

## No. 2013-32

## AN ACT

SB 797

Amending Titles 24 (Education) and 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for the calculation of military members' Public School Employees Retirement System benefits.

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

Section 1. Section 8102 of Title 24 of the Pennsylvania Consolidated Statutes is amended to read:

§ 8102. Definitions.

The following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Accumulated deductions." The total of pickup contributions and the contributions paid into the fund by the member on account of current school service, previous school service, or creditable nonschool service and the statutory interest credited on all such contributions.

"Activated military service." Military service by a member of a reserve component of the armed forces, pursuant to an order on or after July 1, 1990, *and prior to July 1, 2013*, to enter into active military service, other than an order to enter into active duty to meet periodic training requirements, who was an active member of the system immediately preceding the order into active military service and to whom the military leave provisions of 51 Pa.C.S. Ch. 73 (relating to military leave of absence) do not apply.

"Active member." A school employee for whom pickup contributions are being made to the fund or for whom such contributions otherwise required for current school service are not being made solely by reason of any provision of this part relating to the limitations under section 401(a)(17) or 415(b) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401(a)(17) or 415(b)).

"Actuarially equivalent." Equal present values, computed on the basis of statutory interest and the mortality tables adopted by the board.

"Actuary." The consultant to the board who shall be:

- (1) a member of the American Academy of Actuaries;
- (2) an individual who has demonstrated to the satisfaction of the Insurance Commissioner of Pennsylvania that he has the educational background necessary for the practice of actuarial science and has had at least seven years of actuarial experience; or
- (3) a firm, partnership, or corporation of which at least one member meets the requirements of paragraph (1) or (2).

"Alternate payee." Any spouse, former spouse, child or dependent of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the moneys payable to that member under this part.

"Alternative investment." An investment in a private equity fund, private debt fund, venture fund, real estate fund, hedge fund or absolute return fund.

"Alternative investment vehicle." A limited partnership, limited liability company or any other legal vehicle for authorized investments under section 8521(i) (relating to management of fund and accounts) through which the system makes an alternative investment.

"Annuitant." Any member on or after the effective date of retirement until his annuity is terminated.

"Approved domestic relations order." Any domestic relations order which has been determined to be approved in accordance with section 8533.1 (relating to approval of domestic relations orders).

"Approved leave of absence." A leave of absence for activated military service or which has been approved by the employer for sabbatical leave, service as an exchange teacher, service with a collective bargaining organization or professional study.

"Basic contribution rate." For Class T-A, T-B and T-C service, the rate of 6 1/4%. For Class T-D service, the rate of 7 1/2%. For all active members on the effective date of this provision who are currently paying 5 1/4% and elect Class T-D service, the rate of 6 1/2%. For Class T-E service, the rate of 7 1/2%. For Class T-F service, the rate of 10.30%.

"Beneficiary." The person or persons last designated in writing to the board by a member to receive his accumulated deductions or a lump sum benefit upon the death of such member.

"Board." The Public School Employees' Retirement Board or the Public School Employees' Retirement Board.

"Class of service multiplier."

Class of service	Multiplier
T-A	.714
T-B	.625
T-C	1.000
T-D	1.000
T-E	1.000
T-F	1.000

"Commissioner." The Commissioner of the Internal Revenue Service.

"Compensation." Pickup contributions plus any remuneration received as a school employee excluding reimbursements for expenses incidental to employment and excluding any bonus, severance payments, any other remuneration or other emolument received by a school employee during his school service which is not based on the standard salary schedule under which he is rendering service, payments for unused sick leave or vacation leave, bonuses or other compensation for attending school seminars and conventions, payments under health and welfare plans based on hours of employment or any other payment or emolument which may be provided for in a collective bargaining agreement which may be determined by the Public School Employees' Retirement Board to be for the purpose of enhancing compensation as a factor in the determination of final average salary, **[provided] and excluding payments for military leave and any other payments made by an employer while on USERRA leave, leave of absence granted under 51 Pa.C.S. § 4102 (relating to leaves of absence for certain government employees), military leave of absence granted under 51 Pa.C.S. § 7302 (relating to granting military leaves of absence), leave**

***granted under section 1178 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or other types of military leave, including other types of leave payments, stipends, differential wage payments as defined in IRC § 414(u)(12) and any other payments, provided,*** however, that the limitation under section 401(a)(17) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401(a)(17)) taken into account for the purpose of member contributions, including regular or joint coverage member contributions, regardless of class of service, shall apply to each member who first became a member of the Public School Employees' Retirement System on or after July 1, 1996, and who by reason of such fact is a noneligible member subject to the application of the provisions of section 8325.1 (relating to annual compensation limit under IRC § 401(a)(17)).

"Concurrent service." Simultaneously credited school and State service.

"Creditable nonschool service." Service other than service as a school employee for which an active member may obtain credit.

"Credited service." School or creditable nonschool service for which the required contributions have been made, or for which the contributions otherwise required for such service were not made solely by reason of any provision of this part relating to the limitations under section 401(a)(17) or 415(b) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401(a)(17) or 415(b)), or for which salary deductions or lump sum payments have been agreed upon in writing.

"Date of termination of service." The last date of service for which pickup contributions are made for an active member or, in the case of an inactive member, the effective date of his resignation or the date his employment is formally discontinued by his employer or two years following the last day of service for which contributions were made, whichever is earliest.

