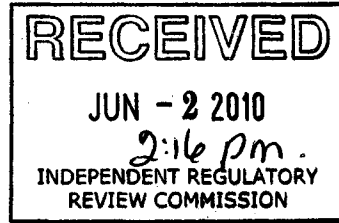


Regulatory Analysis Form

(Completed by Promulgating Agency)



SECTION I: PROFILE



2689

(1) Agency:

State Employees' Retirement System

(2) Agency Number:

Identification Number: 31-7

(3) Short Title:

Priority of forfeitures [taxation], attachments and assignments of funds

(4) PA Code Cite:

4 Pa.Code § 247.11

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Robert Gentzel, 717-787-9657; 30 N. 3rd Street Suite 150, Harrisburg, PA 17101-1716; rgentzel@state.pa.us

Secondary Contact: Brian E. McDonough, Esq., 717-783-7317; 30 N.3rd Street Suite 150, Harrisburg, PA 17101-1716; bmcDonough@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This new regulation sets priorities among conflicting demands on forfeiture, attachments and assignments of members' retirement benefits authorized by the State Employees' Retirement Code ("Retirement Code"), 71 Pa.C.S. §§ 5101 et seq. The court's decision in the *Marshall* case, *Gail G. Marshall v. State Employees' Retirement System*, 887 A.2d 351 (Pa.Cmwlth. 2005), has offered partial guidance in this area. The regulation would enable consistent application of the statute and could avoid litigation of priority issues.

(9) Include a schedule for review of the regulation including:

- | | |
|---|------------------------------------|
| A. The date by which the agency must receive public comments: | 30 days from initial publication |
| B. The date or dates on which public meetings or hearings will be held: | None |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Upon approval |
| D. The expected effective date of the final-form regulation: | Upon final publication |
| E. The date by which compliance with the final-form regulation will be required: | Immediately upon final publication |
| F. The date by which required permits, licenses or other approvals must be obtained: | n/a |

(10) Provide the schedule for continual review of the regulation.

Regulatory Analysis Form

None.

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Retirement Code Section 5902(h). *Gail G. Marshall v. State Employees' Retirement System*, 887 A.2d 351 (Pa.Cmwlth. 2005).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

See (11) above.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation sets priorities among conflicting demands on members' retirement benefits and could avoid or limit future litigation. All members, their beneficiaries and survivors when there are conflicting demands on their retirement benefits. SERS' membership benefits in excess of 200,000 people.

Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

Not applicable.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

None.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Regulatory Analysis Form

All members, their beneficiaries and survivors when there are conflicting demands on their retirement benefits. SERS' membership benefits in excess of 200,000 people.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation will save significant litigation costs and delays when there are conflicting demands upon retirement benefits. An actual dollar amount of the savings cannot be calculated.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

None.

Regulatory Analysis Form

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation could save significant litigation costs to the agency and its over 200,000 members.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

Regulatory Analysis Form

(20a) Provide the past three year expenditure history for programs affected by the regulation.

n/a

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No such information exists.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

None.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are none.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Not applicable.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Not applicable.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

Regulatory Analysis Form

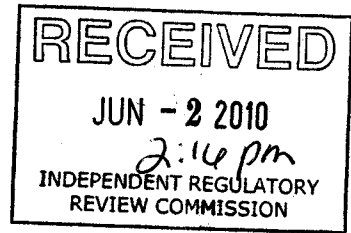
(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No such procedures or paperwork are required.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

CDL-1



**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

State Employees' Retirement System _____
(AGENCY)

BY:
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 31-7

MAY 14 2010

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY:
Acting Chief Counsel

TITLE:
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)
Secretary

Check if applicable
Copy not approved.
Objections attached.

Check if applicable.
No Attorney General approval
or objection within 30 days
after submission.

**FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA**

4 PA.CODE, CH. 247, SECTION 247.11

This new regulation sets priorities among conflicting demands on forfeiture, attachments and assignments of members' retirement benefits authorized by the State Employees' Retirement Code.

**Notice of Final Rulemaking
State Employees' Retirement Board
State Employees' Retirement System
(4 Pa. Code Chapter 247)**

Preamble

The State Employees' Retirement Board ("Board") proposes to amend 4 Pa. Code, Chapter 247 by adding Section 247.11 as a new regulation pertaining to the priority of forfeiture, attachments and assignments of funds.

