

# Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

**INDEPENDENT REGULATORY  
REVIEW COMMISSION**

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(1) Agency  
State Employees' Retirement System

(2) Agency Number: 31  
Identification Number: 14

IRRC Number: 3128

(3) PA Code Cite:  
4 Pa.Code § 245.4  
4 Pa.Code § 247.5.1

(4) Short Title:  
Member purchases of credit for previous State service  
and  
Reelection of benefit options

(5) Agency Contacts (List Telephone Number and Email Address):  
Primary Contacts: Jay Pagni, Director of Communications and Policy, 717-237-0236 – jaypagni@pa.gov  
Sharon S. Smith, Legislative Specialist, 717-237-0227 – sharosmith@pa.gov  
Secondary Contact: Catherine Nolan, Assistant Counsel, 717-237-0392 – canolan@pa.gov

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

<input type="checkbox"/> Proposed Regulation	<input type="checkbox"/> Emergency Certification Regulation; N/A
<input checked="" type="checkbox"/> Final Regulation	<input type="checkbox"/> Certification by the Governor
<input type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> Certification by the Attorney General

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

The amendment to §245.4 requires that a member electing to purchase previous State service credit, must purchase credit for all such service simultaneously. The amendment also would extend the payroll deduction payment period to six years.

The addition of §247.5.1 expresses a reasonable interpretation of the Retirement Code provision allowing retired members to reelect benefit options if the designated survivor annuitant dies or the member divorces or marries. It states that the right to reelect is valid for seven years from the triggering event or until the occurrence of another triggering event.

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

71 Pa. C.S. §5902(h).

(9) 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.

No.

(10) 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 amendments clarify an existing regulation and put members on notice of the Board's interpretation of the two provisions relating to service purchases and benefit reelections.

SERS' regulations and policies apply only to members of the system, and not to the general public. By amending §245.4, the Board is publishing its long-standing practice regarding purchasing previous optional service credit and adding flexibility to the terms of payment. By adding §247.5.1, the Board is publishing its interpretation of Section 5907(j) to include a reasonable time limitation on the member's ability to exercise the reelection right without unnecessarily exposing the system to manipulation and expressly stating that members may not accumulate reelection rights.

(11) 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.

There are no applicable federal pension standards. SERS is exempt from ERISA because it is a governmental plan. SERS is subject to provisions of the Internal Revenue Code, however, those provisions are not relevant here.

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

These regulatory amendments will have no impact on Pennsylvania's ability to compete with other states.

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

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

SERS has not asked for input from the general public because these regulations will not affect that population.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Not applicable because they are not affected by these regulations.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The amendment to §245.4 applies only to members purchasing previous State service credit; and the addition of §247.5.1 applies only to retired members who have elected a retirement benefit option with a survivor annuity.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There are no financial, economic and social impacts associated with these regulatory amendments.

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

There are no costs or adverse effects associated with these regulatory amendments.

(19) 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.

There are no costs or savings associated with these regulatory amendments.

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

There are no costs or savings associated with these regulatory amendments.

(21) Provide a specific estimate of the costs and/or savings to the **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.

There are no costs or savings associated with these regulatory amendments.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

Not applicable.

(23) 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.

\* There are no costs or savings to the Commonwealth, its citizens, local governments or school employees associated with this proposal.

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

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Not applicable.

Program	FY -3	FY -2	FY -1	Current FY
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(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

Not applicable.

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

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

Not applicable.

(26) 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 no alternatives.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Not applicable.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Not applicable.

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

- |   |                                    |
|---|------------------------------------|
| A. The date by which the agency must receive public comments:                               | <u>2/23/2016</u>                   |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>none scheduled at this time</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>6/15/2016</u>                   |
| D. The expected effective date of the final-form regulation:                                | <u>6/25/2016</u>                   |
| E. The date by which compliance with the final-form regulation will be required:            | <u>Not applicable</u>              |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>Not applicable</u>              |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Not applicable.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

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

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections  
attached.

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

State Employees' Retirement System  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 31-14

DATE OF ADOPTION: June 10-2015

BY: David E. Durbin

TITLE: David E. Durbin, Secretary  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: Marisa H. Z. Lehr

5-5-2016  
DATE OF APPROVAL

Deputy General Counsel  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

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

**Notice of Final-Form Rulemaking  
State Employees' Retirement Board  
State Employees' Retirement System  
(4 Pa. Code Chapters 245 and 247)  
(Member Purchases of Credit for Previous State Service and  
Reelection of Benefit Option)**

**Preamble**

The State Employees' Retirement Board ("Board") is submitting this final-form rulemaking amending 4 Pa. Code Chapter 245, Section 245.4 (relating to member purchases of credit for previous state service) and amending 4 Pa. Code Chapter 247, to add Section 247.5.1 (relating to reelection of benefit option).

