until 424
the unfunded actuarial accrued liability for all benefits, except 425
health care benefits provided under section 3307.39 or 3307.61 of 426
the Revised Code and benefit increases provided after March 31, 427
1997, is fully amortized, as determined by the annual actuarial 428
valuation prepared under section 3307.51 of the Revised Code; 429

(3) If the electing employee would be subject to Chapter 430
3309. of the Revised Code had the employee not made an election 431
pursuant to section 3305.05 or 3305.051 of the Revised Code, until 432
the unfunded actuarial accrued liability for all benefits, except 433
health care benefits provided under section 3309.375 or 3309.69 of 434
the Revised Code and benefit increases provided after March 31, 435
1997, is fully amortized, as determined by the annual actuarial 436
valuation prepared under section 3309.21 of the Revised Code. 437

Sec. 3305.061. Notwithstanding section 171.07 and division 438
(D) of section 3305.06 of the Revised Code, the percentage of an 439
electing employee's compensation contributed by ~~a public~~ 440
~~institution of higher education~~ an employer under division (D) of 441
section 3305.06 of the Revised Code shall not exceed the 442
percentage of compensation transferred under section 145.87, 443
3307.84, or 3309.88 of the Revised Code, as appropriate, by the 444
state retirement system that otherwise applies to the electing 445
employee's position. A change in the percentage of compensation 446
contributed under division (D) of section 3305.06 of the Revised 447
Code, as required by this section, shall take effect on the same 448
day a change in the percentage of compensation takes effect under 449
section 145.87, 3307.84, or 3309.88 of the Revised Code, as 450
appropriate. 451

Sec. 3305.07. (A) Neither the state nor ~~a public institution~~ 452

~~of higher education~~ any employer shall be a party to any contract 453
purchased in whole or in part with contributions to an alternative 454
retirement plan made under section 3305.06 of the Revised Code. No 455
retirement, death, or other benefits shall be payable by the state 456
or by any ~~public institution of higher education~~ employer under 457
any alternative retirement plan elected pursuant to this chapter. 458

(B)(1) Except as provided under division (B)(2) of this 459
section and sections 3305.08 and 3305.09 of the Revised Code, 460
benefits shall be paid to an electing employee or the employee's 461
beneficiaries in accordance with the alternative retirement plan 462
adopted by the ~~public institution of higher education at which the~~ 463
~~employee is employed~~ employer. 464

(2) A benefit or payment shall not be paid under an 465
investment option prior to the time an electing employee dies, 466
terminates employment with the ~~public institution of higher~~ 467
~~education~~ employer, or, if provided under the alternative 468
retirement plan or investment option, becomes disabled, except 469
that the provider of the investment option shall transfer the 470
employee's account balance to another provider as provided under 471
section 3305.053 of the Revised Code. 472

Sec. 3307.01. As used in this chapter: 473

(A) "Employer" means the board of education, school district, 474
governing authority of any community school established under 475
Chapter 3314. of the Revised Code, college, university, 476
institution, or other agency within the state by which a teacher 477
is employed and paid. 478

(B) "Teacher" means all of the following: 479

(1) Any person paid from public funds and employed in the 480
public schools of the state under any type of contract described 481
in section 3319.08 of the Revised Code in a position for which the 482

person is required to have a license issued pursuant to sections 483
3319.22 to 3319.31 of the Revised Code; 484

(2) Any person employed as a teacher by a community school 485
pursuant to Chapter 3314. of the Revised Code; 486

(3) Any person having a license issued pursuant to sections 487
3319.22 to 3319.31 of the Revised Code and employed in a public 488
school in this state in an educational position, as determined by 489
the state board of education, under programs provided for by 490
federal acts or regulations and financed in whole or in part from 491
federal funds, but for which no licensure requirements for the 492
position can be made under the provisions of such federal acts or 493
regulations; 494

