PSERS

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT SYSTEM

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

PSERS
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Harrisburg PA 17101-1905

Toll-free: 1.888.773.7748 (1.888.PSERS4U)
Local: 717.787.8540
www.psers.pa.gov

January 14, 2022

Chairman Seth Grove
House State Government Committee
House of Representatives
7 East Wing
P.O. Box 202196
Harrisburg, PA 17120-2196

Dear Chairman Grove and Subcommittee members:

Thank you for inviting the management team of the Public School Employees' Retirement System to testify at the January 20, 2022, public hearing before the House State Government Committee's Subcommittee on Pension Benefits & Risk Management.

Please be advised PSERS has not taken a position on any legislation before the Subcommittee. Rather, testimony will center around management's technical and legal reviews in keeping with the System's historical practice to stay neutral on legislative policy matters as well as the Subcommittee's directive mentioned in a December 6, 2021, letter to PSERS Board Chairman Chris Santa Maria.

Management has reviewed the nine pieces of legislation on the Subcommittee's agenda. Prior to the Subcommittee announcing this hearing, management had submitted responses to questions some individual lawmakers had about many of the same bills. In addition, PSERS submitted cost estimates on some bills to the Independent Fiscal Office in response to its legislative mandates under Act 37 of 2020.

PSERS management is submitting the written material it had previously produced for individual lawmakers and the IFO to keep its records consistent and transparent, and not to overburden the Subcommittee with unnecessary duplicative material. Written material for **House Bill 811** and **Senate Bill 423** are not provided as those bills are related only to the State Employees' Retirement System.

In closing, thank you again for the opportunity to testify.

Sincerely,

Terri J. Sanchez
Interim Executive Director
PSERS

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January 14, 2022

Honorable Seth Grove
Chairman, House State Government Committee
Commonwealth of Pennsylvania House of Representatives
7 East Wing
P.O. Box 202196
Harrisburg, PA 17120-2196

RE: House Resolution 59, P.N. 618

Dear Chairman Grove:

Thank you for extending an invitation to the management team of the Public School Employees' Retirement System (PSERS) to testify at the January 20, 2022, public hearing before the House State Government Committee's Subcommittee on Pension Benefits & Risk Management. This letter is meant to supplement our testimony as it relates to House Resolution 59, P.N. 618.

PSERS has not taken a position on HR 59 or any other legislation the Subcommittee will discuss at the upcoming hearing. Rather, this letter offers PSERS's technical and legal feedback in keeping with the System's historical role to stay neutral on legislative policy matters and as well as the Subcommittee's directive mentioned in a December 6, 2021, letter to PSERS Board Chairman Chris Santa Maria.

PSERS Management Analysis

Since 1976, the Retirement Code has permitted an early retirement subject, of course, to an early retirement reduction factor. Section 8345, however, contains a special early retirement provision that permits a member to retire at age 55 (age 57 for Class TG members) with 25 years of service at a significantly reduced early retirement reduction factor, i.e., a "55/25" retirement is reduced by one quarter of one percent per month for each month the member is under normal retirement age. PSERS website explains the early retirement reductions, including the special early retirement factors, for each membership class.

The mandate in HR 59 would permit the Pennsylvania House of Representatives to direct the Legislative Budget and Finance Committee to conduct an early retirement study on the financial impact of providing an unreduced benefit for certain public employees who are members of the Public School Employees' Retirement System (PSERS) and State Employees' Retirement System (SERS) "who are 55 years of age or older or who have at least 30 years of service" (page 2, lines 4-8). Along with those demographic parameters, the resolution requests that the study examine how an early retirement could impact the following:

1. Possible cost savings to the Commonwealth and school employers over 1 year, 3 years and 10 years.

2. Potential positive employment "value" creation for younger employees
3. Potential negative brain-drain and skills loss on school and state workforces.
4. The historical impact of #1-3 that occurred after prior early retirement incentives were enacted.

(1) Budgetary Cost

Although PSERS was not asked to provide actuarial data for this hearing, management thought it would be helpful for lawmakers to have summary data. So, PSERS Office of Financial Management requested the System's contracted actuary, Buck Global LLC, to analyze the cost impact on the June 30, 2021, actuarial valuation of an early retirement window that offer unreduced benefits for eligible members who elect to retire during the period March of 2022 to February of 2023. Time constraints did not permit PSERS and Buck to conduct a full-fledged actuarial evaluation for all the time frames referenced in the resolution.

The results of Buck's one-year analysis show about 38,000 members would be eligible for the early retirement incentive between March of 2022 to February of 2023. The unfunded liability would range from about **$307.5 million** if **10%** of current eligible members took the incentive and more than **$3 billion** if **all** eligible members took it.

Exhibit II
Pennsylvania Public School Employees' Retirement System
House Resolution 59, Printer's No. 618
June 30, 2021 Actuarial Valuation Early Retirement Incentive Program Cost/(Savings)

	Unfunded Accrued Liability ($Millions) *						
Elaction Rate	100%	60%	50%	40%	30%	20%	10%
Currently eligible for early retirement (at least age 55 with at least 25 years of service)	$ 916.5	$ 549.9	$ 458.2	$ 366.6	$ 274.9	$ 183.3	$ 91.6
Eligible for HR59 window program but not yet early retirement eligible	2,158.6	1,295.2	1,079.3	863.5	647.6	431.7	215.9
Total	$ 3,075.1	$ 1,845.1	$ 1,537.5	$ 1,230.1	$ 922.5	$ 615.0	$ 307.5

* The additional unfunded accrued liability resulting (UAL) from the early retirement window would be payable over a 10-year period beginning with the 2022/2203 fiscal year with increasing payments for the succeeding nine years. The additional UAL cost will be offset by a decreasing normal cost savings amount each year as the members who elected to retire under the early retirement window would eventually have retired or terminated their employment from PSERS. In addition, the new employees hired to replace the retiring members would offset some of the normal cost savings. A more extensive projection of future PSERS contributions would be needed to analyze the cost implications of the proposed early retirement window.

Buck disclaimers:

- Future actuarial measurements may differ significantly from current measurements due to Retirement System experience differing from that anticipated by the economic and demographic assumptions, increases or decreases expected as part of the natural operation of the methodology used for these measurements, and changes in Retirement System provisions or applicable law. Liability models necessarily rely on the use of actuarial assumptions, approximations and estimates and are sensitive to changes in these actuarial assumptions, approximations and estimates. Small variations in these actuarial assumptions, approximations and estimates may lead to significant changes in actuarial measurements. An analysis of the potential range of such future differences is beyond the scope of this valuation.
- The purpose of this analysis is to provide estimates of the potential costs of the proposal under HR59 for informational purposes. Use of this report for any other purpose, or by anyone other than the Board of Trustees or the staff of PSERS or employers or its auditors, may not be appropriate and may result in mistaken conclusions because of failure to understand applicable

assumptions, methods, or inapplicability of the report for that purpose. Buck should be asked to review any statement to be made on the basis of the results contained in this report. Buck will accept no liability for any such statement made without prior review by Buck.

