

**PUBLIC EMPLOYEE RETIREMENT COMMISSION****ACTUARIAL NOTE TRANSMITTAL**

Bill ID: Senate Bill Number 798, Printer's Number 818

System: Public School Employees' Retirement System

Subject: Purchase of Military Service

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**SYNOPSIS**

Senate Bill Number 798, Printer's Number 818, would amend the act of March 10, 1949, (P. L. 30, No. 14), known as the Public School Code of 1949, to entitle members of the Public School Employees' Retirement System (PSERS) who are granted leave for military service on or after July 1, 2013, to receive credit in PSERS and to purchase the service as "nonintervening" military service, as provided in Title 24. Senate Bill Number 798, Printer's Number 818, is a companion bill to Senate Bill Number 797, Printer's Number 817, which would amend Titles 51 (Military Affairs) and 24 (Public School Employees' Retirement Code) to bring PSERS into compliance with the following Federal laws: 1) the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act"); 2) the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"); and 3) Internal Revenue Code Section 414(u) [IRC §414(u)].

**DISCUSSION****The Retirement Code and System**

The Public School Employees' Retirement Code (Code) is a governmental, cost-sharing, multiple-employer pension plan. The designated purpose of the Public School Employees' Retirement System (PSERS) is to provide retirement allowances and other benefits, including disability and death benefits to public school employees. As of June 30, 2012, there were approximately 773 participating employers, generally school districts, area vocational-technical schools, and intermediate units in PSERS.

Membership in PSERS is mandatory for most school employees. Certain other employees are not required but are given the option to participate. As of June 30, 2012, there were 273,504 active members and 202,015 annuitant members of PSERS.

For most members of the System, the basic benefit formula used to determine the normal retirement benefit is equivalent to the product of 2.5% multiplied by the member's years of accumulated service credit ("eligibility points") multiplied by the member's final average (highest three years) salary. Since the passage of Act 9 of 2001 (which increased the accrual rate for most members from 2.0% to 2.5%), most members of PSERS are Class T-D members and contribute 7.5% of pay to the System. Within PSERS, there are a number of additional

## **DISCUSSION (CONT'D)**

membership classes with corresponding benefit accrual and employee contribution rates that differ from the majority of school employees.

Act 120 of 2010 implemented major pension reform that affected the System, including the establishment of new benefit tiers applicable to most new members. Effective July 1, 2011, new members of PSERS are required to become members of one of two membership classes, known as "Class T-E" and "Class T-F." Most new members of PSERS are required to become members of Class T-E beginning July 1, 2011. Class T-E members are eligible for an annuity based upon an annual benefit accrual rate of 2% and have a corresponding employee contribution of 7.5% of compensation. As an alternative to Class T-E, an employee who becomes a member of PSERS on or after July 1, 2011, may elect Class T-F membership within 45 days of becoming a member of PSERS. A Class T-F member is eligible for an annuity based upon an annual benefit accrual rate of 2.5% with a corresponding employee contribution requirement equal to 10.3% of compensation.

Under the Public School Employees' Retirement Code, superannuation or normal retirement age is age 62 with at least one full year of service, age 60 with 30 or more years of service, or any age with 35 years of service. For most members of PSERS who first became members after the effective date of Act 120, the superannuation requirement is age 65 with a minimum of three years of service credit, or any combination of age and service that totals 92 with at least 35 years of credited service.

### **Service Credit Purchase**

Active members of both PSERS and the State Employees' Retirement System (SERS) may purchase certain types of service credit for retirement purposes. The types of service that may be purchased include prior school and State service. Additionally, various types of nonschool and nonstate service may be purchased by members and credited to them for retirement purposes. Historically, service purchases of all types have been paid for, in part or in full, by active members through either payroll deductions or in lump-sum payments.

One of the most common service purchase authorizations provided by public employee retirement systems is for periods of military service which interrupt (intervening military service) or delay (nonintervening military service) the commencement of a career with the public employer. Permitting a member to receive retirement service credit for military service is of benefit to the member because the member's retirement benefit can be enhanced through the acquisition of additional service credit, and in some cases, retirement eligibility can be accelerated.

## **DISCUSSION (CONT'D)**

PSERS credit for military leave service is governed by several bodies of law: 1) the Public School Employees' Retirement Code, Title 24 Pa. C. S. §8101 *et seq.* (Retirement Code); 2) the Pennsylvania Military and Veterans Code, Title 51, Pa. C. S. §§4102, 7301-7309 (Military Code); 3) the Public School Code, 24 P. S. §11-1178 (School Code); and 4) Federal law, primarily the HEART Act, USERRA and the IRC. These bodies of law have different and sometimes inconsistent terms, conditions, requirements and PSERS benefit consequences pertaining to PSERS credit for military leave service. Senate Bill Number 797, Printer's Number 817, the companion bill to Senate Bill Number 798, Printer's Number 818, brings PSERS into compliance with the HEART Act, USERRA and IRC by removing inconsistencies in the law through amendments to the Military Code and the Retirement Code. Likewise, Senate Bill Number 798, Printer's Number 818, brings PSERS into compliance through an amendment to the School Code.