(4) Any other teacher or faculty member employed in any 495
school, college, university, institution, or other agency wholly 496
controlled and managed, and supported in whole or in part, by the 497
state or any political subdivision thereof, including Central 498
state university, Cleveland state university, and the university 499
of Toledo; 500

(5) The educational employees of the department of education, 501
as determined by the state superintendent of public instruction. 502

In all cases of doubt, the state teachers retirement board 503
shall determine whether any person is a teacher, and its decision 504
shall be final. 505

"Teacher" does not include any eligible employee ~~of a public~~ 506
~~institution of higher education~~, as defined in section 3305.01 of 507
the Revised Code, who elects to participate in an alternative 508
retirement plan established under Chapter 3305. of the Revised 509
Code. 510

(C) "Member" means any person included in the membership of 511
the state teachers retirement system, which shall consist of all 512
teachers and contributors as defined in divisions (B) and (D) of 513

this section and all disability benefit recipients, as defined in 514
section 3307.50 of the Revised Code. However, for purposes of this 515
chapter, the following persons shall not be considered members: 516

(1) A student, intern, or resident who is not a member while 517
employed part-time by a school, college, or university at which 518
the student, intern, or resident is regularly attending classes; 519

(2) A person denied membership pursuant to section 3307.24 of 520
the Revised Code; 521

(3) An other system retirant, as defined in section 3307.35 522
of the Revised Code, or a superannuate; 523

(4) An individual employed in a program established pursuant 524
to the "Job Training Partnership Act," 96 Stat. 1322 (1982), 29 525
U.S.C.A. 1501. 526

(D) "Contributor" means any person who has an account in the 527
teachers' savings fund or defined contribution fund. 528

(E) "Beneficiary" means any person eligible to receive, or in 529
receipt of, a retirement allowance or other benefit provided by 530
this chapter. 531

(F) "Year" means the year beginning the first day of July and 532
ending with the thirtieth day of June next following, except that 533
for the purpose of determining final average salary under the plan 534
described in sections 3307.50 to 3307.79 of the Revised Code, 535
"year" may mean the contract year. 536

(G) "Local district pension system" means any school teachers 537
pension fund created in any school district of the state in 538
accordance with the laws of the state prior to September 1, 1920. 539

(H) "Employer contribution" means the amount paid by an 540
employer, as determined by the employer rate, including the normal 541
and deficiency rates, contributions, and funds wherever used in 542
this chapter. 543

(I) "Five years of service credit" means employment covered 544
under this chapter and employment covered under a former 545
retirement plan operated, recognized, or endorsed by a college, 546
institute, university, or political subdivision of this state 547
prior to coverage under this chapter. 548

(J) "Actuary" means the actuarial consultant to the state 549
teachers retirement board, who shall be either of the following: 550

(1) A member of the American academy of actuaries; 551

(2) A firm, partnership, or corporation of which at least one 552
person is a member of the American academy of actuaries. 553

(K) "Fiduciary" means a person who does any of the following: 554

(1) Exercises any discretionary authority or control with 555
respect to the management of the system, or with respect to the 556
management or disposition of its assets; 557

(2) Renders investment advice for a fee, direct or indirect, 558
with respect to money or property of the system; 559

(3) Has any discretionary authority or responsibility in the 560
administration of the system. 561

(L)(1) Except as provided in this division, "compensation" 562
means all salary, wages, and other earnings paid to a teacher by 563
reason of the teacher's employment, including compensation paid 564
pursuant to a supplemental contract. The salary, wages, and other 565
earnings shall be determined prior to determination of the amount 566
required to be contributed to the teachers' savings fund or 567
defined contribution fund under section 3307.26 of the Revised 568
Code and without regard to whether any of the salary, wages, or 569
other earnings are treated as deferred income for federal income 570
tax purposes. 571