(2, 3) Positive and negative impacts on workforce(s)

The resolution does not require PSERS to opine on the potential positive and negative workforce impacts an early retirement incentive might have. Additionally, PSERS policies do not allow us to opine on such legislative policy matters. However, management thought it would be helpful to the subcommittee if we provided PSERS membership data and relevant media articles on this topic.

PSERS annual Valuation Reports show overall declines in PSERS active membership rolls across its six classes of employees over the last decade. During the same time, annualized salaries and average compensation increased overall among PSERS active membership rolls.

Active Members	**2021**	**2020**	**2019**	**2018**	**2017**	**2016**	**2015**	**2014**	**2013**	**2012**	**2011**
Total	248,145	256,306	255,749	256,362	255,945	257,080	259,868	263,312	267,428	273,504	279,152
Annualized salaries (Billions)	$14.1	$14	$13.7	$13.4	$13	$12.9	$12.7	$12.6	$12.6	$12.7	$12.9

Source: PSERS June 30, 2011-2021 Valuation reports

PSERS 2021-20 Annual Comprehensive Financial Report (ACFR) shows retirements had been trending downward for several years until an increase occurred in 2020-21. For instance, PSERS processed 12,468 retirements in FY2013 and 8,290 in FY2020, a 33.5% decline, the ACFR states. Retirements then increased 13.5% in FY2021 from FY2020, the ACFR states. PSERS policies and state laws do not require members to list a reason for seeking retirement. Media reports have cited union and schools' officials as saying the COVID-19 pandemic is a reason for the retirement increases. Those retirements also come at a time when the Pennsylvania Department of Education statistics show a 64% decline in teaching certificates between 2010-11 and 2018-19, according to a Sept. 20, 2020 PennLive article. More recently, Forbes.com posted a column on Jan. 4, 2022, that cited surveys showing nearly half of respondent teachers are thinking about quitting their jobs across America and fewer college students are opting to pursue teaching careers.

(4) Historical Impact

PSERS records indicate that the General Assembly passed eight early retirement bills that became law between 1982 and 1998. Management believes that it would be too difficult to draw meaningful conclusions between those past laws and the present. The comparative difficulty arises due to the length of time that has passed and because Act 120 of 2010 and Act 5 of 2017 altered the benefit cost structures for PSERS members hired as of July 1, 2011, and July 1, 2019, respectively.

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January 14, 2022

Honorable Seth Grove
Chairman, House State Government Committee
Commonwealth of Pennsylvania House of Representatives
7 East Wing
P.O. Box 202196
Harrisburg, PA 17120-2196

RE: **House Bill 967, P.N. 977**

Dear Chairman Grove:

Thank you for extending an invitation to the management team of the Public School Employees' Retirement System to testify at the January 20, 2022, public hearing before the House State Government Committee's Subcommittee on Pension Benefits & Risk Management. This letter is meant to supplement our testimony as it relates to House Bill 967, P.N. 977.

PSERS has not taken a position on HB 967 or any of other legislation the Subcommittee will discuss at the upcoming hearing. Rather, this letter offers PSERS management's technical and legal feedback in keeping with the System's historical practice to stay neutral on legislative policy matters as well as the Subcommittee's directive mentioned in a December 6, 2021, letter to PSERS Board Chairman Chris Santa Maria.

PSERS Management Analysis

HB 967 would permit a PSERS annuitant to return to service as a substitute teacher on a day-to-day or long-term basis, without loss of annuity, for up to 90 days per school year, without regard for whether there is an emergency increase in workload or shortage of non-annuitant substitutes. The annuitant substitute would not earn additional retirement income credit from their school employer and Commonwealth for partial or full days worked.

This legislation should be read in conjunction with current Retirement Code and the Public School Code provisions that explain how PSERS annuitants can return to service. Reading the proposed and existing legislation together provides context and clarity for understanding possible legal and policy implications PSERS management has identified.

Section 8346(b) of the Retirement Code: Permits PSERS retirees to return to service for up to one full school year when, in the judgment of the employer, an emergency creates an increase in the workload or there is a shortage of non-retired personnel.

Possible Legal Implications of HB 967

- HB 967 will change Section 8346 of the Retirement Code, and it may affect the newly signed Act 91 of 2021 (formerly House Bill 412). On Dec. 17 2021, Governor Tom Wolf signed Act 91 into law, which amended the

Public School Code. Act 91 gives school employers more flexibility when hiring day-to-day substitute teachers for the 2021-2022 school year and the 2022-2023 school year. The law authorizes employers to hire a PSERS retiree as a *day-to-day substitute* without first attempting to secure a non-PSERS retiree, except the employer is still required to first offer the work to any certified professional employee on a recall list. The law does not eliminate the requirement that the employer must first determine that a shortage of personnel exists under Section 8346(b) of the Retirement Code. HB 967 would add Section (b.3) to the Retirement Code to allow school employers to hire PSERS retirees as substitute teachers on a daily *or* long-term basis for up to 90 days, without Section 8346(b)'s requirement that an emergency increase in the workload or staffing shortage exist first. Only substitute teachers would be affected by this carveout to the emergency declaration rules.

- Unlike Act 91, which contains a limited time frame for the school years 2021-2022 and 2022-2023, this legislative change to the Retirement Code appears permanent.

- It is unclear whether a PSERS retiree who returns as a substitute teacher and renders the full 90 days under the proposed subsection (b.3) would then be *prohibited* from returning within the same school year under Section 8346(b), if the school has a shortage of substitute teachers.

- If such PSERS retirees are prohibited from returning under the shortage of personnel provisions of Section 8346(b), then HB 967 may affect Act 91 of 2021, which does not limit the return period for *day-to-day* substitutes.

To the extent the concern relates to a shortage of substitute teachers, the existing Retirement Code provision permits PSERS retirees to return to school service when a shortage of substitute teachers exists, for up to one school year, without the loss of their annuity. Please find attached copies of prior PSERS' communications regarding Act 91 and PSERS' return to service rules that have been shared with Legislators, employers, and stakeholder organizations.

