

**CHAPTER 249. ADMINISTRATION, FUNDS, ACCOUNTS,
GENERAL PROVISIONS**

Subchap.		Sec.
A.	ADMINISTRATION	249.1
E.	GENERAL PROVISIONS	249.51

Subchapter A. ADMINISTRATION

- Sec. 249.2. Administrative duties of the Board.
- 249.3. Duties of the Board to advise and report.
- 249.4. Reports to the Public School Employees' Retirement Board.
- 249.5. Applications and elections of members.
- 249.6. Duties of heads of departments.
- 249.7. Rights and duties of employees and members.
- 249.8. Rights and duties of annuitants.

§ 249.2. Administrative duties of the Board.

The Board will furnish, to the extent required by Federal law, information to members concerning those provisions of the Internal Revenue Code of 1954, which may impose a tax liability to a member or beneficiary. The sole responsibility for such tax liability, including tax computations, is imposed upon the member and not the Board and the member should consult tax counsel for advice in these matters since the Board is not qualified or required to offer same.

Source

The provisions of this § 249.2 amended May 26, 2006, effective May 27, 2006, 36 Pa.B. 2517. Immediately preceding text appears at serial page (204977).

§ 249.3. Duties of the Board to advise and report.

Whenever an active member or eligible school employee applies for purchase of credit for previous State or intervening military service, the Board will bill the applicable employer, as the case may be, for its share in order to complete the purchase of such service. The employer's billing shall be paid in a lump sum within 30 days thereafter and credit shall be applied to the member accordingly.

Source

The provisions of this § 249.3 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18763).

§ 249.4. Reports to the Public School Employees' Retirement Board.

(a) *Multiple service election.* A former member who becomes an active member in the Public School Employees' Retirement System and elects multiple service will receive a certification from the Board including not only the total cred-

ited service in the System and the annual compensation received therefrom, as provided in section 5904(b)(1) and (2) of the code (relating to duties of the board to report to the Public School Employees' Retirement Board) but also the amount of the Social Security integration credited service as provided in section 5904(b)(3) of the code. In the event a member vests his account or is in receipt of an annuity, which includes benefits representing Social Security integration credits, or in the event the member enters school service within a period of 6 months after termination of State service, not having withdrawn his accumulated deductions; he shall be eligible for retention of those credits if he becomes an active member in the Public School Employees' Retirement System and elects multiple service. In all other cases of members electing multiple service as members of the Public School Employees' Retirement System, previous Social Security integration credits shall not be reinstated and shall be deemed cancelled. Reference should be made to § 247.6 (relating to termination of annuities).

(b) *Multiple service membership.* After a member with multiple service, or his legally constituted representative, as the case may be, applies for a multiple service benefit from the Public School Employees' Retirement System, there will be transferred to that System, under section 5904(c)(2) of the code, the total accumulated deductions of the member and the actuarial reserve necessary to fund the State portion of the annuity based on the calculation of the final average salary applicable to the benefit to which he is entitled. The transfer will be made no later than the end of the calendar quarter following the effective date of such benefits.

Source

The provisions of this § 249.4 amended through March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18763).

§ 249.5. Applications and elections of members.

(a) *General.* In the event a member of the Public School Employees' Retirement System, who is receiving an annuity from the System, elects to become a multiple service member, his annuity payments shall be discontinued retroactively to the date he became a member of the Public School Employees' Retirement System and any annuity payments received from this System subsequent to that date shall be restored to the Fund.

(b) *Time for payments.* Pursuant to section 5905(g) of the code (relating to duties of the board regarding applications and elections of members), in the case of the death of an active member or one on leave without pay, the Board will pay the benefits to which those members would be entitled to the designated beneficiary or the legally constituted representative, as the case may be, not more than 60 days after all necessary data is both received from the department and the selection of the benefit is made by such beneficiary or legally constituted representative.

(c) *Group hospitalization annuitant plan.* A member or vestee entering upon retirement, who has had hospitalization and medical insurance coverage through the State Employee Program while an active employee, may elect to convert, at the time of retirement, the membership into such State annuitant group plan and pay the monthly charges applicable thereto. Election of the coverage shall not be available subsequent to the time of retirement. Under the criteria that the Executive Board may establish with respect to contributions made to a State annuitant plan, the Board will apply to each member thereof such sums to defray the costs, which the Executive Board may determine.

§ 249.6. Duties of heads of departments.

(a) In those instances where the head of a department, board, commission or agency does not certify to the State Treasurer the amounts deducted from each payroll for member contributions, because its payroll does not emanate from that agency, it shall nevertheless certify to the Board the amounts deducted from each payroll simultaneously with the payments made to the Board for the contributions. The contributions will be deposited into the State Treasury by the Board.