One of the amendments to the Retirement Code in Senate Bill Number 797, Printer's Number 817, would be a change in the crediting of military service leave. Under the bill, military leave that does not qualify for PSERS credit under USERRA, but would otherwise be creditable in PSERS under current definitions of creditable military service, intervening military service and military service leave can be purchased as "nonintervening" military service credit. Senate Bill Number 798, Printer's Number 818, reflects this proposed change in military service credit by also amending the related section of the School Code. Section 1178 of the School Code would be amended to permit members of the System to receive credit in PSERS for military leave taken on or after July 1, 2013, and to purchase the service as nonintervening military service, as provided in the amendments to Section 8302 of Title 24 (through Senate Bill Number 797, Printer's Number 817).

### **Uniformed Services Employment and Reemployment Rights Act**

In 1994, the United States Congress passed the Uniformed Services Employment and Reemployment Rights Act (USERRA), which replaced the former Veterans' Reemployment Rights Law (VRRL). All private and governmental employers must comply with USERRA, which provides special employment and benefit rights to individuals who leave employment to perform "qualified military service." Qualified military service is service in the "uniformed services" while on active or inactive duty, including training periods. Uniformed services include the Army, Navy, Air Force, Marines, Coast Guard, Reserves, Army and Air National Guard, the commissioned corps of the Public Health Service, and any other persons designated by the President.

## **DISCUSSION (CONT'D)**

To ensure that they are not held at a disadvantage in their employment rights, USERRA requires that all employees rendering intervening military service (service that interrupts employment) be considered as having been on leave of absence during that time, a policy that is also reflected in the Commonwealth of Pennsylvania's Military Code and in most state pension plan statutes (USERRA does not address the issue of *nonintervening* military service.). Specifically, 38 U. S. C. § 4318(a)(2)(A) provides that the employee "shall be treated as not having incurred a break in service . . . by reason of such person's period or periods of service." Further, § 4318(b)(1) provides that "[a]n employer . . . shall . . . be liable to an employee pension benefit plan for funding any obligation of the plan to provide the benefits described in subsection (a)(2) . . .," and that "[n]o such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer" (§ 4318(b)(2)).

## **SUMMARY OF ACTUARIAL COST IMPACT**

The Commission's consulting actuary has reviewed the bill and the actuarial cost estimate provided to the Commission by the consulting actuary for PSERS. Despite the many changes required to bring PSERS into compliance with the HEART Act, USERRA and IRC §414(u), the Commission's consulting actuary does not expect these changes to materially impact the future funding requirements of PSERS. The amendatory language in the bill is administrative in scope and presents no additional cost to PSERS.

## **POLICY CONSIDERATIONS**

In reviewing the bill, the Commission identified the following policy consideration:

Substantial Compliance with Federal Law. (+) The bill attempts to bring the School Code into conformance with Federal Law by making amendments that are consistent with the mandatory provisions of USERRA.

## **COMMISSION RECOMMENDATION**

The Commission voted to attach the actuarial note to the bill, recommending that the General Assembly and the Governor consider the policy issue identified above.

**ATTACHMENTS**

Actuarial cost estimate provided by Buck Consultants, consulting actuary for the Public School Employees' Retirement System.

Actuarial Note provided by David H. Killick of Conrad Siegel Actuaries.

Senate Bill Number 798, Printer's Number 818.



May 10, 2013

Mr. Francis Ryder  
Director, Government Relations Office  
Pennsylvania Public School Employees' Retirement System  
5 North 5<sup>th</sup> Street  
Harrisburg, PA 17101

**Re: *Actuarial Impact of Senate Bill No. 797 (Printer's No. 817) and  
Senate Bill No. 798 (Printer's No. 818)***

Dear Frank:

As requested, we are writing with regard to Senate Bill No. 797 (Printer's No. 817) and Senate Bill No. 798 (Printer's No. 818) which amend the Public School Employees Retirement System's (PSERS) Retirement Code with respect to military leaves of absence to conform to amendments to federal law known as the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and IRC §414(u). The Senate Bills incorporate the federal law requirements for USERRA leaves effective July 1, 2013 and are proposed in order to maintain PSERS' tax qualified status.

Under Senate Bill No. 797, a member may elect to receive credit, for benefit accrual purposes, for service while on USERRA leave by contributing the required member contributions the member would have made had the member not gone on a USERRA leave. Further, the employer shall make the employer contributions that would have been made on behalf of the member. In addition, a member returning to PSERS covered employment from a USERRA leave or who dies while on USERRA leave must be granted service for benefit eligibility purposes for the time while the member was on USERRA leave.

There is no additional System cost associated with a member's purchase of benefit accrual service since the full cost is paid for by the member and employer. There may be future additional costs associated with granting eligibility service while on USERRA leave. However, the annual valuation of the System currently makes no assumptions with respect to members returning from military leave or dying while on military leave. Nevertheless, it is our opinion that the additional liability incurred due to this amendment would have an immaterial effect on the System's annual actuarial valuation.