(2) Compensation does not include any of the following: 572

(a) Payments for accrued but unused sick leave or personal 573

leave, including payments made under a plan established pursuant	574
to section 124.39 of the Revised Code or any other plan	575
established by the employer;	576
(b) Payments made for accrued but unused vacation leave,	577
including payments made pursuant to section 124.13 of the Revised	578
Code or a plan established by the employer;	579
(c) Payments made for vacation pay covering concurrent	580
periods for which other salary, compensation, or benefits under	581
this chapter are paid;	582
(d) Amounts paid by the employer to provide life insurance,	583
sickness, accident, endowment, health, medical, hospital, dental,	584
or surgical coverage, or other insurance for the teacher or the	585
teacher's family, or amounts paid by the employer to the teacher	586
in lieu of providing the insurance;	587
(e) Incidental benefits, including lodging, food, laundry,	588
parking, or services furnished by the employer, use of the	589
employer's property or equipment, and reimbursement for	590
job-related expenses authorized by the employer, including moving	591
and travel expenses and expenses related to professional	592
development;	593
(f) Payments made by the employer in exchange for a member's	594
waiver of a right to receive any payment, amount, or benefit	595
described in division (L)(2) of this section;	596
(g) Payments by the employer for services not actually	597
rendered;	598
(h) Any amount paid by the employer as a retroactive increase	599
in salary, wages, or other earnings, unless the increase is one of	600
the following:	601
(i) A retroactive increase paid to a member employed by a	602
school district board of education in a position that requires a	603

license designated for teaching and not designated for being an 604
administrator issued under section 3319.22 of the Revised Code 605
that is paid in accordance with uniform criteria applicable to all 606
members employed by the board in positions requiring the licenses; 607

(ii) A retroactive increase paid to a member employed by a 608
school district board of education in a position that requires a 609
license designated for being an administrator issued under section 610
3319.22 of the Revised Code that is paid in accordance with 611
uniform criteria applicable to all members employed by the board 612
in positions requiring the licenses; 613

(iii) A retroactive increase paid to a member employed by a 614
school district board of education as a superintendent that is 615
also paid as described in division (L)(2)(h)(i) of this section; 616

(iv) A retroactive increase paid to a member employed by an 617
employer other than a school district board of education in 618
accordance with uniform criteria applicable to all members 619
employed by the employer. 620

(i) Payments made to or on behalf of a teacher that are in 621
excess of the annual compensation that may be taken into account 622
by the retirement system under division (a)(17) of section 401 of 623
the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 624
401(a)(17), as amended. For a teacher who first establishes 625
membership before July 1, 1996, the annual compensation that may 626
be taken into account by the retirement system shall be determined 627
under division (d)(3) of section 13212 of the "Omnibus Budget 628
Reconciliation Act of 1993," Pub. L. No. 103-66, 107 Stat. 472. 629

(j) Payments made under division (B), (C), or (E) of section 630
5923.05 of the Revised Code, Section 4 of Substitute Senate Bill 631
No. 3 of the 119th general assembly, Section 3 of Amended 632
Substitute Senate Bill No. 164 of the 124th general assembly, or 633
Amended Substitute House Bill No. 405 of the 124th general 634

assembly; 635

(k) Anything of value received by the teacher that is based 636
on or attributable to retirement or an agreement to retire. 637

(3) The retirement board shall determine by rule both of the 638
following: 639

(a) Whether particular forms of earnings are included in any 640
of the categories enumerated in this division; 641

(b) Whether any form of earnings not enumerated in this 642
division is to be included in compensation. 643

Decisions of the board made under this division shall be 644
final. 645

(M) "Superannuate" means both of the following: 646

(1) A former teacher receiving from the system a retirement 647
allowance under section 3307.58 or 3307.59 of the Revised Code; 648

(2) A former teacher receiving a benefit from the system 649
under a plan established under section 3307.81 of the Revised 650
Code, except that "superannuate" does not include a former teacher 651
who is receiving a benefit based on disability under a plan 652
established under section 3307.81 of the Revised Code. 653

For purposes of sections 3307.35 and 3307.353 of the Revised 654
Code, "superannuate" also means a former teacher receiving from 655
the system a combined service retirement benefit paid in 656
accordance with section 3307.57 of the Revised Code, regardless of 657
which retirement system is paying the benefit. 658