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

**B. Contact Persons**

For further information contact Jay Pagni, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, 717-237-0236, Sharon S. Smith, Legislative Specialist, 717-237-0227, or M. Catherine Nolan, Assistant Counsel, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, 717-237-0392.

**C. Statutory Authority**

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

**D. Background and Purpose**

The Retirement Code permits State Employees' Retirement System ("SERS") members and Public School Employees' Retirement System ("PSERS") members who have elected Multiple service to purchase credit for previous State service that is uncredited because membership in SERS was optional at the time it was rendered. The amendment to §245.4 expressly requires that a member who elects to purchase previous State service credit, must



purchase credit for all such service simultaneously. Partial purchases of previous optional State service are not allowed. The proposed amendment also would extend the time to pay for such period by payroll deductions from the customary three years to six years.

The Board has long interpreted the Retirement Code to require that the purchase be comprehensive and Commonwealth Court affirmed SERS' interpretation in *Susan Shinkman v. State Employees' Retirement Board*, 958 A.2d 613 (Pa. Cmwlth. 2008). Therefore, this amendment maintains the status quo except in that it extends the payroll deduction payment period for the flexibility of the member.

The addition of §247.5.1 pertains to a member's limited right to reelect a benefit option. The Retirement Code permits retired members who selected a retirement benefit payment option with a joint and survivor annuity to select a new benefit payment option under certain circumstances. Specifically, the Retirement Code provides that if the designated survivor annuitant predeceases the member or the member divorces or marries after retirement, the member has the right to reelect an option. The Retirement Code does not expressly state the time within which the member may exercise the reelection right.

The absence of a time limitation would allow a member to delay changing the option indefinitely and could result in the payment of a larger total benefit. When a member reelects a benefit option, the member's benefit and any survivor annuity is recomputed to be actuarially equivalent to the value of the benefit remaining at the time of the recomputation. The recomputation often produces a lower monthly annuity payment to the member. By delaying the option change, the member can postpone such benefit payment reduction and could secure a larger total benefit that would be payable otherwise. In addition, the statute is silent as to whether a member who experiences multiple triggering events has a single right to change the initial benefit option or whether reelection options may accumulate, potentially allowing a member to accumulate opportunities to change the option selection, thereby further enhancing the member's benefit beyond the statutory maximum.

The amendment to §247.5.1 provides the right to reelect an option remains valid until the earlier of seven years from the triggering event or upon the occurrence of a subsequent triggering event.

## **E. Benefits, Costs and Compliance**

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

### ***Benefits***

This final-form rulemaking makes SERS' regulation regarding purchasing service credit for previous optional State service consistent with SERS' long-standing interpretation of the Retirement Code and with Commonwealth Court precedent and eases members' payment terms. It also sets forth reasonable limitations, clarifying a member's ability to select a new benefit payment option.

***Costs***

The amendments maintain the status quo, except with regard to the extended payment period. The extended payment period has no impact on the service purchase cost or applicable interest. Therefore, these amendments have no associated cost.

***Compliance Costs***

This final-form rulemaking will not impose any additional compliance costs on state employees or employers.

**F. Sunset Review**

Not applicable.

**G. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC), the Chairpersons of the House State Government Committee and the Senate Finance Committee, and the Legislative Reference Bureau on January 6, 2016. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a detailed regulatory analysis form prepared by SERS in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

By letter dated March 24, 2016, the Executive Director of IRRC notified the Executive Director of SERS that IRRC had reviewed the proposed regulation #31-14 and that IRRC had no comments, recommendations or objections to offer on this regulation. The Regulatory Review Act specifies detailed procedures for review by the General Assembly and the Governor of objections raised by IRRC prior to final publication of the amendment by the Board.

**H. Public Comments**

On January 16, 2016, the Board published in the *Pennsylvania Bulletin* a notice of proposed rulemaking and written public comment period on the proposed amendments to Chapters 245 and 247. The comment period closed on February 23, 2016, and no comments on the proposed rulemaking were received. Subsequently, during a review prior to submitting the final form rulemaking, a non-substantive correction was made in 245.4 (a), to add "a" between "who is" and "member of the". No other changes have been made.