The remaining amendatory language contained in the Senate Bills is administrative in scope and presents no additional cost to PSERS.

Mr. Francis Ryder  
May 10, 2013  
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The proposed amendments should be reviewed by legal counsel for compliance with the HEART Act, USERRA and IRC §414(u) and maintenance of PSERS' tax qualified status.

If you have any questions, please call.

Very truly yours,



Dana Spangher, FSA, EA, MAAA, FCA  
Principal, Consulting Actuary

Pc: Jeff Clay  
Brian Carl  
David Driscoll

DS:hn  
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ConradSiegel.com

May 14, 2013

Mr. James L. McAneny  
Executive Director  
Public Employee Retirement Commission  
P.O.Box 1429  
Harrisburg, PA 17105-1429

Re: Senate Bill No. 798, Printer's No. 818  
Public School Code of 1949

Dear Jim:

Pursuant to engagement, I have reviewed Senate Bill No. 798 and am hereby providing an actuarial note on such bill. The bill would amend the Act of March 10, 1949 (Public School Code of 1949) to entitle members of the Public School Employees' Retirement System (PSERS) who are granted leave for military service on or after July 1, 2013, to receive credit in PSERS as provided in Title 24 (Public School Employees' Retirement Code) of the Pennsylvania Consolidated Statutes. Senate Bill No. 798 is a companion bill to Senate Bill No. 797, Printer's No. 817, which would amend Titles 24 and 51 (Military Affairs) of the Pennsylvania Consolidated Statutes to incorporate amendments to certain Federal laws into PSERS. Such laws are the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), and Internal Revenue Code section 414(u). These changes are necessary for PSERS to maintain its tax-qualified status.

Under Senate Bill No. 797, military service that does not qualify for PSERS credit under USERRA, but would otherwise be creditable under current definitions of creditable military service, intervening military service and military service leave can be purchased as nonintervening military service credit by the member. Senate Bill No. 798 reflects this proposed change in military service credit by also amending section 1178 of the Public School Code.

I have also reviewed a letter dated May 10, 2013, from Dana Spangher, the consulting actuary for PSERS, to Mr. Francis Ryder of PSERS which provides Mr. Ryder with an actuarial cost estimate for both Senate Bill No. 797 and Senate Bill No. 798. I agree with the consulting actuary for PSERS that any actuarial liability incurred as a result of passage of Senate Bill No. 797 and Senate Bill No. 798 will not be material when included in the annual actuarial valuation for PSERS.

With best regards,

Yours sincerely,

A handwritten signature in black ink that reads 'Dave'.

David H. Killick, F.S.A.  
Consulting Actuary

DHK:smf



THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 798 Session of 2013

INTRODUCED BY BROWNE, FARNESE, TEPLITZ, STACK, FONTANA,  
WASHINGTON, YUDICHAK, ERICKSON, MENSCH, VANCE, WHITE, FERLO,  
RAFFERTY, TARTAGLIONE AND WOZNIAK, APRIL 1, 2013

REFERRED TO FINANCE, APRIL 1, 2013

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An  
2 act relating to the public school system, including certain  
3 provisions applicable as well to private and parochial  
4 schools; amending, revising, consolidating and changing the  
5 laws relating thereto," further providing for rights  
6 preserved during leave of absence.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Section 1178 of the act of March 10, 1949  
10 (P.L.30, No.14), known as the Public School Code of 1949, is  
11 amended by adding a subsection to read:

12 Section 1178. Rights Preserved During Leave of Absence.--\* \*

13 \*

14 (e) Notwithstanding this section, for military service for  
15 leaves granted on or after July 1, 2013, an employe who is an  
16 active or inactive member of the Public School Employees'  
17 Retirement System at the time he is granted a military leave  
18 shall be entitled to receive credit in the Public School  
19 Employees' Retirement System for the leave as provided in 24

1 Pa.C.S. Pt. IV (relating to retirement for school employees).

2 Section 2. The addition of section 1178(e) of the act shall  
3 apply to leaves of absence or military leaves of absence that  
4 are granted on or after the effective date of this section.

5 Section 3. The addition of section 1178(e) shall not:

6 (1) Create in any member of the Public School Employees'  
7 Retirement System or in any other person claiming an interest  
8 in the account of any member a contractual right, either  
9 expressed or implied, in relation to requirements for  
10 qualification of the Public School Employees' Retirement  
11 System as a qualified pension plan under the Internal Revenue  
12 Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

13 (2) Establish compliance with or affect any construction  
14 of:

15 (i) 38 U.S.C. Ch. 43, known as the Uniformed  
16 Services Employment and Reemployment Rights Act.

17 (ii) 24 Pa.C.S. Pt. IV or any rules or regulations  
18 adopted under 24 Pa.C.S. Pt. IV.

19 Section 4. This act shall take effect July 1, 2013, or  
20 immediately, whichever is later.