Enclosures

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SAMPLE LETTER SENT TO LEGISLATORS

November 15, 2021

Dear Representative:

In recent weeks, some legislators, and school and union officials have contacted the Public School Employees' Retirement System (PSERS) with questions and concerns about the nationwide shortages of substitute teachers and school bus drivers. They want to know if or how Pennsylvania schools can hire retired public school employees to help alleviate labor shortages.

PSERS is sharing with you how retired public school employees may be used in emergencies or other limited circumstances for a period up to an entire school year. We hope this information can serve your constituent service needs if you are fielding similar questions in your local communities. We also included PSERS statistics on this topic and contact information for those needing additional information.

Summary of Applicable Laws

- The 1975 Retirement Code, Act of Oct. 2, 1975, (P.L. 298, No. 96) added a "return to service section." It outlined the rules when and for how long retirees can work in a public school setting while still receiving a monthly pension benefit from PSERS. A 2004 amendment set the current return-to-service time limit at up to one school year.
- Act 93 of 2015 amended the Retirement Code to require a bona fide break in service for members under the age of 62 before returning to service as a retiree.
- Act 5 of 2017 maintained the same statutory "return to service" rules for public school employees who terminate and receive installment distributions from PSERS DC Plan.

The restrictions in the Retirement Code on the use of retirees are meant to prevent a "pension double dip" in which a public school employee retires from a position and then is rehired to continue to provide the same work for which they are receiving an annuity. The laws are not meant to be punitive, but to recognize staffing emergencies and shortages that can arise for school employers in which the use of retirees would be helpful for a short time.

Return to Service Resources

PSERS website, PSERS.pa.gov, offers many links and documents about returning to service. These resources are meant as guidance for retirees and school employers.

- The "Working After Retirement" link can be found in the drop-down window of the "Retired Members" tab in the top right corner of the home screen.
- PSERS in-depth *Return to Service Exceptions* guidelines can be found under the home screen's "forms and pubs" link. The path of links to the handbook is: "forms and pubs" – "retired" – "return to service exceptions."

As stated in the Return to Service Exceptions guidelines, the Retirement Code permits six exceptions for when PSERS retirees can return to public school employment while still collecting PSERS benefits. Specific requirements and/or time restrictions must be met for each exception.

- **Personnel Shortage:** A shortage of appropriate subject-certified teachers or other personnel.
- **Workload Emergency:** An unforeseen emergency which increases the workload and creates a serious impairment of service to the public.
- **Extracurricular Position:** An extracurricular position under a separate written contract.
- **Independent Contractor:** Contractual arrangement with the employer as a bona fide independent contractor.
- **Employment with a Third-Party Employer:** Employment when validly employed by, and providing services through, a legitimate third-party employer that is not a reporting unit of PSERS.
- **Enrollment in Alternate Retirement Plan:** Employment with any school employer where the retiree enrolls in an alternate retirement plan.

Approval Process

PSERS has two processes for reviewing a retiree's return to school service:

- The **Specific Member Approval Process** is an approval to return a specific retiree or if the employee retired within the last year and is returning to fill a similar position. It must be used for all other instances that do not qualify under the School Year Approval Process noted above.
- The **School Year Approval Process,** created in 2018, is an approval of the employer's recruitment procedure rather than an approval of a specific retiree. It may be used upon the occurrence of an absence, a vacancy with no advanced notice of a permanent separation, or a vacancy where the employer is prevented from filing a vacancy due to a legal challenge.

PSERS website, under the "Employers" tab, provides extra tools to help school officials with the approval process. Links include a PowerPoint presentation and a short-term substitute template letter. PSERS recently reminded employers of the substitute template letter in a message to employers about the school bus driver shortage.

In addition to the information provided, it should be noted that PSERS management informs the PSERS Board of Trustees about return-to-service statistics at regular public meetings. These statistics, as Nov. 9, 2021, are as follows:

Year	Individual Requests – Approved	Individual Requests – Denied	General Correspondence and Questions	School Year Approval – Substitute Teachers	School Year Approval - Transportation
2018	236	5	27	113	n/a
2019	238	8	55	132	n/a
2020	159	3	50	114	n/a
2021	214	10	74	149	11

If you would like more information about returning to service or have other questions, PSERS can be contacted using the information below:

- School employers should contact their regional PSERS Employer Service Center Representative.
- Retired members should contact PSERS at 1.888.773.7748 or securely online using their Member Self-Service account.
- Legislators should call 717-720-4770.

Sincerely,

Steve Esack
PSERS Press Secretary and Acting legislative Director

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SAMPLE LETTER SENT TO SCHOOL EMPLOYERS

December 23, 2021

Dear Public School Administrator:

HB 412 was recently passed into law as Act 91 of 2021. Act 91 establishes a new Section 1114 (Day-to-Day Substitutes) and amends Section 1205.2 (Program of Continuing Professional Education) of the Public School Code to provide flexibility regarding the hiring of substitute teachers for the 2021-2022 school year and the 2022-2023 school year. The employer is allowed to hire an individual who is a PSERS retiree as a *day-to-day substitute* without first offering the day-to-day substitute employment to a non-PSERS retiree; provided the employer must first notify and offer employment to those **who are on a recall list under Section 1125.1(D)(2) of the Public School Code**.

Please note that the legislation does not eliminate the requirement that an employer must first determine that a shortage of personnel exists under the Public School Employees' Retirement Code.

If eligible, you may request a school year approval of emergency employment of PSERS retirees as day-to-day substitute teachers by submitting the following sample letter (below and attached) to PSERS Administrative Determinations at the address provided or by fax to 717-772-3860. Additional information regarding emergency employment of retired PSERS members is in PSERS' Return to Service Exceptions publication.

Sample Language

[Date]

Public School Employees' Retirement System
Administrative Determinations
5 North 5th Street
Harrisburg, PA 17101

Re: Employing PSERS Retirees as Day-to-day substitute teachers
Employer #_____

Dear Administrator:

Due to a general shortage of day-to-day substitute teachers, [School Employer] requests PSERS' approval to employ PSERS retirees as temporary day-to-day substitute teachers as needed throughout the 2021-2022 school year while recruitment of permanent employees continues. In support of this request, [School Employer] certifies as follows:

1. [School Employer] confirms that a shortage of personnel exists with respect to day-to-day substitute teachers.

2. [School Employer] confirms that when the need for a day-to-day substitute teacher arises, it will first notify and exhaust a candidate pool of those who are not PSERS retirees **and who are on a recall list under Section 1125.1(D)(2) of the Public School Code**; [School Employer] will not employ a PSERS retiree unless someone who is on the recall list is not available or does not accept the assignment within a reasonable period of time.