**I. Findings**

The Board finds that:

(1) Public notice of intention to amend the regulations herein was given under 1 Pa.Code § 7.1 (relating to notice of proposed rulemaking required) by publication at 44 Pa.B. 4641.

(2) The amendments to the rules and procedures herein are necessary and appropriate for the administration of the Retirement Code.

**J. Order**

The Board, acting under the State Employees' Retirement Code and the Commonwealth Documents Law, including particularly those sections specified in the several authority sections herein specified with respect to each provision of the rules and procedures of SERS modified by this order, orders:

(a) The regulations for the Board, 4 Pa. Code Chapter 245 and Chapter 247 are amended by the changes to section 245.4 and the addition of section 247.5.1, as set forth in Annex A.

(b) The amendments shall be submitted to the Office of Attorney General for approval as to form and 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*.

DAVID R. FILLMAN

Chairman  
State Employees' Retirement Board

# Annex A

TITLE 4. ADMINISTRATION  
PART X. STATE EMPLOYEES' RETIREMENT BOARD  
CHAPTER 245. CONTRIBUTIONS

4 Pa. Code § 245.4 (2015)

## Draft Amendment to Regulation

(Note: Additions to existing language are noted by **bold underscoring**, and deletions are noted by **[bold brackets]**.)

§ 245.4. Member *[contributions for the purchase]* purchases of credit for previous State service *[or to become a full coverage member]*

*[Multiple service election.* A school employe and a member of the Public School Employees' Retirement System may, if he elects multiple service, apply for and receive credit for total previous State service, provided he makes the required member contributions for the purchase of previous] **(a) A State employee who is a member of SERS or a school employee who is a member of the Public School Employees' Retirement System who has timely elected Multiple service may receive service credit for all uncredited previous State service, provided the member applies for and makes the required contributions for all such uncredited** State service, regardless of the amount of State service previously credited[, if any].

**(b) The member may make the required contributions through payroll deductions over a period of not more than six years.**

TITLE 4. ADMINISTRATION  
PART X. STATE EMPLOYEES' RETIREMENT BOARD  
CHAPTER 247. BENEFITS

**Draft Amendment to add Regulation**

(Note: Additions to existing language are noted by **bold underscoring**, and deletions are noted by **[bold brackets]**.)

*§ 247.5.1. Reelection of benefit option*

(a) A member who has filed an application for benefits and who has designated a survivor annuitant shall have the right to reelect a benefit option and to nominate a beneficiary or a new survivor annuitant if, after filing such application, the designated survivor annuitant predeceases the member, the member is awarded a divorce, or the member becomes married, provided the member files a timely application for option change with the board.

(b) The member's right to reelect a benefit option shall remain valid for seven years from the date of such death, divorce or marriage that triggered the right or until the occurrence of a subsequent triggering event, whichever occurs first. Upon the occurrence of a subsequent triggering event, a superseding right to reelect shall commence.

(c) Upon the member's timely filing of an application for option change, the member's annuity shall be recomputed to be actuarially equivalent to the annuity in effect immediately prior to such recomputation.

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

**I.D. NUMBER:** 31-14

**SUBJECT:** MEMBER PURCHASES OF CREDIT FOR PREVIOUS STATE SERVICE &  
REELECTION OF BENEFIT OPTIONS

**AGENCY:** STATE EMPLOYEES' RETIREMENT SYSTEM

**TYPE OF REGULATION**

- Proposed Regulation
- 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

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**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON STATE GOVERNMENT</i>
6/2/16	<i>Pamela F. Meynard</i>	MAJORITY CHAIR <u>Daryl D. Metcalfe</u>
6/2/16	<i>Kathy Seed</i>	MINORITY CHAIR <u>Mark B. Cohen</u>
		<i>SENATE COMMITTEE ON FINANCE</i>
6/2/16	<i>Beth Krick</i>	MAJORITY CHAIR <u>John H. Eichelberger, Jr.</u>
6/2/16	<i>Athol U. Pagan</i>	MINORITY CHAIR <u>John P. Blake</u>
6/2/16	<i>K Cooper</i>	
_____	_____	<i>INDEPENDENT REGULATORY REVIEW COMISSION</i>
_____	_____	<i>ATTORNEY GENERAL (for Final Omitted only)</i>
_____	_____	<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>