"Disability annuitant." A member on or after the effective date of disability until his disability annuity or the portion of his disability annuity payments in excess of any annuity to which he may otherwise be entitled is terminated.

"Distribution." Payment of all or any portion of a person's interest in the Public School Employees' Retirement Fund which is payable under this part.

"Domestic relations order." Any judgment, decree or order, including approval of a property settlement agreement, entered on or after the effective date of this definition by a court of competent jurisdiction pursuant to a domestic relations law which relates to the marital property rights of the spouse or former spouse of a member, including the right to receive all or a portion of the moneys payable to that member under this part in furtherance of the equitable distribution of marital assets. The term includes orders of support as that term is defined by 23 Pa.C.S. § 4302 (relating to definitions) and orders for the enforcement of arrearages as provided in 23 Pa.C.S. § 3703 (relating to enforcement of arrearages).

"Effective date of retirement." The first day following the date of termination of service of a member if he has properly filed an application for an annuity within 90 days of such date or:

(1) In the case of a member who applies for an annuity subsequent to 90 days after termination of service, the date of filing such application or the date specified on the application, whichever is later.

(2) In the case of a vestee who files an application for an annuity within 90 days of his superannuation age, the attainment of such age.

(3) In the case of a vestee who defers the filing of an application for an annuity to a date later than 90 days following attainment of superannuation age, the date of filing or the date specified on the application, whichever is later.

(4) In the case of a finding of disability, the date certified by the board as the effective date of disability.

"Eligible annuitants." All current and prospective annuitants with 24 1/2 or more eligibility points and all current and prospective disability annuitants. Beginning January 1, 1995, "eligible annuitants" shall include members with 15 or more eligibility points who terminated or who terminate school service on or after attaining superannuation retirement age and who are annuitants with an effective date of retirement after superannuation age.

"Eligibility points." Points which are accrued by an active member **[or]**, a multiple service member who is an active member of the State Employees' Retirement System for credited service *or by a member who has been reemployed from USERRA leave or dies while performing USERRA leave* and are used in the determination of eligibility for benefits as provided in section 8306 (relating to eligibility points).

"Employer." Any governmental entity directly responsible for the employment and payment of the school employee and charged with the responsibility of providing public education within this Commonwealth, including but not limited to: State-owned colleges and universities, the Pennsylvania State University, community colleges, area vocational-technical schools, intermediate units, the State Board of Education, Scotland School for Veterans' Children, Thaddeus Stevens College of Technology, and the Western Pennsylvania School for the Deaf.

"Final average salary." The highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months with the compensation for part-time service being annualized on the basis of the fractional portion of the school year for which credit is received; except, if the employee was not a member for three such periods, the total compensation received as an active member annualized in the case of part-time service divided by the number of such periods of membership; in the case of a member with multiple service credit, the final average salary shall be determined by reference to compensation received by him as a school employee or a State employee or both; and, in the case of a noneligible member, subject to the application of the provisions of section 8325.1 (relating to annual compensation limit under IRC § 401(a)(17)). *Final average salary shall be determined by including in compensation, payments deemed to have been made to a member reemployed from USERRA leave to the extent member contributions have been made as provided in section 8302(d)(2) (relating to credited school service) and payments made to a member on leave of absence under 51 Pa.C.S. § 4102*

*(relating to leaves of absence for certain government employees) as provided in section 8302(d)(6).*

"Full coverage member." Any member for whom regular member pickup contributions are being picked up or who has paid or has agreed to pay to the fund the actuarial equivalent of regular member contributions due on account of service prior to January 1, 1983.

"Fund." The Public School Employees' Retirement Fund.

"Governmental entity." Board of school directors, board of public education, intermediate unit board of directors, area vocational-technical board, any governing board of any agency or authority created by them, and the Commonwealth.

"Inactive member." A member for whom no pickup contributions are being made, except in the case of an active member for whom such contributions otherwise required for current school service are not being made solely by reason of any provision of this part relating to the limitations under section 401(a)(17) or 415(b) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401(a)(17) or 415(b)) **or because the member is on USERRA leave**, who has accumulated deductions standing to his credit in the fund and for whom contributions have been made within the last two school years or a multiple service member who is active in the State Employees' Retirement System.

"Intervening military service." Active military service of a member who was a school employee immediately preceding his induction into the armed services or forces of the United States in order to meet a draft obligation excluding any voluntary extension of such obligational service and who becomes a school employee within 90 days of the expiration of such service.

"IRC." The Internal Revenue Code of 1986, as designated and referred to in section 2 of the Tax Reform Act of 1986 (Public Law 99-514, 100 Stat. 2085, 2095). A reference in this part to "IRC § " shall be deemed to refer to the identically numbered section and subsection or other subdivision of such section in 26 United States Code (relating to Internal Revenue Code).

"Irrevocable beneficiary." The person or persons permanently designated by a member in writing to the board pursuant to an approved domestic relations order to receive all or a portion of the accumulated deductions or lump sum benefit payable upon the death of such member.

"Irrevocable survivor annuitant." The person permanently designated by a member in writing to the board pursuant to an approved domestic relations order to receive an annuity upon the death of such member.

"Joint coverage member." Any member who agreed prior to January 1, 1966 to make joint coverage member contributions to the fund and has not elected to become a full coverage member.

"Joint coverage member contributions." Regular member contributions reduced for a joint coverage member.