Sec. 3309.01. As used in this chapter: 659

(A) "Employer" or "public employer" means boards of 660
education, school districts, joint vocational districts, governing 661
authorities of community schools established under Chapter 3314. 662
of the Revised Code, educational institutions, technical colleges, 663

state, municipal, and community colleges, community college 664
branches, universities, university branches, other educational 665
institutions, or other agencies within the state by which an 666
employee is employed and paid, including any organization using 667
federal funds, provided the federal funds are disbursed by an 668
employer as determined by the above. In all cases of doubt, the 669
school employees retirement board shall determine whether any 670
employer is an employer as defined in this chapter, and its 671
decision shall be final. 672

(B)(1) "Employee" means all of the following: 673

~~(1)~~(a) Any person employed by a public employer in a position 674
for which the person is not required to have a certificate or 675
license issued pursuant to sections 3319.22 to 3319.31 of the 676
Revised Code; 677

~~(2)~~(b) Any person who performs a service common to the normal 678
daily operation of an educational unit even though the person is 679
employed and paid by one who has contracted with an employer to 680
perform the service, and the contracting board or educational unit 681
shall be the employer for the purposes of administering the 682
provisions of this chapter; 683

~~(3)~~(c) Any person, not a faculty member, employed in any 684
school or college or other institution wholly controlled and 685
managed, and wholly or partly supported by the state or any 686
political subdivision thereof, the board of trustees, or other 687
managing body of which shall accept the requirements and 688
obligations of this chapter. 689

~~In (2) "Employee" does not include any eligible employee, as 690
defined in section 3305.01 of the Revised Code, who elects to 691
participate in an alternative retirement plan established under 692
Chapter 3305. of the Revised Code. 693~~

(3) In all cases of doubt, the school employees retirement 694

board shall determine whether any person is an employee, as 695
defined in this division, and its decision is final. 696

(C) "Prior service" means all service rendered prior to 697
September 1, 1937: 698

(1) As an employee as defined in division (B) of this 699
section; 700

(2) As an employee in a capacity covered by the public 701
employees retirement system or the state teachers retirement 702
system; 703

(3) As an employee of an institution in another state, 704
service credit for which was procured by a member under the 705
provisions of section 3309.31 of the Revised Code. 706

Prior service, for service as an employee in a capacity 707
covered by the public employees retirement system or the state 708
teachers retirement system, shall be granted a member under 709
qualifications identical to the laws and rules applicable to 710
service credit in those systems. 711

Prior service shall not be granted any member for service 712
rendered in a capacity covered by the public employees retirement 713
system, the state teachers retirement system, and this system in 714
the event the service credit has, in the respective systems, been 715
received, waived by exemption, or forfeited by withdrawal of 716
contributions, except as provided in this chapter. 717

If a member who has been granted prior service should, 718
subsequent to September 16, 1957, and before retirement, establish 719
three years of contributing service in the public employees 720
retirement system, or one year in the state teachers retirement 721
system, then the prior service granted shall become, at 722
retirement, the liability of the other system, if the prior 723
service or employment was in a capacity that is covered by that 724
system. 725

The provisions of this division shall not cancel any prior 726
service granted a member by the school employees retirement board 727
prior to August 1, 1959. 728

(D) "Total service," "total service credit," or "Ohio service 729
credit" means all contributing service of a member of the school 730
employees retirement system, and all prior service, computed as 731
provided in this chapter, and all service established pursuant to 732
sections 3309.31, 3309.311, and 3309.33 of the Revised Code. In 733
addition, "total service" includes any period, not in excess of 734
three years, during which a member was out of service and 735
receiving benefits from the state insurance fund, provided the 736
injury or incapacitation was the direct result of school 737
employment. 738

