

ARTHUR COCCODRILLI, CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN.
NANCY SABOL FRANTZ, ESQ.
JOHN F. MIZNER, ESQ.
KAREN A. MILLER
KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irc@irc.state.pa.us
<http://www.irc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 2, 2008

Leonard M. Knepp, C.P.A., Executive Director
State Employees' Retirement Board
30 North Third Street
Harrisburg, PA 17108-1147

Re: Regulation #31-7 (IRRC #2689)
State Employees' Retirement Board
Priority of Taxation, Attachment and Assignment of Funds

Dear Mr. Knepp:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

wbg

Enclosure

cc: Honorable Patrick M. Browne, Chairman, Senate Finance Committee
Honorable John N. Wozniak, Minority Chairman, Senate Finance Committee
Honorable Babette Josephs, Majority Chairman, House State Government Committee
Honorable Matthew E. Baker, Minority Chairman, House State Government Committee

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.

Facsimile Cover Sheet




Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Bob Gentzel
Agency: State Employees' Retirement Board
Phone: 7-9657
Fax: 3-7300
Date: July 2, 2008
Pages: 3

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Employees' Retirement Board's regulation #31-7 (IRRC #2689). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: _____


Patricia J. Dence

Date: _____

7.2.08