§ 803. Retroactive membership. a. A public retirement system shall have the authority to grant relief from a failure to file an application for membership in that system in connection with service rendered prior to April first, nineteen hundred ninety-three in accordance with the provisions of this section. If the determination is made by a public retirement system other than the public retirement system of which he or she is a member, such other system shall notify the member's current system of its determination and the retroactive membership resulting from such determination shall be deemed to have been immediately transferred to the member's current system. In such event, the member's current system shall advise such other system of the additional cost resulting from such relief, which shall thereupon be billed and collected by such other system and remitted to the member's current system.

b. Retroactive membership shall be granted to a member of a public retirement system who was entitled to join a public retirement system prior to the date on which the member actually joined such a system provided that:

(1) the member files a written request for retroactive membership in a public retirement system with the member's current retirement system within three years of the effective date of this article, or within two years of the enactment of a local law by the city of New York for a member who: (i) is an employee of the city of New York; or (ii) is not an employee of the city of New York, but has prior employment with such city, which without the transfer and crediting provisions of this article would render him or her ineligible for retroactive membership under the provisions of this section;

(2) membership shall only be granted retroactively back to the date from which the member has served continuously in a position or positions which would have entitled the member to join a public retirement system. For the purpose of this paragraph (and subdivision b of section eight hundred one of this article), a member shall be considered to have served continuously from the earliest date after which he or she shall have rendered at least twenty days of eligible service during each plan year of such public retirement system, excluding one break in service of not more than one plan year or not more than two plan years when such

break in service is attributable to the birth of a child of the member or care for such child or the placement of a child with the member for adoption or foster care, provided that for the limited purposes of this section only, no employment with the city of New York, the board of education of the city of New York or with any employer which participates in the New York city employees' retirement system or the New York city board of education retirement system shall be deemed to be service which would have entitled the member to join a public retirement system, or shall be deemed to be retirement system eligible service, where the person rendering such service would have been deemed by such retirement system prior to May thirty-first, nineteen hundred eighty-eight to be ineligible for membership in such retirement system because he or she was not regularly scheduled to work a sufficient number of hours per year, or because such employment was being rendered not on a per annum basis, but rather on a per hour basis, a per diem basis or some other basis; and

(3) the employer who employed such member at the time he or she was first eligible to join a public retirement system files with the retirement system an affidavit stating that the relief sought is appropriate because the member did not (i) expressly decline membership in a form filed with the employer; (ii) participate in a procedure explaining the option to join the system in which a form, booklet or other written material is read from, explained or distributed, such form, booklet or written material can be produced and documentation or a notation to the effect that he or she so participated exists; or (iii) participate in a procedure that a reasonable person would recognize as an explanation or request requiring a formal decision by him or her to join a public retirement system. Such affidavit shall also set forth the facts and circumstances giving rise to the request for relief, including but not necessarily limited to dates of employment and the date on which the member was first eligible to join a public retirement system and salary information. The employer shall respond to all requests for such affidavits by a public retirement system. A member seeking to prove that he or she did not participate in a procedure described in clause (ii) or (iii) hereof must do so by substantial evidence. An employer shall establish a review process which shall afford a member an opportunity to appear in person or in writing. If a determination has been made to deny

retroactive membership, the employer shall produce an affidavit including a statement of the grounds on which such denial was based. Nothing herein is intended to require a public retirement system to conduct a hearing if one is not customarily held by the system to determine pension rights, privileges or benefits.

c. If a member is entitled to relief pursuant to this section, the public retirement system shall determine the member's date of membership, which shall be the date on which such member would have become a member of such retirement system pursuant to subdivision b of this section.

d. Nothing in this section shall be construed to change or modify the requirements for filing an application for membership prescribed by the head of the retirement system or by applicable law or to modify the obligations of employers or any public retirement system with respect to informing employees of their right to join a public retirement system or with respect to transmitting their application to such a system.

e. (1) The entire cost of retroactive membership granted pursuant to this section shall be paid by the employer who employed such member at the time he or she was first eligible to join a public retirement system, subject to the limitations provided in paragraph two of this subdivision. For the purposes of this section, the additional cost shall be the increase in the accrued liabilities resulting from relief under this section. At the employer's election, the additional cost to be paid by it may be paid with interest equal to the valuation rate of the member's current system in equal annual installments over a period of either five or ten years.

(2) In the case of an individual who on March thirty-first, nineteen hundred ninety-three was a member of any public retirement system and who, on such date, was employed by an employer other than the employer which employed such member at the time he or she was first eligible to join a public retirement system, costs to such original employer shall not exceed a percentage of the total cost but not greater than one hundred percent of such cost; (a) such percentage to be determined in the case of the New York state and local employees' retirement system

and the New York state and local police and fire retirement system by dividing the greater of the amounts calculated under subparagraph (i) or (ii) of this paragraph by the salary used for calculating costs under paragraph one of this subdivision: (i) the annual compensation such member would have earned during the salary period used for calculating costs under this subdivision had such member remained in the original position, as determined by applying annual increases of seven percent from the time of such original twelve month period to the amount of annual compensation such member was actually paid by such employer during the first twelve months of employment or (ii) the amount determined by applying annual increases of seven percent to the amount an individual employed on a full-time basis at the then applicable state minimum wage would have earned during such twelve month period; (b) such percentage in the case of the New York state teachers' retirement system to be determined by dividing by the member's annualized salary in the year in which the cost under paragraph one of this subdivision is determined, by the following: the member's annualized salary in the plan year in which the member was first eligible to join a public retirement system increased by seven percent per year for each year from the plan year in which the member was first eligible to join a public retirement system to the plan year in which such cost is determined.

f. Notwithstanding any other provision of this section to the contrary, this section shall not apply to any person who received a retroactive membership date pursuant to the provisions of chapter one thousand forty-four of the laws of nineteen hundred eighty-one, chapter five hundred thirty-nine of the laws of nineteen hundred eighty-four, chapter five hundred twenty-two of the laws of nineteen hundred eighty-eight or chapter five hundred twenty-three of the laws of nineteen hundred eighty-eight.

g. A member receiving a retroactive membership date pursuant to subdivision b of this section shall pay to his or her current retirement system those payments, with applicable interest thereon, which would have been made by such member had he or she been a member of such retirement system during the period of service beginning from the date which is being credited pursuant to such subdivision b. For members of a

retirement system or pension fund maintained by the city of New York, the granting of any service credit pursuant to this section (1) shall be used only for the purpose of determining the amount of any benefit and not for the purpose of determining eligibility for a benefit and (2) shall not be deemed or construed to create any right for the payment of a pension-providing-for-increased-take-home-pay for such period or to create any liability or responsibility for the funding of such benefit by the city of New York or any other pension obligor or to create any liability or responsibility for the accumulation of a reserve-for-increased-take-home-pay.

h. Anything in this section to the contrary notwithstanding, any member of a public retirement system who, prior to reinstatement to an original date of membership prior to the twenty-seventh day of July, nineteen hundred seventy-six under section six hundred forty-five of this chapter, is required to pay mandatory arrears under this section and still has an amount due, shall, upon application to the comptroller under the provisions of section six hundred forty-five of this chapter for reinstatement under such section six hundred forty-five, and upon conveying in writing to the comptroller a rescission of their election under this section, thereafter not be required to pay mandatory arrears under this section provided that payments previously made for such arrears shall not be refunded to such member. When a member elects to rescind benefits pursuant to this section and makes application under section six hundred forty-five of this chapter as permitted under this subdivision, such member's reinstated rights, benefits and status in the public retirement system will derive and be defined by such section six hundred forty-five rather than this section.