3. [School Employer] acknowledges that it will continue throughout the school year to make a good faith effort to find day-to-day substitute teachers who are not PSERS retirees; understanding, however, that a good faith effort does not require the [School Employer] to solicit the use of a third-party provider for day-to-day substitute teachers.

4. [School Employer] will provide a copy of this request and PSERS' response to any PSERS retiree who is employed under the School Year Approval Process for these services.

[Signature]

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January 14, 2022

Honorable Seth Grove
Chairman, House State Government Committee
Commonwealth of Pennsylvania House of Representatives
7 East Wing
P.O. Box 202196
Harrisburg, PA 17120-2196

RE: House Bill 1442, 1556

Dear Chairman Grove:

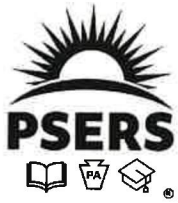
Thank you for extending an invitation to the management team of the Public School Employees' Retirement System (PSERS) to testify at the January 20, 2022, public hearing before the House State Government Committee's Subcommittee on Pension Benefits & Risk Management. This letter is meant to supplement our testimony as it relates to House Bill 1442, 1556.

PSERS has not taken a position on HB 1442 or any other legislation the Subcommittee will discuss at the upcoming hearing. Rather, this letter offers PSERS's technical and legal feedback in keeping with the System's historical practice to stay neutral on legislative policy matters and as well as the Subcommittee's directive mentioned in a December 6, 2021, letter to PSERS Board Chairman Chris Santa Maria.

PSERS Management Analysis

HB 1442 would limit future public employees to becoming vested in only one public pension plan offered by any governmental agency or governmental unit anywhere in Pennsylvania. As the basis for its hearing testimony, PSERS management will rely on its previous communication, dated Aug. 27, 2021, we had with your office on this bill. A copy is attached.

Enclosures



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Aug. 27, 2021

Chairman Seth Grove
House State Government Committee
House of Representatives
7 East Wing
P.O. Box 202196
Harrisburg, PA 17120-2196

Dear Chairman Grove,

Thank you for taking the time this morning to meet with me and my counterparts at State Employees' Retirement System and Independent Fiscal Office. The outcome of the meeting will benefit all parties involved in the review process of pension legislation.

As discussed, I have attached a copy of the legal memo PSERS Office of Chief Counsel produced in relation to House Bill 1442, Printer's No. 1556. PSERS is also available to work with the bill's prime sponsor, Rep. Tony Deluca, and any other member of the General Assembly when it comes to legislative pension matters or general questions about PSERS history and operations.

Thank you.

Steve Esack

Steve Esack
Press Secretary
Public School Employees' Retirement System

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

Office of Chief Counsel

TELEPHONE: (717) 720-4976 FAX: (717) 783-8010

DATE: August 26, 2021

SUBJECT: HB 1442, P.N. 1556

Design issues the interfere with cost analysis

TO: Steve Esack

Press Secretary

FROM: Dwight A. Decker, Jr.

Assistant Counsel

On August 18, 2021, the Independent Fiscal Office ("IFO") requested "data that projects the potential impact of [HB 1442] as an alternative to baseline data that was submitted in accordance with Act 37 of 2020." You asked the Chief Counsel's Office to review HB 1442 and identify issues that affect PSERS' ability to perform the requested analysis. As part of our review, we met and discussed with counsel from the State Employees' Retirement System ("SERS") and the Pa. Municipal Retirement System ("PMRS"), who received similar requests. All three systems have identified similar issues with HB 1442 that limit the ability to perform a cost analysis. As part of their review, SERS Office of Chief Counsel ("OCC") prepared a memo identifying many issues that coincide with issues affecting PSERS. To eliminate the duplication of effort, SERS OCC is permitting us to share their memo with you, as attached. PSERS OCC has identified the following additional issues, which supplement the concerns raised in the attached SERS memo. We are providing you with both the SERS memo and the additional issues raised below to aid you in drafting your response to the IFO or in any discussion you may have with members of the legislature.

1. To the extent the proposed legislation can be read to apply to individuals already enrolledin the Public School Employees' Retirement System ("PSERS') there is a contractual impairment issue as the pension contract is formed at the time of hiring in PSERS.

2. PSERS, as the administrator of tax qualified plans, must adhere to the provisions of thePublic School Employees' Retirement Code ("Retirement Code") and the terms of its defined contribution plan, both of which have received favorable Internal Revenue Service ("IRS") determinations. The proposed law, as currently drafted, would significantly affect the structure of the benefit plans through very broad and general language that is subject to varying interpretations. Without amending the Retirement Code and the School Employees' Defined Contribution Plan and Trust ("DC Plan") to account for all the changes, there could be inconsistencies that lead to noncompliance oran "operational failure" under Section 401(a) of the Internal Revenue Code ("IRC") Section and potential disqualification of PSERS from tax-favored treatment.

3. The proposed legislation references retirement systems. For school employees who qualified for PSERS after July 1, 2019, there are three membership classes and different benefit plans. Class T-G and T-H members have both a defined benefit plan and a definedcontribution plan. Class DC members have only a defined contribution plan. To understand/predict the effect of the proposed legislation, clarification is needed as to whether, if a member elects to receive a benefit from a different system (e.g, the State Employees' Retirement System), the proposed legislation would mean that the Class T-Gand Class T-H members would have to forego, potentially, benefits under both the defined benefit plan and the DC Plan.

4. "Eligibility" is not defined in the proposed legislation. Section 4 states that it applies tomembers who become "eligible" for a benefit after the effective date of the law, which would appear to mean members who are "vested"

    a. If the law applies to the PSERS' defined benefit plan and the DC Plan, the date of eligibility for purposes of applying the proposed legislation is unclear for Class T-G and Class T-H members. For Class T-G and Class T-H members, they vest andbecome eligible for a benefit in the defined benefit plan at 10 years, but they vest in the employee contributions made to the DC Plan and any investment earnings thereon, starting on day one. 24 Pa.C.S. § 8409(a). They vest in the employer contributions made to the DC Plan and any investment earnings thereon when they reach three eligibility points (i.e., when they have worked at any time during three different school years).

    b. For PSERS Class T-C and Class T-D members, they vest and become eligible fora PSERS defined benefit at 5 years of service. For Class T-E and Class T-F, theyvest at 10 years. If "eligibility" refers to the time of vesting, the law may impact members of the same membership class differently. For example, one Class T-E member (i.e., a member who first qualified for PSERS between July 1, 2011 and July 1, 2019) may have 4 years of service and has not vested yet. That member would be subject to the law, and they would have to select between two pensions. Another Class T-E member, however, may have 10 years of service and be vested already. That member may not be subject to the law.

    c. With respect to the defined benefit plan, a PSERS member may be eligible for a disability benefit after only 5 years, although they are not vested. It is unclear how that would factor into the application of the proposed legislation.