"Leave for service with a collective bargaining organization." Paid leave granted to an active member by an employer for purposes of working full time for or serving full time as an officer of a Statewide employee organization or a local collective bargaining representative under the act of July 23, 1970 (P.L.563, No.195), known as the Public Employee Relations Act: Provided, That greater than one-half of the members of the employee

organization are active members of the system; that the employer shall fully compensate the member, including, but not limited to, salary, wages, pension and retirement contributions and benefits, other benefits and seniority, as if he were in full-time active service; and that the employee organization shall fully reimburse the employer for such salary, wages, pension and retirement contributions and benefits and other benefits and seniority.

"Maternity leave of absence." An involuntary leave of absence required by the employer because of the pregnancy of the member and commencing prior to May 17, 1975.

"Member." Active member, inactive member, annuitant, or vestee.

"Member's annuity." The single life annuity which is actuarially equivalent on the effective date of retirement to the sum of the accumulated deductions and the shared-risk member contributions and statutory interest credited on the deductions and contributions standing to the member's credit in the members' savings account.

"Military service." All active military service for which a member has received a discharge other than an undesirable, bad conduct, or dishonorable discharge.

"Multiple service." Credited service of a member who has elected to combine his credited service in both the Public School Employees' Retirement System and the State Employees' Retirement System.

"Noneligible member." For the purposes of section 8325.1 (relating to annual compensation limit under IRC § 401(a)(17)), a member who first became a member on or after July 1, 1996.

"Participating eligible annuitants." All eligible annuitants who are enrolled or elect to enroll in a health insurance program approved by the Public School Employees' Retirement Board.

"Pickup contributions." Regular or joint coverage member contributions and shared-risk member contributions which are made by the employer for active members for current service on and after January 1, 1983.

"Previous school service." Service rendered as a school employee including service in any summer school conducted by a school district of the Commonwealth prior to the member's most recent entrance in the system.

"Public school." Any or all classes or schools within this Commonwealth conducted under the order and superintendence of the Department of Education including, but not limited to: all educational classes of any employer charged with the responsibility of public education within this Commonwealth as well as those classes financed wholly or in part by the Federal Government, State-owned colleges and universities, the Pennsylvania State University, community colleges, area vocational-technical schools, intermediate units, the State Board of Education, Scotland School for Veterans' Children, Thaddeus Stevens State School of Technology, and the Pennsylvania State Oral School for the Deaf.

"Public School Code." The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

***"Reemployed from USERRA leave." Resumption of active membership as a school employee after a period of USERRA leave, if the resumption of active membership was within the time period and under conditions and circumstances such that the school employee was entitled to reemployment***

***rights under 38 U.S.C. Ch. 43 (relating to employment and reemployment rights of members of the uniformed services).***

"Regular member contributions." The product of the basic contribution rate and the compensation of the member.

"Reserve component of the armed forces." The United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, Pennsylvania Army National Guard and Pennsylvania Air National Guard.

"Salaried employee." A school employee who is compensated on the basis of an annual salary.

"Salary deductions." The amounts certified by the board, deducted from the compensation of an active member or the State service compensation of a multiple service member who is an active member of the State Employees' Retirement System and paid into the fund.

"School employee." Any person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an officer, administrator or employee excluding, however, any independent contractor or a person compensated on a fee basis.

"School entity." A school district of any class, intermediate unit or an area vocational-technical school, as provided for under the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"School service." Service rendered as a school employee.

"School year." The 12-month period which the governmental entity uses for purposes of administration regardless of the actual time during which a member renders service.

"Severance payments." Any payments for unused vacation or sick leave and any additional compensation contingent upon retirement including payments in excess of the scheduled or customary salaries provided for members within the same governmental entity with the same educational and experience qualifications who are not terminating service.

"Shared-risk contribution rate." The additional contribution rate that is added to the basic contribution rate for Class T-E and T-F members, as provided for in section 8321(b) (relating to regular member contributions for current service).

"Standard single life annuity." For Class T-A, T-B and T-C credited service of a member, an annuity equal to 2% of the final average salary, multiplied by the total number of years and fractional part of a year of credited service of a member. For Class T-D credited service of a member, an annuity equal to 2.5% of the final average salary, multiplied by the total number of years and fractional part of a year of credited service. For Class T-E credited service of a member, an annuity equal to 2% of the final average salary, multiplied by the total number of years and fractional part of a year of credited service of a member. For Class T-F credited service of a member, an annuity equal to 2.5% of the final average salary, multiplied by the total number of years and fractional part of a year of credited service of a member.

"State Employees' Retirement System." The retirement system established by the act of June 27, 1923 (P.L.858, No.331) and codified by the act of June 1, 1959 (P.L.392, No.78) and by Part XXV of Title 71

(relating to retirement for State employees and officers), added March 1, 1974 (P.L.125, No.31).

"State service." Service rendered as a State employee and credited as service in the State Employees' Retirement System.

"Statutory interest." Interest at 4% per annum, compounded annually.

"Superannuation annuitant." An annuitant whose annuity first became payable on or after the attainment of superannuation age and who is not a disability annuitant.

"Superannuation or normal retirement age."