(b) The head of each department shall certify the information sufficient to determine the amount of credited service earned in a manner prescribed by the Board and shall also furnish quarterly earnings records of all members in such manner as the Board may prescribe.

Source

The provisions of this § 249.6 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18764).

§ 249.7. Rights and duties of employees and members.

(a) *Proof of date of birth.* The Board will accept certification from the employing agency as to the proof of the date of birth for purposes of this section, which shall also include certification by the member, as required by the Board. The proof of date of birth shall be furnished concurrently with the Application for Membership. Under section 5907(a) of the code (relating to rights and duties of State employees and members) each new State employee shall furnish proof of his date of birth. The following, in the order of preference, will be acceptable:

- (1) Birth certificate.
- (2) Baptismal record.
- (3) Selective service record.
- (4) Armed forces discharge.
- (5) Passport.
- (6) School record.
- (7) Life insurance policy.
- (8) Naturalization record.
- (9) Alien registration record.

(10) Another record that may be submitted by the member, which is acceptable to the Board.

(b) *Time when service purchase is paid.* Under section 5907(d) of the code, an eligible school employee who desires to receive credit for service in this Sys-

tem or to become a full coverage member shall, upon written agreement to do so, make payment for the purchase in a lump sum and not by payroll deductions within 30 days after billing.

(c) *Full coverage election.* In the event a joint coverage member elects to vest his retirement rights, under section 5907(f)(2) of the code, the member shall concurrently elect to become a full coverage member and agree to pay, within 30 days of certification, the amount due. In the absence of an election, an election for full coverage membership shall be irrevocably forfeited unless the member returns to service, whereupon membership shall be mandatory and shall be retroactive for all periods of State service, with appropriate statutory interest added to the charges therefor.

(d) *Effect of election to receive a benefit.* A member who terminates State service, who is eligible to elect to withdraw his total accumulated deductions, or vest his retirement rights, or receive an immediate annuity, shall, by exercising the election, be deemed to have made an irrevocable choice which may not be changed unless the change was made prior to the effective date of termination of service. For the purposes of this section there may be no termination of service if a person transfers between departments or returns to the same department within 2 weeks after the last day of compensation. In the event a member has filed an application to withdraw his total accumulated deductions and has returned to State service prior to receipt of payment therefore, the member will not be deemed to be eligible for a withdrawal of the accumulated deductions. An election to receive any of the three benefits made after the effective date of termination of service shall be deemed to be irrevocable and no change may be permitted, except to elect early retirement from vesting.

(e) *Ineligibility to select any benefit.* When a member enters upon retirement, the member shall either execute the application on his own behalf or, in the case when the member is mentally incompetent to do so, the application shall be executed by a guardian appointed by a court. In the case of a member who is physically unable to file the application, it may be filed by anyone possessing a power of attorney. In all instances, the Board will be furnished and will review the legal documents designating persons who are eligible to act on behalf of eligible members.

(f) *Effect of election of benefits.* A member who is eligible for a maximum annuity or a reduced annuity under Option 1, 2, 3 or 4, upon filing an application to receive the benefits, shall, subsequent to termination of service, be deemed to have irrevocably selected the benefit and no change may be permitted, except as provided in section 5907(j) of the code.

(g) *Rights and duties of State employees—members—disability applicants.* A disability applicant who is required by the Board to furnish additional medical documentation to support his application, shall provide the documentation within 30 days of the request, or the Board may render the disability applicant null and void. In that event, or in the event the Board denies a disability applicant for insufficient medical evidence, the applicant may still file, within 90 days after notification, an application to vest or take an annuity, if the applicant is eligible

for same. The filing shall be considered timely, as of the original eligibility date, for the purposes of payment of other benefits or vesting, as the case may be.

(h) *Beneficiary nomination.* Every member shall nominate a beneficiary and, if desired, a contingent beneficiary, in writing on a form to be supplied by and filed with the Board.

Source

The provisions of this § 249.7 amended through March 12, 1976, 6 Pa.B. 449; amended April 16, 2010, effective April 17, 2010, 40 Pa.B. 2015. Immediately preceding text appears at serial pages (348059) to (348061).

Notes of Decisions

Benefit Plan Change

The State Employees' Retirement Board correctly denied the petitioner's request to change his retirement benefits option election from nondisability, early retirement annuitant to disability retirement, where the final and binding nature of a retirement benefit election is absolute. *Crouse v. State Employees' Retirement System*, 729 A.2d 1268 (Pa. Cmwlth. 1999).