5. "Benefits" is not defined in the proposed legislation. Clarification as to what is considered a benefit is necessary to understand/predict the effect of the proposed legislation.

    a. If the proposed legislation applies to Class T-G, Class T-H, and Class DC members, does the PSERS' DC plan provide any "benefits"? Both employeesand employers contribute to PSERS' DC Plan.
        i. Are the "benefits" in a DC Plan only the employer contributions and earnings thereon? If so, the law does not make that clear.
        ii. PSERS assumes the law was not intended to prevent a member from receiving the earnings on their employee invested contributions, but it is not discussed in the proposed law. If earnings on employee contributionsare "benefits," then any member selecting another pension would only be eligible to receive their own contributions. This raises constitutional taking, due process, and unjust enrichment issues. (With respect to pension forfeitures, the Retirement Code states that a participant gets theircontributions and earnings. 24 Pa.C.S. § 8533(b).)
        iii. If employee earnings on contributions in the DC Plan are "benefits," thereis no contemplation in the proposed law, the Retirement Code, or the PSERS' DC Plan for the forfeiture of earnings or what PSERS would dowith those earnings.

    b. If earnings on employee contributions in the DC Plan are <u>not</u> considered "benefits," then Class DC members and Class T-G and Class T-H members willreceive a distribution from PSERS at retirement, even if they are eligible to receive a benefit from two pension systems and they select the other pension system; Class T-C, Class T-D, Class T-E, and Class T-F will not be able to receive any payments from PSERS except their return of contributions (and, presumably, interest), PSERS because they only belong to the defined benefit plan.

    c. It appears that the proposed legislation does not take into account the existence of,or how to value, PSERS' premium assistance program or its Health Options Program ("HOP"). Premium assistance is a benefit provided by PSERS to help eligible retirees pay for health coverage through HOP or a Commonwealth public school employer or district plan. There is no cost to members to receive premiumassistance. The Legislature sets the eligibility requirements and the amount to the Premium Assistance benefits. Annuitants may qualify for up to $100 per month.24 Pa.C.S. § 8509. To be eligible the annuitant must, among other things have 24.5 years of credited service with PSERS, be age 62 or older (or 65 or old for certain membership classes) on their date of termination from employment with atleast 15 years of credited service with PSERS or be receiving a disability pension from PSERS. The HOP program is a group health insurance program available toPSERS annuitants, spouses of annuitants, survivor annuitants, and their dependents. The amounts owed for the insurance are paid by the insured and are generally deducted from the monthly benefit.

6. If a member does not choose a system, the proposed legislation does not provide guidance on

who or which system determines the "higher benefit" under Section 3(b) andhow it is determined?

a. If it is PSERS, how does PSERS determine the benefits of the member under another system? PSERS does not currently have the authority to demand information from another system.
b. Is the determination made at the time of eligibility or must the employee continueto contribute to the retirement system? If it is determined at eligibility, not at the time of termination or retirement, the member will not be able to make an informed decision.
c. What is factored into the estimate for the "higher benefit." Is the DC Plan in anyway factored into what constitutes a higher benefit? Is premium assistance considered?
d. What recourse does a member have, if any, if it disagrees with a system's determination of "higher benefit"? What is the appeal process and who hears the appeal? In general, who is charged with enforcing the law?

7. Many, but not all, charter schools participate in PSERS. They are not, however, "political subdivisions." Consequently, charter school employees appear to be exempt from the proposed legislation, which means those employees could receive two pensions from two systems, while all other school employees could not. In addition, the definitionof "public official or public employee" appears to contain an internal conflict as it pertains to PSERS because the definition includes anyone who is a member of the pension system, but excludes an employee of a charter school who performs tasks over which the Commonwealth or a political subdivision has no right of legal control.

8. The Retirement Code allows employees to rollover prior retirement accounts into the DCPlan. The plan defines a "rollover contribution" as:

   (1) an amount transferred to this DC Plan directly from another Eligible Retirement Plan; (2) a distribution received by a Participant from another Eligible Retirement Plan that is eligible for tax-free rollover to an Eligible Retirement Plan and that is transferred to this DC Plan within sixth (60) days following receipt thereof; and (3) any other amount that is eligible to be rolledover to this DC Plan under the IRC.

   The definition of "Eligible Retirement Plan" includes, but is not limited to, "an eligible plan under IRC Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state."

   If the proposed legislation is intended to limit receipt of any funds in the DC Plan, PSERS assumes, although it is not set forth in the proposed legislation, that the employee would not have to forfeit any rollover funds, regardless of whether a past public employer contributed tothe funds.

9. Pursuant to the Retirement Code, a member's pension may be attached through an approved domestic relations order. 24 Pa.C.S. §§ 8533, 8533.1. The proposed legislationdoes not appear to contemplate divorce matters and the fact that a portion of a member's pension, when earned during the marriage, is considered "marital property." 23 Pa.C.S. §3501(c). The draft legislation

could impede the ability for members to finalize divorce matters, until the time of eligibility or retirement. Also, if the member joins a second pension system after a divorce, it could allow them to avoid any payments to the former spouse by picking the new pension, which was earned with a different employer and system for a period of service that occurred after the divorce

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January 14, 2022

Honorable Seth Grove
Chairman, House State Government Committee
Commonwealth of Pennsylvania House of Representatives
7 East Wing
P.O. Box 202196
Harrisburg, PA 17120-2196

RE: **House Bill 1578, P.N. 1730**

Dear Chairman Grove:

Thank you for extending an invitation to the management team of the Public School Employees' Retirement System (PSERS) to testify at the January 20, 2022, public hearing before the House State Government Committee's Subcommittee on Pension Benefits & Risk Management. This letter is meant to supplement our testimony as it relates to House Bill 1578, P.N. 1730.

PSERS has not taken a position on HB 1578 or any other legislation the Subcommittee will discuss at the upcoming hearing. Rather, this letter offers PSERS's technical and legal feedback in keeping with the System's historical practice to stay neutral on legislative policy matters and as well as the Subcommittee's directive mentioned in a December 6, 2021, letter to PSERS Board Chairman Chris Santa Maria.