Class of service	Age
T-A	62 or any age upon accrual of 35 eligibility points
T-B	62
T-C and T-D	62 or age 60 provided the member has at least 30 eligibility points or any age upon accrual of 35 eligibility points
T-E and T-F	65 with accrual of at least three eligibility points or a combination of age and eligibility points totaling 92, provided the member has accrued at least 35 eligibility points

"Survivor annuitant." The person or persons last designated by a member under a joint and survivor annuity option to receive an annuity upon the death of such member.

"System." The Public School Employees' Retirement System of Pennsylvania as established by the act of July 18, 1917 (P.L.1043, No.343), and codified by the act of June 1, 1959 (P.L.350, No.77).

"Total member contribution rate." The sum of the basic contribution rate and the shared-risk contribution rate.

***"USERRA." The Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Ch. 43 (relating to employment and reemployment rights of members of the uniformed services).***

***"USERRA leave." Any period of time for service in the uniformed services as defined in 38 U.S.C. Ch. 43 (relating to employment and reemployment rights of members of the uniformed services) by a school employee or former school employee who terminated school service to perform the service in the uniformed services, if the current or former school employee is entitled to reemployment rights under 38 U.S.C. Ch. 43 with respect to the uniformed service.***

"Valuation interest." Interest at 5 1/2% per annum, compounded annually and applied to all accounts other than the members' savings account.

"Vestee." A member with five or more eligibility points who has terminated school service, has left his accumulated deductions in the fund and is deferring filing of an application for receipt of an annuity. For Class T-E and Class T-F members, a member with ten or more eligibility points who has terminated school service, has left his accumulated deductions in the fund and is deferring filing of an application for receipt of an annuity.



Section 2. Section 8302(b.1) of Title 24 is amended by adding a paragraph and the section is amended by adding a subsection to read:  
 § 8302. Credited school service.

\* \* \*

(b.1) Optional credit for leave of absence for activated military service.—

\* \* \*

*(4) This subsection shall apply to leaves of absence for activated military service that commence on or before June 30, 2013.*

\* \* \*

*(d) Credit for military service.—*

*(1) For purposes of determining whether a member is eligible to receive credited service for a period of active military service, other than active duty service to meet periodic training requirements, rendered after August 5, 1991, and that began before the effective date of this paragraph, the provisions of 51 Pa.C.S. Ch. 73 (relating to military leave of absence) shall apply to all individuals who were active members of the system when the period of military service began, notwithstanding if the member is not defined as an employee under 51 Pa.C.S. § 7301 (relating to definitions). School employees may not receive service credit or exercise the options under 51 Pa.C.S. § 7306(a), (b) and (c) (relating to retirement rights) for military leaves that begin on or after the effective date of this subsection, except otherwise provided under this subsection.*

*(2) A school employee who has performed USERRA leave may receive credit as provided by this paragraph.*

*(i) A school employee who is reemployed from USERRA leave shall be treated as not having incurred a break in school service by reason of the USERRA leave and shall be granted eligibility points as if the school employee had not been on the USERRA leave. If a school employee who is reemployed from USERRA leave subsequently makes regular member contributions, shared-risk member contributions and any other member contributions in the amounts and in the time periods required by 38 U.S.C. Ch. 43 (relating to employment and reemployment rights of members of the uniformed services) and IRC § 414(u) as if the school employee had continued in his school office or employment and performed school service and been compensated during the period of USERRA leave, the school employee shall be granted school service credit for the period of USERRA leave. The employee shall have his benefits, rights and obligations determined under this part as if he was an active member who performed creditable school service during the USERRA leave in the job position that he would have held had he not been on USERRA leave and received the compensation on which the member contributions to receive school service credit for the USERRA leave were determined.*

*(ii) For purposes of determining whether a school employee has made the required employee contributions for school service credit for USERRA leave, if an employee who is reemployed from USERRA leave terminates school service or dies in school service*

*before the expiration of the allowed payment period, school service credit for the USERRA leave shall be granted as if the required member contributions were paid the day before termination or death. The amount of the required member contributions shall be treated as an incomplete payment subject to the provisions of section 8325 (relating to incomplete payments). Upon a subsequent return to school service or to State service as a multiple service member, the required member contributions treated as incomplete payments shall be treated as member contributions that were either withdrawn in a lump sum at termination or paid as a lump sum under section 8345(a)(4) (relating to member's options). For this purpose, the exclusion of Class T-E and Class T-F members from electing a form of payment under section 8345(a)(4)(iii) shall be ignored.*

*(iii) A school employee who is reemployed from USERRA leave and who does not make the required member contributions or makes only part of the required member contributions within the allowed payment period shall not be:*

*(A) Granted credited service for the period of USERRA leave for which the required member contributions were not timely made.*

*(B) Eligible to subsequently make contributions.*

*(C) Granted either school service credit or nonschool service credit for the period of USERRA leave for which the required member contributions were not timely made.*

*(3) A school employee who performs USERRA leave from which the employee could have been reemployed from USERRA leave had the school employee returned to school service in the time frames required by 38 U.S.C. Ch. 43 for reemployment rights, but did not do so, shall be able to receive creditable nonschool service as nonintervening military service for the period of USERRA leave if the employee later returns to school service and is otherwise eligible to purchase the service as nonintervening military service.*

*(4) A school employee who, on or after the effective date of this subsection, is granted a leave of absence under section 1178 of the Public School Code, a leave of absence under 51 Pa.C.S. § 4102 (relating to leaves of absence for certain government employees) or a military leave under 51 Pa.C.S. Ch. 73, that is not USERRA leave shall be able to receive creditable nonschool service as nonintervening military service should the employee return to school service and is otherwise eligible to purchase the service as nonintervening military service.*