The unequivocal language of this regulation prevents a change in benefit plans even if the pensioners were misled by inadequate counseling. *Cosgrove v. State Employees' Retirement Board*, 665 A.2d 870 (Pa. Cmwlth. 1995).

A survivor annuitant may not change a plan elected by the employee-member. *Marron v. State Employees' Retirement Board*, 544 A.2d 1095 (Pa. Cmwlth. 1988); appeal denied 562 A.2d 829 (Pa. 1989).

Remedies

The doctrine of estoppel cannot be imposed for inadequate consultation advice based upon a failure to tell the prospective retirees about an option as application of the doctrine would violate positive law. *Cosgrove v. State Employees' Retirement Board*, 665 A.2d 870 (Pa. Cmwlth. 1995).

§ 249.8. Rights and duties of annuitants.

The duty of an annuitant, who is receiving a disability annuity, to furnish a written statement concerning his earnings, as provided in section 5908(b) of the code (relating to rights and duties of annuitants), shall continue until the attainment of superannuation age of 50 or 60, as the case may be, depending upon the category of employment at the time of entering upon disability retirement.

Subchapter E. GENERAL PROVISIONS

Sec.

- 249.51. State guarantee.
- 249.53. Exemption from execution; assignment of rights.
- 249.54. Fraud and adjustment of errors.
- 249.55. Construction of code; collective bargaining generally.
- 249.57. General regulations.
- 249.58. Optional Alternate Retirement Program.

§ 249.51. State guarantee.

The required interest charges payable, the maintenance of reserves in the fund, and the payment of all annuities and other benefits granted by the Board under the provisions of the code, are hereby made obligations of those departments, agencies, boards, commissions or independent public corporations specifically enumerated in section 5102 of the code (relating to definitions), which are not

paid for by the Commonwealth from General Fund revenues. The obligations for the employer guarantee under section 5951 of the code (relating to State guarantee) are deemed imposed upon those agencies who have, by prior legislation or Board determination, been accepted into the System.

§ 249.53. Exemption from execution; assignment of rights.

(a) *General.* In the event any member, entitled to a benefit, has been determined, at the time this benefit becomes payable, to be obligated to the Commonwealth for the repayment of money for any employment related reason, or to be obligated to the State Employees' Credit Union for the repayment of a loan not to exceed \$750 with interest, as provided in section 5953 of the code (relating to taxation, attachment and assignment of funds), the Board will cause to be paid from the member's account, upon his authorization, or upon certification of his agencies legal representative, the amount of indebtedness. The member, or his designated beneficiary, in the case of a deceased member, shall have the privilege of restoring the set off amount to his account within 30 days thereafter in a lump sum. Failing that, any benefit to which he would otherwise be entitled shall be withheld until an amount sufficient to satisfy the obligation has been accumulated, whereupon the annuity shall be payable to the member.

(b) *Debt priorities.* In the event a member is indebted, not only to the Commonwealth, but also the State Employees' Credit Union, under section 5953 of the code, payments to satisfy indebtedness to the Commonwealth shall be made in full before the Credit Union indebtedness is satisfied.

(c) *Effect of credit union payment.* In the event the Board is required to satisfy a credit union loan on behalf of an active member, as provided in section 5953(b)(2) of the code, the amount of the satisfaction will be automatically converted into an arrears liability of the member, which shall be restored in full by the defaulting member by lump sum or payroll deductions over a period not exceeding 1 year with statutory interest charged during the repayment period.

Source

The provisions of this § 249.53 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (18769).

§ 249.54. Fraud and adjustment of errors.

(a) Any person knowingly making any false statements falsifying or permitting to be falsified any record of this System with an intent to defraud it, shall, upon conviction, be guilty of a misdemeanor of the second degree punishable by law.

(b) The Board upon learning of any mistake in any record resulting in the payment of a greater or lesser benefit than that provided by the code, will make

an appropriate adjustment, as far as practicable, so that the person thereto entitled shall receive only the benefit specifically provided under the code.

§ 249.55. Construction of code; collective bargaining generally.

The pension benefits available to State employees under the code may only be changed, modified or altered by legislation. No collective bargaining agreement, or binding arbitration award, or any determination resulting from the collective bargaining process between the Commonwealth and its employees, or between other employers whose employees are subject to these provisions, shall have the effect of modifying, altering or changing any benefit specifically provided under the code, unless there is statutory authority authorizing such change, alteration or modification. The repealer provisions of the code specifically exclude, as a bargainable matter under the act of June 24, 1968 (P. L. 237, No. 111) (43 P. S. §§ 217.1—217.10), with respect to collective bargaining between policemen and firemen, and the Public Employee Relations Act (43 P. S. §§ 1101.101—1101.2301), with respect to collective bargaining between public employers and their employees, those items relating to the pension benefits provided by the code.