PSERS Management Analysis

HB 1578 would prohibit the use of collared employer contribution rates for the State Employees' Retirement System (SERS) and Public School Employees' Retirement System (PSERS) after the June 30, 2021, fiscal year.

The bill would have no adverse impact on PSERS tax and finance structures. It is our understanding HB 1578 would eliminate an obsolete older piece of legislation that provided "collared contribution rates" for employers between July 1, 2011, and June 30, 2021. The legislative collars are no longer in use. As such, HB 1578 would provide no hardship on PSERS operations or its membership.

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January 14, 2022

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Commonwealth of Pennsylvania House of Representatives
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Harrisburg, PA 17120-2196

RE: **House Bill 1671, P.N. 1874**

Dear Chairman Grove:

Thank you for extending an invitation to the management team of the Public School Employees' Retirement System (PSERS) to testify at the January 20, 2022, public hearing before the House State Government Committee's Subcommittee on Pension Benefits & Risk Management. This letter is meant to supplement our testimony as it relates to House Bill 1671, P.N. 1874.

PSERS has not taken a position on HB 1671 or any other legislation the Subcommittee will discuss at the upcoming hearing. Rather, this letter offers PSERS's technical and legal feedback in keeping with the System's historical practice to stay neutral on legislative policy matters and as well as the Subcommittee's directive mentioned in a December 6, 2021, letter to PSERS Board Chairman Chris Santa Maria.

PSERS Management Analysis

HB 1671 would mandate new fee reporting and transparency-related requirements for the State Employees' Retirement System (SERS) and Public School Employees' Retirement System (PSERS). One key provisions include: live-streaming public meetings and retaining those records for a certain period of time. A second key provision would mandate more investment fee records be made public unless the SERS or PSERS boards decide the records fall into certain nondisclosure parameters: violate a contracted confidentiality agreement, cause substantial competitive harm, or cause a negative financial impact. Other provisions would require additional fee, performance and travel-cost reports.

As the basis for its hearing testimony, PSERS management will rely on its previous communication, dated Aug. 31, 2021, we had the Independent Fiscal Office. Copies are attached.

Enclosures

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August 31, 2021

Matthew Knittel, Director
Independent Fiscal Office
Rachel Carson State Office Building400
Market Street
Harrisburg, PA 17105
RE: HB 1960, PN 2794

Dear Mr. Knittel,

I am writing in response to your letter of August 18, 2021, seeking an analysis of House Bill1671, Printer's Number 1874.

PSERS management has reviewed House Bill 1671 and determined the bill would not cause a "material actuarial impact" on the System as defined under Act 37 of 2020. Therefore, it is not necessary to retainthe System's contracted actuarial firm, Buck Global LLC, to conduct an actuarial note with 30-year projections.

Management's review of the bill has identified potential administrative and operational costs with the proposed legislation. Those costs in terms of existing staff time and resources could be reduced further if the General Assembly is amenable to making minor legislative changes as outlined below.

House Bill 1671, Printer's Number 1874

Summary Analysis

A version of this bill was introduced in the General Assembly during the 2019-20 legislative cycle, leadingto a series of long, fruitful discussions among PSERS management, the prime sponsor and leaders of the General Assembly. House Bill 1671 carries the same language all sides negotiated last session with a few minor deviations:

- **Bill page 2, lines 7 & 8,** reverts to the original HB 1964 language requiring retention of public board meeting video and records online for a period of at least threeyears and maintained for a period of seven years. Language agreed to last session would have required retention of these records for only one year versus seven years.
- **Bill page 6, lines 3 through 8**, reverts to previous requirements in HB 1964requiring the Board to annually submit an investment performance report to each member of the General Assembly within **six months** of the end of the fiscal year. Agreed to language from last session would have required only notice be given to each member of the General Assembly and would have permitted the Board up to a one-yeargrace period after the close of the fiscal year to provide the report if reporting was delayed by late receipt of information that was beyond the control of PSERS.
- **Bill page 7, lines 2 through 4**, reverts to previous requirements in HB 1964 requiring reporting of all travel or other expenses incurred by staff of the system or planand paid for by an external investment manager,

fund or consultant. Agreed to language from last session's bill specified that the travel expenses would be disclosed ina manner determined by the Board and specified that the staff being referenced were staff of PSERS.

Financial Cost Estimates

- Board Meeting Videos: PSERS management estimates the cost for storing the online meeting videos and records to be relatively *de minimis* based on current contractual and technology procedures used by PSERS and the Governor's Office ofAdministration.
  1. PSERS did not have the technological and contractual resources needed to livestream Board of Trustees meetings and store the footage when a versionof HB 1671 was introduced in 2019-20. When the COVID-19 pandemic beganin March 2020, PSERS expended the necessary funds to establish the resources needed to conduct virtual public Board meetings via the MicrosoftTeams platform and Microsoft cloud.
  2. PSERS currently pays about $23 per month per user for all Microsoft 365 services, which is the approved vendor authorized by the Governor's Office of Administration. PSERS Technology Office believes the current Microsoft contract should provide enough cloud space to store the recordings for the years outlined in the bill. If more space is required, the cost would be about15 cents per GB per month for regular storage, and less than 1 cent per GB per month for archive storage. (A Teams meeting recording takes about 0.5 GB per hour.)
  3. The technology and contracting cost estimates could change if theCommonwealth switched providers in the future.
- Investment Performance Report: No additional personnel or contractual costs are envisioned for the investment performance reporting time frame. However, PSERS Investment Office is very concerned that it would not be able to finalize the report in the six-month timeframe due to late receipt of required information from outsideentities. If a one-year reporting grace period is not feasible, a minimum of 9 monthswould allow more grace time to ensure PSERS is able to receive, audit and compile the report.
- Travel report: PSERS Board recently passed a travel policy that provides significantlymore detail than what is being contemplated in the bill. It would be more beneficial and cost effective if PSERS provided a link to the more detailed travelinformation it publishes on PSERS website than incur additional staff time and costs creating a new travel report envisioned by the bill.

In closing, I thank you for the opportunity to opine on HB1671 as part of IFO's responsibility to reviewpension-related legislation under section 615-B of the Administrative Code of 1929. My staff is alwayshere to assist you and your agency with historical, financial or operational information you need to better understand how PSERS operates and its mission to serve roughly half a million Pennsylvanians each year.