*(5) If a member dies while performing USERRA leave, the beneficiaries or survivor annuitants of the deceased member shall be entitled to any additional benefits, including eligibility points, other than benefit accruals relating to the period of qualified military service, provided under this part as if the member resumed and then terminated employment on account of death.*

*(6) A school employee who is on a leave of absence from his duties as a school employee and for which 51 Pa.C.S. § 4102 provides that he*

*is not to suffer a loss of pay, time or efficiency shall not be an active member, receive service credit or make member contributions for the leave of absence except as provided for in this part. Notwithstanding this paragraph, any pay the member receives under section 1178 of the Public School Code or 51 Pa.C.S. § 4102 shall be included in the determination of final average salary and other calculations utilizing compensation as if the payments were compensation under this part.*

Section 3. Section 8303 of Title 24 is amended by adding a subsection to read:

§ 8303. Eligibility points for retention and reinstatement of service credits.

\* \* \*

*(b.1) USERRA leave.—A member who is reemployed from USERRA leave or who dies while performing USERRA leave shall receive eligibility points in accordance with section 8306 for the school service that would have been performed had the member not performed USERRA leave.*

\* \* \*

Section 4. Sections 8304(b) and 8305.2(b) of Title 24 are amended to read:

§ 8304. Creditable nonschool service.

\* \* \*

(b) Limitations on nonschool service.—Creditable nonschool service credit shall be limited to:

(1) Intervening military service, *if the member returned to school service before July 1, 2013.*

(2) Military service other than intervening military service [and], activated military service *or service performed during USERRA leave* not exceeding five years provided that a member with multiple service may not purchase more than a total of five years of military service in both the system and the State Employees' Retirement System.

(3) Service in any public school or public educational institution in any state other than this Commonwealth or in any territory or area under the jurisdiction of the United States. This paragraph includes service, prior to July 1, 1965, at a community college established under the act of August 24, 1963 (P.L.1132, No.484), known as the Community College Act of 1963.

(4) Service as an administrator, teacher, or instructor in the field of public school education for any agency or department of the government of the United States whether or not such area was under the jurisdiction of the United States.

(5) Previous service as an employee of a county board of school directors which employment was terminated because of the transfer of the administration of such service or of the entire agency to a governmental entity.

(6) Previous service as a county employee as a nurse. For every three years or major fraction thereof in previous work experience, an individual may buy one year of creditable service, not to exceed a total of five years. The purchase of this service shall begin within three years of the employee's eligibility to purchase this creditable service.

(7) (i) Service for the period of time spent on a maternity leave of absence required by the employer, which creditable service shall not exceed two years per leave and shall be applicable only to a maternity leave which was mandatory prior to May 17, 1975. The purchase of this service shall begin within one year of the employee's eligibility to purchase the creditable service under this subparagraph as originally enacted by the act of August 5, 1991 (P.L.183, No.23), entitled "An act amending Titles 24 (Education) and 71 (State Government) of the Pennsylvania Consolidated Statutes, further providing for the Public School Employees' Retirement System and the State Employees' Retirement System; adding and amending certain definitions; further providing for membership in the systems, for creditable nonschool and nonstate service and the purchase of credit, for incentives for special early retirement, for contributions to the retirement funds, for annuities and the rights and duties of annuitants, for health insurance premium assistance, for board membership and for the re-amortization and management of the retirement funds."

(ii) Service for the period of time spent on a maternity leave of absence required by the employer, which creditable service shall not exceed two years per leave and shall be applicable only to a maternity leave that was mandatory and began after May 16, 1975, and prior to November 1, 1978. The purchase of this service shall begin within one year of the employee's eligibility to purchase the creditable service under this subparagraph.

(8) Service in the Cadet Nurse Corps with respect to any period of training as a student or graduate nurse under a plan approved under section 2 of the act of June 15, 1943 (Public Law 78-73, 57 Stat. 153), if the total period of training under the plan was at least two years, the credit for such service not to exceed three years.

\* \* \*

§ 8305.2. Election to become a Class T-F member.

\* \* \*

(b) Time for making election.—A member must elect to become a Class T-F member by filing a written election with the board within 45 days of notification by the board that such member is eligible for such election. *A school employee who is eligible to elect to become a Class T-F member who begins USERRA leave during the election period without having elected Class T-F membership may make the election within 45 days after being reemployed from USERRA leave.*

\* \* \*

Section 5. Section 8306(b) of Title 24 is amended and the section is amended by adding a subsection to read:

§ 8306. Eligibility points.

\* \* \*

*(a.1) USERRA leave.—A member who is reemployed from USERRA leave or who dies while performing USERRA leave shall be granted the eligibility points that he would have accrued had he continued in his school office or employment instead of performing USERRA leave. If a*

***school employee who is reemployed from USERRA leave makes the member contributions to be granted school service credit for the USERRA leave, no additional eligibility points may be granted.***

(b) Transitional rule.—For the purposes of the transition:

(1) In determining whether a member, other than a disability annuitant who returns to school service after June 30, 2001, upon termination of the disability annuity, who is not a school employee or a State employee on June 30, 2001, and July 1, 2001, and who has previous school service, has the five eligibility points required by the definition of "vestee" in sections 8102 (relating to definitions), 8307 (relating to eligibility for annuities), 8308 (relating to eligibility for vesting) and 8345 (relating to member's options), only eligibility points earned by performing credited school service, ***USERRA leave*** or credited State service after June 30, 2001, shall be counted until such member earns one eligibility point by performing credited school service or credited State service after June 30, 2001, at which time all eligibility points as determined under subsection (a) shall be counted.