A. Effective Date

The amendment will go into effect upon publication in the *Pennsylvania Bulletin* as a final rulemaking.

B. Contact Person

For further information contact Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 787-9657, or Brian E. McDonough, Deputy Chief Counsel, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 783-7317.

C. Statutory Authority

This final rulemaking is being made under the authority of Sections 5902(h) and 5953 of the State Employees' Retirement Code ("Retirement Code"), 71 Pa.C.S. Sections 5101 *et seq.*

D. Background and Purpose

This final-form regulation sets priorities among conflicting demands on forfeiture, attachments and assignments of members' retirement benefits authorized by the Retirement Code. A court decision has offered partial guidance in this area. The regulation would enable consistent application of the statute and could avoid litigation of priority issues.

E. Summary of Comments and Responses

Comments were received from the Independent Regulatory Review Commission (IRRC) regarding this rulemaking (attached). The comments are mooted by revisions in the final rulemaking. The Board's response is attached.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulation.

Benefits

The regulation is intended to alleviate confusion and prevent possible disputes with regard to conflicting demands upon members' retirement benefits.

Costs

There are no costs to the Commonwealth, its citizens or state employees associated with this proposal.

Compliance Costs

The amendment is not expected to impose any additional compliance costs on state employees.

G. Sunset Review

Not applicable.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 18, 2008 the Board submitted a copy of the proposed amendment, published at 38 Pa.B. 2062 to IRRC and the Chairpersons of the House State Government Committee and the Senate Finance Committee. In addition to submitting the proposed amendment, the Board has provided IRRC and the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation". A copy of this material is available to the public upon request.

Under Section 5(c) of the Regulatory Review Act, the Board is required to provide IRRC and the Committees with copies of the comments received during the public comment period, as requested. No comments from the Committees, or the public were received. IRRC's comments and the Board's response thereto are attached.

Under Section 5.1(j.2) of the Regulatory Review Act, on _____, 2010, this final form regulation was deemed approved by the House and Senate Committees. Under Section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2010, and approved the final-form regulation.

I. Findings

The Board finds that:

- (1) Public notice of intention to amend this regulation was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required) by publication at 38 Pa.B. 2062.
- (2) The final-form rulemaking is necessary and appropriate for the administration of the Retirement Code.

J. Order

The Board, acting under 71 Pa. C.S. §5902(h) and the Commonwealth Documents Law, orders that:

- (a) The regulation of the Board, 4 Pa. Code Chapter 247, is amended to read as set forth in Annex A.
- (b) The amendments shall be submitted to the Office of Attorney General for approval as to legality as required by law.
- (c) The Secretary of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

NICHOLAS J. MAIALE
Chairman
State Employees' Retirement Board

ANNEX "A"

(Deletions from the proposed language appear in brackets; the entire regulation is new; new language is underscored)

4 Pa. Code Chapter 247

§ 247.11. Priority of [taxation] forfeitures, attachments and assignments of funds.

(a) The right of a person to any benefit or right accrued or accruing under the provisions of the State Employees' Retirement Code, 71 Pa.C.S. §§ 5101-5956, as amended from time to time, and the moneys in the fund are subject to prior payment or forfeiture of rights, as set forth in Section 5953, in the following sequential priority to the extent such forfeitures and competing claims exist at the time the distribution is made as determined by the Board consistent with applicable law :

(1) For pension forfeitures, fines and restitution as provided by the act of July 8, 1978 (P.L. 752, No. 140), as amended from time to time, or pursuant to section 16(b) of Article V of the Constitution of Pennsylvania [or as otherwise provided by law];

(2) To the employer after certification by the head of the employer of the amount that the member is obligated to pay, and after review and approval by the employer's legal representative or upon receipt of an assignment from the member in the amount so certified;

[(3) To each appropriate taxing authority for money owed on account of taxes;]

[4](3) To an alternate payee or attaching authority as set forth in an approved domestic relations order, order for support, or order for the enforcement of arrearages as described in Section 5953.1 of the Retirement Code;

[5](4) To the member directly or to an eligible retirement plan by way of an eligible rollover distribution.