(E) "Member" means any employee, except an SERS retirant or 739
other system retirant as defined in section 3309.341 of the 740
Revised Code, who has established membership in the school 741
employees retirement system. "Member" includes a disability 742
benefit recipient. 743

(F) "Contributor" means any person who has an account in the 744
employees' savings fund. When used in the sections listed in 745
division (B) of section 3309.82 of the Revised Code, "contributor" 746
includes any person participating in a plan established under 747
section 3309.81 of the Revised Code. 748

(G) "Retirant" means any former member who retired and is 749
receiving a service retirement allowance or commuted service 750
retirement allowance as provided in this chapter. 751

(H) "Beneficiary" or "beneficiaries" means the estate or a 752
person or persons who, as the result of the death of a contributor 753
or retirant, qualifies for or is receiving some right or benefit 754
under this chapter. 755

(I) "Interest," as specified in division (E) of section 756

3309.60 of the Revised Code, means interest at the rates for the 757
respective funds and accounts as the school employees retirement 758
board may determine from time to time, except as follows: 759

(1) The rate of interest credited on employee contributions 760
at retirement shall be four per cent per annum, compounded 761
annually, to and including June 30, 1955; three per cent per 762
annum, compounded annually, from July 1, 1955, to and including 763
June 30, 1963; three and one-quarter per cent per annum, 764
compounded annually, from July 1, 1963, through June 30, 1966; and 765
thereafter, four per cent per annum compounded annually until a 766
change in the amount is recommended by the system's actuary and 767
approved by the retirement board. Subsequent to June 30, 1959, the 768
retirement board shall discontinue the annual crediting of current 769
interest on a contributor's accumulated contributions. 770
Noncrediting of current interest shall not affect the rate of 771
interest at retirement guaranteed under this division. 772

(2) In determining the reserve value for purposes of 773
computing the amount of the contributor's annuity, the rate of 774
interest used in the annuity values shall be four per cent per 775
annum through September 30, 1956; three per cent per annum 776
compounded annually from October 1, 1956, through June 30, 1963; 777
three and one-quarter per cent per annum compounded annually from 778
July 1, 1963, through June 30, 1966; and, thereafter, four per 779
cent per annum compounded annually until a change in the amount is 780
recommended by the system's actuary and approved by the retirement 781
board. In the purchase of out-of-state service credit as provided 782
in section 3309.31 of the Revised Code, and in the purchase of an 783
additional annuity, as provided in section 3309.47 of the Revised 784
Code, interest shall be computed and credited to reserves therefor 785
at the rate the school employees retirement board shall fix as 786
regular interest thereon. 787

(J) "Accumulated contributions" means the sum of all amounts 788

credited to a contributor's account in the employees' savings fund 789
together with any regular interest credited thereon at the rates 790
approved by the retirement board prior to retirement. 791

(K) "Final average salary" means the sum of the annual 792
compensation for the three highest years of compensation for which 793
contributions were made by the member, divided by three. If the 794
member has a partial year of contributing service in the year in 795
which the member terminates employment and the partial year is at 796
a rate of compensation that is higher than the rate of 797
compensation for any one of the highest three years of annual 798
earnings, the board shall substitute the compensation earned for 799
the partial year for the compensation earned for a similar 800
fractional portion in the lowest of the three high years of annual 801
compensation before dividing by three. If a member has less than 802
three years of contributing membership, the final average salary 803
shall be the total compensation divided by the total number of 804
years, including any fraction of a year, of contributing service. 805

(L) "Annuity" means payments for life derived from 806
contributions made by a contributor and paid from the annuity and 807
pension reserve fund as provided in this chapter. All annuities 808
shall be paid in twelve equal monthly installments. 809

(M)(1) "Pension" means annual payments for life derived from 810
appropriations made by an employer and paid from the employers' 811
trust fund or the annuity and pension reserve fund. All pensions 812
shall be paid in twelve equal monthly installments. 813

(2) "Disability retirement" means retirement as provided in 814
section 3309.40 of the Revised Code. 815