(2) A member subject to paragraph (1) shall be considered to have satisfied any requirement for five eligibility points contained in this part if the member has at least ten eligibility points determined under subsection (a).

Section 6. Section 8325 of Title 24 is amended to read:

§ 8325. Incomplete payments.

In the event that a member terminates school service or a multiple service member who is an active member of the State Employees' Retirement System terminates State service before any agreed upon payments, ***including USERRA leave***, or return of benefits on account of returning to school service or entering State service and electing multiple service have been completed, the member or multiple service member who is an active member of the State Employees' Retirement System shall have the right to pay within 30 days of termination of school service or State service the balance due, including interest, in a lump sum, and the annuity shall be calculated including full credit for the previous school service, creditable nonschool service, or full-coverage membership. In the event a member does not pay the balance due within 30 days of termination of school service or in the event a member dies in school service or within 30 days of termination of school service or in the case of a multiple service member who is an active member of the State Employees' Retirement System does not pay the balance due within 30 days of termination of State service or dies in State service or within 30 days of termination of State service and before the agreed upon payments have been completed, the present value of the benefit otherwise payable shall be reduced by the balance due, including interest, and the benefit payable shall be calculated as the actuarial equivalent of such reduced present value.

Section 7. Section 8326 of Title 24 is amended by adding a subsection to read:

§ 8326. Contributions by the Commonwealth.

\* \* \*

***(d) Contributions resulting from members reemployed from USERRA leave.—When a school employee reemployed from USERRA leave makes the member contributions required to be granted school service credit for the USERRA leave, either by actual payment or by actuarial debt under section 8325 (relating to incomplete payments), the Commonwealth employer or other employer by whom the school employee is employed at the time the member contributions are made, or the last employer before termination in the case of payment under sections 8327 (relating to payments by employers) and 8535 (relating to payments to school entities by Commonwealth), shall make any employer contributions that would have been made under this section as if the employee making the member contributions after being reemployed from USERRA leave continued to be employed in his school office or position instead of performing USERRA leave.***

Section 8. Section 8346(d) of Title 24 is amended and the section is amended by adding a subsection to read:

§ 8346. Termination of annuities.

\* \* \*

***(a.2) Return of benefits paid during USERRA leave.—If a former school employee is reemployed from USERRA leave who had received any payments or annuity from the system during the USERRA leave, the employee shall return to the board the amount received plus statutory interest. The amount payable shall be certified by the board in accordance with methods approved by the actuary and:***

***(1) shall be paid in a lump sum within 30 days; or***

***(2) in the case of an active member, may be amortized with statutory interest through salary deductions in amounts agreed upon by the member and the board for not longer than a period that starts with the date of reemployment and continuing for up to three times the length of the member's immediate past period of USERRA leave. A repayment period under this paragraph may not exceed five years or a longer time as agreed to between the board and the member.***

\* \* \*

***(d) Elimination of the effect of frozen present value.—***

***(1) An annuitant who returns to school service and earns three eligibility points by performing credited school service or reemployment from USERRA leave following the most recent period of receipt of an annuity under this part, or an annuitant who enters State service and:***

***(i) is a multiple service member; or***

***(ii) who elects multiple service membership, and earns three eligibility points by performing credited State service, reemployment from USERRA leave or credited school service following the most recent period of receipt of an annuity under this part, and who had the present value of his annuity frozen in accordance with subsection (a), shall qualify to have the effect of the frozen present value resulting from all previous periods of retirement eliminated, provided that all payments under Option 4 and annuity payments payable during previous periods of retirement plus interest as set forth in paragraph (3) shall be***

returned to the fund in the form of an actuarial adjustment to his subsequent benefits or in such form as the board may otherwise direct.

(2) Upon subsequent discontinuance of service and the filing of an application for an annuity, a former annuitant who qualifies to have the effect of a frozen present value eliminated under this subsection shall be entitled to receive the higher of either:

(i) an annuity (prior to optional modification) calculated as if the freezing of the former annuitant's account pursuant to subsection (a) had not occurred, adjusted by crediting Class T-C school service as Class T-D service as provided for in section 8305(c) (relating to classes of service) and further adjusted according to paragraph (3), provided that a former annuitant of the system or a former annuitant of the State Employees' Retirement System who retired under a provision of law granting additional service credit if termination of school or State service or retirement occurred during a specific period of time shall not be permitted to retain the additional service credit under the prior law when the annuity is computed for his most recent retirement; or

(ii) an annuity (prior to optional modification) calculated as if the former annuitant did not qualify to have the effect on the frozen present value eliminated,

unless the former annuitant notifies the board in writing by the later of the date the application for annuity is filed or the effective date of retirement that the former annuitant wishes to receive the lower annuity.

(3) In addition to any other adjustment to the present value of the maximum single life annuity that a member may be entitled to receive that occurs as a result of any other provision of law, the present value of the maximum single life annuity shall be reduced by all amounts paid or payable to him during all previous periods of retirement plus interest on these amounts until the date of subsequent retirement. The interest for each year shall be calculated based upon the annual interest rate adopted for that school year by the board for the calculation of the normal contribution rate pursuant to section 8328(b) (relating to actuarial cost method).