(b) Payments from a member's retirement benefits under subsection[s] (a)(2) [and (a)(3)] shall first be made from the entire accumulated deductions then standing to the credit of the member upon entering pay status. The remaining balance, if any, of payments due under subsection[s] (a)(2) [and (a)(3)] and payments due under (a)(3)[4] for orders for support and/or orders for the enforcement of arrearages shall be paid out of the monthly annuity payable to or on behalf of the member at the rate of up to 50% (as determined by SERS consistent with applicable law) of the gross monthly annuity until paid in full. The amount payable under subsection (a)(3)[4] pursuant to an approved domestic relations order may be paid out of the monthly annuity paid to or on behalf of the member at the rate of up to 100% (as determined by the System [SERS] consistent with applicable law) of the member's remaining monthly annuity until paid in full. Unpaid amounts remaining after termination of an annuity paid to or on behalf of the member or, after the death of the member prior to receiving an annuity, shall be paid out of the remaining initial present value then standing to the credit of the member, if any.

[(c) Payments pursuant to those pension forfeitures described in subsection (a)(1) shall be made pursuant to the operative forfeiture law.]

Comments of the Independent Regulatory Review Commission



State Employees' Retirement Board #31-7 (IRRC #2689)

Priority of Taxation, Attachment and Assignment of Funds

July 2, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the May 3, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Employees' Retirement Board (Board) to respond to all comments received from us or any other source.

Section 247.11. Priority of taxation, attachments and assignment of funds. - Statutory authority; clarity.

Subsection (a)(3) pertains to money that is owed on account of taxes. We have three concerns. First, would this subsection apply to taxes owed by a member not on account of the member's employment? For instance, would this subsection apply to taxes owed due to the sale of real estate by a member? We recommend that the provision be clarified to state that any obligations of a member must relate to their employment.

Second, what is the Board's statutory authority for this provision? If the Board is relying on particular statutes as justification for this subsection, references to those statutes should be included in the final-form regulation.

Third, assuming the Board has the statutory authority for Subsection (a)(3), what is the sequential priority for the various taxing authorities that might seek payment? For example, would a claim filed by the Internal Revenue Service for taxes owed take precedence over a claim filed by the Pennsylvania Department of Revenue or a local employment tax collection agency?

In addition, Subsection (a)(1) includes the phrase "as otherwise provided by law" and Subsection (c) includes the phrase "under the operative forfeiture law." Both phrases lack clarity. We recommend that specific statutory citations be included in the final-form regulation.

2008 JUL - 3 P 2 07
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LEGAL OFFICE
STATE EMPLOYEES/
RETIREMENT SYSTEM

**STATE EMPLOYEES' RETIREMENT BOARD RESPONSE TO COMMENTS
OF THE INDEPENDENT REGULATORY REVIEW COMMISSION
STATE EMPLOYEES' RETIREMENT BOARD #31-7 (IRRC #2689)**

Priority of Forfeitures, Attachment and Assignment of Funds

May 25, 2010

We submit for your consideration the following response to IRRC's comments on the final rulemaking as set forth in Annex A herein which deletes any reference to taxes.

**Section 247.11. Priority of forfeitures, attachments and assignment of funds.—
Statutory authority; clarity.**

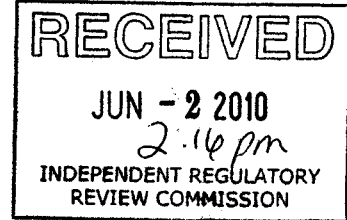
IRRC's comments are mooted by deletion of tax references due to their complexity, fluidity and the fact that they are already described in the statute at 71 Pa.C.S. § 5953. While taxes may not be easily amenable to rulemaking due to these factors, a separate regulation dedicated to taxes may be considered at a future date. The phrases "as otherwise provided by law" and "under the operative forfeiture law" were likewise deleted and replaced with the phrase "consistent with applicable law" which is true for any regulation.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 31-7
 SUBJECT: PRIORITY OF TAXATION, ATTACHMENTS, AND ASSIGNMENT OF FUNDS
 AGENCY: STATE EMPLOYEES' RETIREMENT SYSTEM

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions



FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/2/10	<i>Jerry J Noel</i>	House Minority Chair - Rep. Kerry Benninghoff HOUSE COMMITTEE ON STATE GOVERNMENT
6/2/10	<i>[Signature]</i>	MAJORITY CHAIRMAN <u>Rep. Babette Josephs</u>
6/2/10	<i>[Signature]</i>	Senate Minority Chair - Senator Jim Ferlo SENATE COMMITTEE ON FINANCE
6/2/10	<i>[Signature]</i>	MAJORITY CHAIRMAN <u>Senator Patrick Browne</u>
6/2/10	<i>K Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)