

PROPOSED RULEMAKING

STATE EMPLOYEES' RETIREMENT BOARD

[4 PA. CODE CHS. 245 AND 247]

Member Purchases of Credit for Previous State Service and Re-election of Benefit Option

The State Employees' Retirement Board (Board) proposed to amend § 245.4 (relating to member purchases of credit for previous State service) and add § 247.5a (relating to re-election of benefit option) to read as set forth in Annex A.

A. *Effective Date*

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

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 proposed rulemaking is being made under the authority of 71 Pa.C.S. § 5902(h) (relating to administrative duties of the board).

D. *Background and Purpose*

Part XXV of 71 Pa.C.S. (relating to State Employees' Retirement Code) (Retirement Code) permits members of the State Employees' Retirement System (SERS) and the Public School Employees' Retirement System (PSERS) 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 proposed amendment to § 245.4 expressly requires that a member who elects to purchase previous State service credit shall purchase credit for all service simultaneously. Partial purchases of previous optional State service are not allowed. The proposed amendment also extends the time to pay for period by payroll deductions from the customary 3 years to 6 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 proposed amendment maintains the status quo except in that it extends the payroll deduction payment period for the flexibility of the member.

Proposed § 247.5a pertains to a member's limited right to re-elect 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 re-elect an option. The Retirement Code does not expressly state the time within which the member may exercise the re-election right.

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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 re-elects 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 the benefit payment reduction and could secure a larger total benefit that would be payable otherwise. In addition, the Retirement Code is silent as to whether a member who experiences multiple triggering events has a single right to change the initial benefit option or whether re-election 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.

Proposed § 247.5a provides the right to re-elect an option remains valid until the earlier of 7 years from the triggering event or upon the occurrence of a subsequent triggering event.

E. *Benefits, Costs and Compliance*

Benefits

This proposed 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 proposed rulemaking maintains 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 proposed amendments have no associated cost.

Compliance Costs

The proposed rulemaking will not impose additional compliance costs on State employees or employers.

F. *Sunset Review*

A sunset review is not applicable.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 6, 2016, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House State Government Committee and the Senate Finance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The Regula-

tory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. *Public Comments*

Those who could be affected by the proposed amendment to § 245.4 include a mandatory member of SERS or multiple service member of PSERS who has previous optional State service that is uncredited. Also, potentially affected by proposed § 247.5a is a SERS member who elects a retirement benefit payment option with a joint and survivor annuity.

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to Jay Pagni, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716. Comments submitted by facsimile will not be accepted. The Board must receive comments, suggestions or objections by February 23, 2016.

Electronic comments. Comments may be submitted by e-mail to the Board at jpagni@pa.gov and must be received by the Board by February 23, 2016. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, comments should be retransmitted to ensure receipt.

DAVID R. FILLMAN,
Chairperson

Fiscal Note: 31-14. No fiscal impact; (8) recommends adoption.

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

§ 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 State service, regardless of the amount of State service previously credited, if any.]

(a) A State employee who is a member of the System or a school employee who is 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 uncredited State service, regardless of the amount of State service previously credited.

(b) The member may make the required contributions through payroll deductions over a period of not more than 6 years.

CHAPTER 247. BENEFITS

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 247.5a. Re-election of benefit option.

(a) A member who has filed an application for benefits and who has designated a survivor annuitant has the right to re-elect a benefit option and to nominate a beneficiary or a new survivor annuitant if, after filing the 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 re-elect a benefit option remains valid for 7 years from the date of the 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 re-elect shall begin.

(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 the recomputation.

[Pa.B. Doc. No. 16-72. Filed for public inspection January 15, 2016, 9:00 a.m.]