Section 9. Sections 8347(a) and (b), 8502(m) and 8505(h) of Title 24 are amended to read:

§ 8347. Death benefits.

(a) Members eligible for annuities.—Any member *or former member on USERRA leave*, other than an annuitant, who dies and was eligible for an annuity in accordance with section 8307(a) or (b) (relating to eligibility for annuities) shall be considered as having applied for an annuity to become effective the day before his death; and, in the event he has not elected an option, it shall be assumed that he elected Option 1 and assigned as beneficiary that person last designated in writing to the board.

(b) Members ineligible for annuities.—In the event of the death of any member *or former member on USERRA leave*, other than an annuitant, who is not entitled to a death benefit as provided in subsection (a), his designated beneficiary shall be paid the full amount of his accumulated deductions.

\* \* \*

§ 8502. Administrative duties of board.

\* \* \*

(m) Member contributions and interest.—The board shall cause each member's contributions, including payroll deductions, pickup contributions and all other payments, including, but not limited to, amounts collected by the State Employees' Retirement System for the reinstatement of previous school service or creditable nonschool service and amounts paid to return benefits paid after the date of return to school service or entering State service representing lump sum payments made pursuant to section 8345(a)(4)(iii) (relating to member's options) and member's annuity payments, but not including other benefits returned pursuant to section 8346(a.1) *and (a.2)* (relating to termination of annuities), to be credited to the account of such member and shall pay all such amounts into the fund. Such contributions shall be credited with statutory interest until date of termination of service, except in the case of a vestee, who shall have such interest credited until the effective date of retirement or until the return of his accumulated deductions, if he so elects; and in the case of a multiple service member who shall have such interest credited until termination of service in both the school and the State systems.

\* \* \*

§ 8505. Duties of board regarding applications and elections of members.

\* \* \*

(h) Death benefits.—Upon receipt of notification of the death of a member *or former member on USERRA leave*, the board shall notify the designated beneficiary or survivor annuitant of the benefits to which he is entitled and shall make the first payment to the beneficiary under the plan elected by the beneficiary within 60 days of receipt of certification of death and other necessary data. If no beneficiary designation is in effect at the date of the member's death or no notice has been filed with the board to pay the amount of such benefits to the member's estate, the board is authorized to pay such benefits to the executor, administrator, surviving spouse or next-of-kin of the deceased member, and payment pursuant hereto shall fully discharge the fund from any further liability to make payment of such benefits to any other person. If the surviving spouse or next-of-kin of the deceased member cannot be found for the purpose of paying such benefits for a period of seven years from the date of death of the member, then such benefits shall be escheated to the Commonwealth for the benefit of the fund.

\* \* \*

Section 10. Section 8506 of Title 24 is amended by adding a subsection to read:

§ 8506. Duties of employers.

\* \* \*

*(k) School employees performing USERRA or military-related leave of absence.—The employer shall report to the board all of the following:*

*(1) Any school employee who:*

*(i) ceases to be an active member to perform USERRA service;*

*or*



*(ii) is granted a leave of absence under 51 Pa.C.S. § 4102 (relating to leaves of absence for certain government employees) or a military leave of absence under 51 Pa.C.S. § 7302 (relating to granting military leaves of absence).*

*(2) The date on which the USERRA service, leave of absence or military leave of absence began.*

*(3) The date on which the school employee is reemployed from USERRA leave or returns after the leave of absence or military leave of absence, if applicable.*

*(4) Any other information the board may require.*

Section 11. Section 8507(c) of Title 24 is amended and the section is amended by adding a subsection to read:

§ 8507. Rights and duties of school employees and members.

\* \* \*

*(c) Multiple service membership.—Any active member who was formerly an active member in the State Employees' Retirement System may elect to become a multiple service member. Such election shall occur no later than 365 days after becoming an active member in this system. A school employee who is eligible to elect to become a multiple service member and who begins USERRA leave during the election period without having elected multiple service membership may make the election within 365 days after being reemployed from USERRA leave.*

\* \* \*

*(d.1) School service for USERRA leave.—Any active member or inactive member who was reemployed from USERRA leave and who desires to receive school service credit for his USERRA leave shall notify the board within the time period required under 38 U.S.C. Ch. 43 (relating to employment and reemployment rights of members of the uniformed services) and IRC § 414(u) of his desire to make the required member contributions. Upon making the required member contributions within the allowed time period, the member shall receive credit for the service as of the date the contributions are made.*

\* \* \*

Section 12. Section 7306(a) of Title 51, amended October 24, 2012 (P.L.1436, No.181), is amended and the section is amended by adding a subsection to read:

§ 7306. Retirement rights.

*(a) Options available to employees.—Any employee who is a member of a retirement system other than an active member or inactive member on leave without pay of the State Employees' Retirement System or an active or inactive member of the Public School Employees' Retirement System at the time he is granted a military leave of absence shall be entitled to exercise any one of the following options in regard thereto:*

*(1) He may continue to make regular payments into the fund during the period of his military leave of absence. The amount of such payments shall be the same as they would have been, had he not been granted a military leave of absence, but had instead remained actively in his employment. The time of making such payments shall be mutually agreed upon by the employee and the retirement association of which he is a*

member, but in no event shall be less frequent than semiannually. The employer shall make its contributions on the same basis as is used to compute the employee's contributions. In this case, his retirement rights shall be determined on the basis that he was in the active, continuous and uninterrupted employ of his employer for the period during which he was on military leave of absence.