Sincerely,

Glen R. Grell
Executive Director

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January 14, 2022

Honorable Seth Grove
Chairman, House State Government Committee
Commonwealth of Pennsylvania House of Representatives
7 East Wing
P.O. Box 202196
Harrisburg, PA 17120-2196

RE: **House Bill 1698, P.N. 1916**

Dear Chairman Grove:

Thank you for extending an invitation to the management team of the Public School Employees' Retirement System to testify at the January 20, 2022, public hearing before the House State Government Committee's Subcommittee on Pension Benefits & Risk Management. This letter is meant to supplement our testimony as it relates to House Bill 1698, Printer's Number 1916.

PSERS has not taken a position on HB 1698 or any of other legislation the Subcommittee will discuss at the upcoming hearing. Rather, this letter offers PSERS management's technical and legal feedback in keeping with the System's historical practice to stay neutral on legislative policy matters as well as the Subcommittee's directive mentioned in a December 6, 2021, letter to PSERS Board Chairman Chris Santa Maria.

PSERS Management Analysis

HB 1698 would require Public School Employees' Retirement System (PSERS) and State Employees' Retirement System (SERS) the 2020 Global Investment Professional Standards (GIPS) and any future updates beginning with the 2022-23 fiscal year.

Management of PSERS and the State Employees Retirement System had worked with the bill's author, Rep. Frank Ryan, a PSERS Board Trustee, on this legislation in summer 2021. PSERS also submitted an administrative and operational cost analysis to the Independent Fiscal Office per Act 37 of 2020.

A copy of the PSERS' Aug. 31, 2021, letter to the IFO and IFO's Sept. 13, 2021 letter to Chairman Grove are attached for the Subcommittee's records. To ensure public records remain consistent, PSERS management submits its IFO letter as the main basis for this written hearing supplement – with the following additional comments:

It is PSERS management's understanding that Rep. Ryan plans to submit an amendment to HB 1698 based on his and his staff's discussion with PSERS and SERS management teams. The amendment would remove the systems' defined contribution plan from the bill's mandated compliance with the 2020 edition of the Global Investment Performance Standards for Asset Owners and any future updates.

- If such an amendment is introduced and approved, PSERS estimated 1-year cost of implementing this bill, as outlined in its IFO letter, would be reduced by **$45,000**, the DC compliance cost projection. The DC-related cost would have been charged to the DC participants, not the fund itself. The amended removal of the DC

component would bring PSERS' estimated 1-year personnel, consulting, and auditing costs of HB 1698 to **$594,500**.

The rest of PSERS analysis to IFO remains unchanged.

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August 31, 2021

Matthew Knittel, Director
Independent Fiscal Office
Rachel Carson State Office Building400
Market Street
Harrisburg, PA 17105
RE: HB 1960, PN 2794

Dear Mr. Knittel,

I am writing in response to your letter of August 18, 2021, in which you requested that the Public School Employees' Retirement System (PSERS) provide an analysis of House Bill 1698, Printer's Number 1916.

PSERS has identified additional administrative and operational costs associated with HB 1698. The estimated costs, however, would not cause a "material actuarial impact" on the defined benefit plan orthe School Employees' Defined Contribution Plan (DC Plan) as defined under Act 37 of 2020. Therefore,PSERS' contracted actuarial firm, Buck Global LLC, does not need to conduct an actuarial note with 30- year projections.

PSERS has been involved in conversations that may result in some minor amendments to this legislation,and we reserve the right to update this note should those amendments occur.

Please accept the following analysis of the potential additional costs that would be incurred in complying with the current proposed legislation.

House Bill 1698, Printer's Number 1916

Summary Analysis

The current version of the bill states the Boards of Trustees of PSERS and the State Employee Retirement System "shall" comply with the 2020 edition of Global Investment Performance Standards for Asset Owners and may adopt any subsequent updates issued by the CFA Institute, a professional investment organization. The standards were developed by the CFA Institute with the goal of creating recommended best practices of calculating and presenting historical investment performance data andconducting due diligence on investment managers.

Financial Cost Estimates

The Institute's 2020 edition of Global Investment Performance Standards (GIPS®) for Asset Owners are comprised of six chapters: Fundamentals of Compliance; Input Data and Calculation Methodology; Total Fund and Composite Maintenance; Total Fund and Composite Time-Weighted Return Report; AdditionalComposite Money-Weighted Return Report; and GIPS Advertising Guidelines. Each chapter includes multiple subsections detailing rules and regulations for complying with 248 different GIPS provisions.
Some provisions are more in-depth than others and all may not pertain to an institutional investor suchas PSERS.

Nonetheless, compliance with such provisions would require additional funding as follows:

• PSERS Investment Office estimates that it would need to hire 1 additional full-time (managerlevel) position dedicated to ensuring the defined benefit plan is GIPS compliant. The Investment Officealso estimates that it could incur up to $200,000 in operational start-up costs in the initial year of adoption.

• If the final version of the bill continues to include the DC Plan, PSERS Deputy Executive Director and Director of Defined Contribution Investments estimates that it could incur at least $45,000in additional contractual costs to ensure the DC Plan is GIPS complaint. Compliance would include additional due diligence on each current DC investment manager, conducting interviews, preparing reporting enhancements, and more. This cost could increase if PSERS were to add additional fund managers to its existing array of investments. Any GIPS costs associated with the increased due diligence must be paid by the participants of the Plan and if the Commonwealth does not earmark money for DC-related GIPS costs in its annual General Fund Budget.

• PSERS Internal Audit Office estimates increased contractual costs of $150,000 for the bill's component that reads "engage a firm to conduct an independent performance verification and examination." The bill does not specify how often the "performance verification and examination" would have to be performed. The estimated cost is for each individual examination and is assumed tooccur on an annual basis.

The above potential costs, on a 1-year basis, are summarized below:

PSERS Potential Annual Cost of GIPS Legislation					
August 25,2021					
	Personnel (Salary & Benefits)		Consulting / Development		Certification / Audit
Investment Office	$244,500		$200,000		$0
Internal Audit	$0		$0		$150,000
DC Plan	$0		$45,000		$0
Totals	**$244,500**		**$245,000**		**$150,000**
Grand Total	**$639,500**				

Source: PSERS Office of Financial Management

In closing, I thank you for the opportunity to opine on HB 1698 as part of IFO's responsibility to review pension-related legislation under section 615-B of the Administrative Code of 1929. PSERS staff is alwayshere to assist you and your agency with historical, financial or operational information you may need to better understand PSERS operations and its mission to serve roughly half a million Pennsylvanians.

Sincerely,

Glen R. Grell Executive
Director

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January 14, 2022

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RE: **House Bill 2010, P.N. 2310**

Dear Chairman Grove:

Thank you for extending an invitation to the management team of the Public School Employees' Retirement System to testify at the January 20, 2022, public hearing before the House State Government Committee's Subcommittee on Pension Benefits & Risk Management. This letter is meant to supplement our testimony as it relates to House Bill 2010, P.N. 2310.