(N) "Retirement allowance" means the pension plus the 816
annuity. 817

(O)(1) "Benefit" means a payment, other than a retirement 818
allowance or the annuity paid under section 3309.341 of the 819

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, 850
with respect to money or property of the system; 851

(3) Has any discretionary authority or responsibility in the 852
administration of the system. 853

(V)(1) Except as otherwise provided in this division, 854
"compensation" means all salary, wages, and other earnings paid to 855
a contributor by reason of employment. The salary, wages, and 856
other earnings shall be determined prior to determination of the 857
amount required to be contributed to the employees' savings fund 858
under section 3309.47 of the Revised Code and without regard to 859
whether any of the salary, wages, or other earnings are treated as 860
deferred income for federal income tax purposes. 861

(2) Compensation does not include any of the following: 862

(a) Payments for accrued but unused sick leave or personal 863
leave, including payments made under a plan established pursuant 864
to section 124.39 of the Revised Code or any other plan 865
established by the employer; 866

(b) Payments made for accrued but unused vacation leave, 867
including payments made pursuant to section 124.13 of the Revised 868
Code or a plan established by the employer; 869

(c) Payments made for vacation pay covering concurrent 870
periods for which other salary or compensation is also paid or 871
during which benefits are paid under this chapter; 872

(d) Amounts paid by the employer to provide life insurance, 873
sickness, accident, endowment, health, medical, hospital, dental, 874
or surgical coverage, or other insurance for the contributor or 875
the contributor's family, or amounts paid by the employer to the 876
contributor in lieu of providing the insurance; 877

(e) Incidental benefits, including lodging, food, laundry, 878
parking, or services furnished by the employer, use of the 879

employer's property or equipment, and reimbursement for 880
job-related expenses authorized by the employer, including moving 881
and travel expenses and expenses related to professional 882
development; 883

(f) Payments made to or on behalf of a contributor that are 884
in excess of the annual compensation that may be taken into 885
account by the retirement system under division (a)(17) of section 886
401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 887
U.S.C.A. 401(a)(17), as amended. For a contributor who first 888
establishes membership before July 1, 1996, the annual 889
compensation that may be taken into account by the retirement 890
system shall be determined under division (d)(3) of section 13212 891
of the "Omnibus Budget Reconciliation Act of 1993," Pub. L. No. 892
103-66, 107 Stat. 472; 893

(g) Payments made under division (B), (C), or (E) of section 894
5923.05 of the Revised Code, Section 4 of Substitute Senate Bill 895
No. 3 of the 119th general assembly, Section 3 of Amended 896
Substitute Senate Bill No. 164 of the 124th general assembly, or 897
Amended Substitute House Bill No. 405 of the 124th general 898
assembly; 899

(h) Anything of value received by the contributor that is 900
based on or attributable to retirement or an agreement to retire, 901
except that payments made on or before January 1, 1989, that are 902
based on or attributable to an agreement to retire shall be 903
included in compensation if both of the following apply: 904

(i) The payments are made in accordance with contract 905
provisions that were in effect prior to January 1, 1986. 906

(ii) The employer pays the retirement system an amount 907
specified by the retirement board equal to the additional 908
liability from the payments. 909

(3) The retirement board shall determine by rule whether any 910

form of earnings not enumerated in this division is to be included 911
in compensation, and its decision shall be final. 912

(W) "Disability benefit recipient" means a member who is 913
receiving a disability benefit. 914

(X) "Actuary" means an individual who satisfies all of the 915
following requirements: 916

(1) Is a member of the American academy of actuaries; 917

(2) Is an associate or fellow of the society of actuaries; 918

(3) Has a minimum of five years' experience in providing 919
actuarial services to public retirement plans. 920

Section 2. That existing sections 3105.80, 3305.01, 3305.03, 921
3305.04, 3305.05, 3305.052, 3305.053, 3305.06, 3305.061, 3305.07, 922
3307.01, and 3309.01 of the Revised Code are hereby repealed. 923