(2) He may discontinue making payments into the fund during the period of his military leave of absence. In such event, the employer shall also discontinue making its contributions during this period. In this case, his retirement rights shall be determined by completely disregarding the period of his military leave of absence for all purposes.

\* \* \*

***(e) Members of Public School Employees' Retirement System.—An employee who is an active member or inactive member of the Public School Employees' Retirement System at the time he is granted a military leave of absence shall be entitled to receive credit in the Public School Employees' Retirement System for the leave as provided under 24 Pa.C.S. Pt. IV (relating to retirement for school employees).***

Section 13. This act shall apply as follows:

(1) (i) Except as provided under subparagraph (ii), the amendment of 24 Pa.C.S. Pt. IV shall apply to leaves of absence, military leaves of absence and leaves pursuant to 38 U.S.C. Ch. 43 that are granted on or after the effective date of this section.

(ii) If a member died performing uniformed service under 38 U.S.C. Ch. 43, the amendment of 24 Pa.C.S. Pt. IV shall apply to leaves of absence, military leaves of absence and leaves pursuant to 38 U.S.C. Ch. 43 that were granted on or after December 31, 2006.

(2) The amendment or addition of 51 Pa.C.S. § 7306(a) and (e) shall apply to leaves of absence or military leaves of absence that are granted on or after the effective date of this section.

Section 14. Notwithstanding the provisions of 24 Pa.C.S. § 8503(b), the statement for each member prepared by the Public School Employees' Retirement Board for the period ending June 30, 2013, and any other statements or estimates of benefits prepared by the board under 24 Pa.C.S. Pt. IV from the effective date of this section to June 30, 2014, shall not be required to reflect the provisions of this act.

Section 15. Notwithstanding the provisions of 24 Pa.C.S. Pt. IV, the obligation of the Public School Employees' Retirement Board to make payments to any individual whose rights, benefits and obligations are affected by this act within specified time periods of the receipt of applications for benefits or other information shall not apply from the effective date of this section to June 30, 2014.

Section 16. The board shall have the authority to:

(1) Implement the requirements of 24 Pa.C.S. Pt. IV pertaining to school employees on USERRA leave or who have been granted a leave of absence under 51 Pa.C.S. § 4102, a leave of absence under 24 Pa.C.S. Pt. IV or a military leave of absence under 51 Pa.C.S. § 7302.

(2) Establish administrative, reporting and payment requirements and processes pertaining to the leaves applicable to employers and members.

Section 17. Nothing under this act shall be deemed to permit the restoration of service credit or retirement benefits which were or are subject to 42 Pa.C.S. § 3352 or the subject of an order of forfeiture pursuant to the act of July 8, 1978 (P.L.752, No.140), known as the Public Employee Pension Forfeiture Act.

Section 18. Nothing under this act shall be construed or deemed to imply that any interpretation or application of the provisions of 24 Pa.C.S. Pt. IV or benefits available to members of the Public School Employees' Retirement System was not in accordance with the provisions of 24 Pa.C.S. Pt. IV or other applicable law, including the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) prior to the effective date of this section. It is the express intent of the General Assembly that nothing under this act shall be construed to grant to or be deemed to imply that this act expands, contracts or otherwise affects any contractual rights, either expressed or implied, or any other constitutionally protected rights, in the terms and conditions of the Public School Employees' Retirement System or other pension or retirement benefits as a State employee, including, but not limited to, benefits, options, rights or privileges established by 24 Pa.C.S. Pt. IV for any current or former public school employees.

Section 19. This act shall be construed and administered in such a manner that the Public School Employees' Retirement System will satisfy the requirements necessary to qualify as a qualified pension plan under section 401(a) and other applicable provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) and 38 U.S.C. Ch. 43. The rules, regulations and procedures adopted and promulgated by the Public School Employees' Retirement Board under 24 Pa.C.S. § 8502(h) may include those necessary to accomplish the purpose of this section.

Section 20. The following shall apply:

(1) The amendment of 51 Pa.C.S. § 7306 or 24 Pa.C.S. Pt. IV shall not:

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

(ii) Establish compliance with or affect any construction of:

(A) 38 U.S.C. Ch. 43.

(B) 24 Pa.C.S. Pt. IV or any rules or regulations adopted under 24 Pa.C.S. Pt. IV.

(2) The provisions of 24 Pa.C.S. Pt. IV shall remain subject to the Internal Revenue Code of 1986, and the General Assembly reserves to itself the further exercise of its legislative power to amend or supplement the provisions as may be required in order to maintain the qualification of the system as a qualified pension plan under section 401(a) and other applicable provisions of the Internal Revenue Code of 1986 and 38 U.S.C. Ch. 43.

Section 21. References in this act to the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or 38 U.S.C. Ch. 43, including for this purpose administrative regulations promulgated under those acts, are intended to include laws and regulations in effect on the effective date of this section and as they may be amended or supplemented or supplanted by successor provisions after the effective date of this section.

Section 22. This act shall take effect July 1, 2013, or immediately, whichever is later.

APPROVED—The 1st day of July, A.D. 2013

TOM CORBETT