PSERS has not taken a position on HB 2010 or any of other legislation the Subcommittee will discuss at the upcoming hearing. Rather, this letter offers PSERS management's technical and legal feedback in keeping with the System's historical practice to stay neutral on legislative policy matters as well as the Subcommittee's directive mentioned in a December 6, 2021, letter to PSERS Board Chairman Chris Santa Maria.

PSERS Management Analysis

House Bill 2010 would address three specific matters: (1) require Board members, and their designees, to complete fiduciary training; (2) permit the Board to compensate designees; and (3) entitle trustees, board members, appointees or elected officials, and their designees to payment of legal fees unless their conduct was found by a court to constitute a criminal offense, willful misconduct, or self-dealing.

1. Fiduciary Training

- The training requirements of this bill would apply to "a trustee, board member or other appointed or elected official who stands in a fiduciary relationship to the members and beneficiaries of a State fund or a fund of a public pension system, or a designee thereof," which includes the Board, among others. New Board members and designees would be required to complete two hours of "fiduciary law" training their first year on the Board and one hour annually thereafter—current Board members must complete one hour of annual "fiduciary law" training.

- Although "fiduciary law" is not defined in the bill, the bill would require initial training to cover (1) the definition of fiduciary, (2) conflicts of interest, (3) the prudent expert standard, and (4) self-dealing, with annual training thereafter covering "updates and case studies related to [topics (1) – (4)]." The bill specifically would provide that this fiduciary training may be applied toward the Board training requirements under the Retirement Code (§§ 8501(f) & (g)), provided the training meets the requisite criteria.

- It should be noted for the Subcommittee that the Public School Retirement Code (8525 (e)) states "members of the board, employees of the board, and agents thereof shall stand in a fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund and shall not profit either directly or indirectly with respect thereto." The Code does not define "fiduciary relationship." However, PSERS historically has interpreted that section of the Code to mean that the System has an implied obligation to train and educate Board and staff about a fiduciary's legal and ethical obligations outlined in common law, case law and statute. To that end, PSERS has endeavored to provide fiduciary education and training:

2. Designee Compensation

- This bill would permit, but would not require, "the board or governing body of a Commonwealth agency or public pension system," which is broadly defined to include any instrumentality of the Commonwealth — including the Board, to compensate a "designee of a member, trustee or other official of the board or governing body" up to $5,000 per year. This would give the Board the authority to opt to "compensate" a board member's designee. Because it is at the Board's discretion, such compensation would, presumably, be paid out of the fund — meaning such an expenditure would be subject to the same requirements and restrictions as any other expenditure of the fund. This section only would apply to designees, not the actual Board member.

- The estimated cost to the fund would be **$65,000** annually based on the Board's current use of designees.

- Notably, this section only would apply to designees, not the actual Board member. The designees, therefore, would be treated differently than the actual trustees of the board, which may require further amendments to the Retirement Code. Currently, designees are to act in place of the trustee, not in addition to the trustee, under the Retirement Code and PSERS Bylaws. This provision may permit the designee to act alongside the trustee, potentially increasing the current statutory size of the board expressed in the retirement code. Additional amendments to clarify this relationship should be considered.

- Moreover, by identifying the payment as a stipend, the designee may be deemed an employee of PSERS. To the extent the designee is also an employee of the Commonwealth in another capacity, the bill should be reviewed by the State Employees' Retirement System and the Office of Administration, particularly with respect to salary deductions such as tax, retirement, and unemployment compensation.

- Another consideration is that the stipend, presumably paid out of the PSERS fund, would be separate and apart from the full-time salaries the designee would receive as employees of a trustee's legislative, executive, or row office. Thus, if a stipend is considered salary and creates an employee/employer relationship with PSERS, the service rendered as a designee may be restricted to such times that are outside the normal work hours of the designee's regular workday. Otherwise, the designee would be required to take leave from their normal job duties to avoid any misappropriation of Commonwealth funds. The reimbursement of salary or substitute authorized by the Retirement Code to school employers for those trustees who are missing school days was crafted to avoid this issue and specifies that such members are to serve without compensation.

(3) Legal fees

- This bill would require the Board to pay a Board member's — or their designee's — legal fees if they were "reasonably incurred by the individual in defending a threatened, pending or completed legal action against the individual in the individual's capacity as a [Board member or designee]." Payment of legal fees would be prohibited, however, if a court found that the conduct of the individual "constituted a criminal offense, willful misconduct or self-dealing."

- The bill's provisions would differ in part from the Board's own existing indemnification protections outlined in Article VII (pages 38-45) of the Board's Statement if Organization, Bylaws and Other Procedures Policy, which was adopted Jan. 25, 1991, revised on June 13, 2014 and last reviewed by Chief Counsel on Feb. 5, 2016.

- The Board's existing indemnification policy is broader and more detailed than the bill. The policy is broader than the bill because it covers the Board as well as employees and an "agent, partner, or fiduciary of, or in any other capacity, for any corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise" if or until a court determined criminal conduct, willful misconduct, or self-dealing occurred. The Board policy also provides certain procedures and limitations, some of which conflict with the blanket entitlement provided by this bill. For instance, the Board policy requires the indemnitee to provide "prompt written notice" to the system "upon notice of commencement of any proceeding." Unlike the bill, the policy provides settlement authority to the system, grants authority for the System to assume defense of the matter, and permits the system to deny, in writing, indemnification protections.

- From a legal perspective, the bill, if passed, could be implemented as written but would require changes to the Board's indemnification policy. To the extent a new law conflicted with existing policy, the new law would control, and the Board would be required to indemnify a Board member pursuant to the law, which could lead to possible legal fee disputes. For instance, because the bill would *require* payment of legal fees *reasonably incurred* there could be some dispute over the reasonableness of charges incurred by a board member or their designee.

- The bill is silent on legal protections for employees and the system's agents, partners or fiduciaries. As such, the system's employees, etc., would retain the same indemnification protections outlined in the current policy or any new policy the Board, as an independent fiduciary, would adopt to be consistent with state law. It should be noted common law and other statutory provisions also exist to protect employees acting in their official capacity.

- The bill is silent on legal protections for employees and the system's agents, partners or fiduciaries. As such, the system's employees, etc., would retain the same indemnification protections outlined in the current policy or any new policy the Board, as an independent fiduciary, would adopt to be consistent with state law. It should be noted common law and other statutory provisions also exist to protect employees acting in their official capacity.