§ 249.57. General regulations.

(a) *Effect of enactment of code.* The code is intended as a reenactment and recodification of existing law, which also repeals, to the extent inconsistent therewith, those acts which are specifically enumerated in the repealer section of the code.

(b) *Effect of lifting of pension freeze for certain members.* The limitations on salaries of any member terminating service hereafter, which limitations had been in effect pursuant to the Commonwealth Compensation Commission freeze for pension purposes, for certain legislative, executive, and judicial employees, are repealed retroactive to January 1, 1973. Any member in this category shall be required to pay to the fund the total accumulated deductions that would have been paid in the absence of such freeze, retroactive to January 1, 1973, or other period applicable, including statutory interest during the repayment period. Any benefits shall be payable without reference to any limitations heretofore imposed for service subsequent to January 1, 1973.

(c) *Effect of repeal of certain judicial benefits.* The additional retirement benefits provided certain judges of Class E and E-1, under prior law, shall only continue for those judges exercising the option for such benefits prior to March 1, 1974, whereupon those benefits are expressly terminated. Such benefits shall be limited to the benefits existing when the application for same was made and subsequent superannuation benefits shall be restricted to the compensation actually received and the contributions based thereon.

(d) *Crediting of statutory interest during leave of absence without pay.* Statutory interest shall be credited to accounts of members on leave without pay, commencing July 1, 1974, for a period not to exceed 2 years in such leave status.

(e) *Payment of fees for furnishing certain information.* Effective January 1, 1976, the Board will charge a fee for each request to furnish duplicate information to members based on the following schedules:

1. Federal Interest Income Statement (Duplicate) (1099)	\$5.00
2. Statement of Employee's Retirement Account (Duplicate) (RB-393)	\$5.00
3. Annuitant's Initial Information Letter (Duplicate) (RS-340)	\$5.00
4. Disability Annuitant's Initial Information Letter (Duplicate) (RS-326)	\$5.00
5. Tax Statement (Duplicate) (RB-325)	\$5.00
6. Federal Statement for Recipients of Annuities, Pension or Retired Pay (Duplicate) (W2-P)	\$5.00
7. Request for Recomputation of Present Value on Current Basis	\$15.00
8. Membership account statements (Duplicate)	\$5.00
9. All other information (duplicate), per item	\$5.00

Each such request shall be accompanied by a check or money order in the amount necessary to obtain each of the items set forth in this subsection and shall be made payable to the State Employees' Retirement System. Cash will not be acceptable.

Source

The provisions of this § 249.57 amended March 12, 1976, 6 Pa.B. 449. Immediately preceding text appears at serial page (22952).

§ 249.58. Optional Alternate Retirement Program.

Under section 5301 of the code (relating to mandatory and optional membership), certain school employees may elect not to join the System in favor of an optional alternate retirement program approved by the employer.

(1) Every employee, who is eligible for membership in the optional alternate retirement program, shall make the election within 30 days of the first date of active employment. Employees not exercising the option to join the optional alternate retirement program shall be deemed to have chosen to commence active membership in the System, unless they have elected membership in the Public School Employees' Retirement System.

(2) When an eligible employee elected to participate in the optional alternate retirement program in accordance with the provisions of paragraph (2) as it existed on April 15, 2005, or paragraph (4) as it existed on April 15, 2005, or elects to participate in the optional alternate retirement program in accordance with current paragraph (1), the election shall be final and binding so long as the employee remains eligible to remain in the optional alternate retirement program. If the employee later becomes employed by the Commonwealth in a

capacity which does not qualify him for membership in the optional alternate retirement program, the employee shall, upon meeting the qualifications for membership in this System, make contributions to the fund, and if eligible, the employee may reinstate former credited service for which contributions had been withdrawn. Remittance of contributions or reinstatement of former credited service shall be made in accordance with the applicable provisions of the code. Service, salary or other compensation paid to an employee while a member of the optional alternate retirement program will not be credited toward membership in or retirement benefit from this System.

(3) Each year, the Board will certify to the Secretary of Education or the governing bodies of employing institutions the percentage rate of the employer normal contribution as determined in accordance with section 5508(b) of the code.

Source

The provisions of this § 249.58 amended July 18, 1975, 5 Pa.B. 1840; amended April 15, 2005, effective April 16, 2005, 35 Pa.B. 2275. Immediately preceding text appears at serial pages (204984) to (204986).

[Next page is 250-1.]

249-10

(348066) No. 426 May 10

Copyright © 2010 Commonwealth of Pennsylvania