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**Policy Name:** Policy for Indemnification of Board Members, Designees, Officers and Employees  
**Policy Number:** 2018 POL-BD-01  
**Effective Date:** January 14, 2004, as amended September 12, 2018  
**Reviewed Date:** January 9, 2018  
**Applies To:** SERS Board Members, Designees, Officers and Employees  
**Contact Person:** SERS Legal Office

Section 1: Indemnification and Insurance.

(a) Indemnification of Board Members, Designees, Officers and Employees.

(i) Each Indemnitee (as defined below) shall be indemnified and held harmless by the State Employees' Retirement System ("SERS") for all actions taken by such Indemnitee and for all failures to take action (regardless of the date of any such action or failure to take action) to the fullest extent permitted by Pennsylvania law against all expense, liability and loss (including without limitation attorneys' fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding (as defined below). No indemnification pursuant to this Section 1 shall be made, however, in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted criminal conduct, willful misconduct or recklessness. All amounts advanced by SERS in Section 1 (b) for legal fees and expenses incurred in the defense of any Proceeding where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted criminal conduct, willful misconduct or recklessness shall be refunded to SERS.

(ii) The right to indemnification provided in this Section 1 shall include the right to have the expenses reasonably incurred by the Indemnitee in defending any Proceeding paid by SERS in advance of the final disposition of the Proceeding upon the receipt by SERS of a written undertaking by the Indemnitee to refund the amounts so advanced if it is ultimately determined that the Indemnitee is not entitled to indemnification under this Section 1.

(iii) Indemnification pursuant to this Section 1 shall continue as to an Indemnitee who has ceased to be a Board member, designee of a Board member, officer, or employee of SERS and shall inure to the benefit of such person's legal representatives, heirs, executors and administrators.

(iv) For purposes of this Policy for Indemnification, (A) "Indemnitee" shall mean each current or former i. Board member, ii. duly appointed designee of a Board member, iii. officer or iv. employee (including, without limitation, the attorneys in SERS' Office of Chief Counsel) of SERS who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding, by reason of the fact that such person is or was a Board member, designee of a Board member, officer or employee of SERS or is or was serving in any capacity at

the request or for the benefit of SERS as a director, officer, employee, agent, partner, or fiduciary of, or in any other capacity for, any corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise; and (B) "Proceeding" shall mean any threatened, pending or completed action, suit or proceeding (including, without limitation, an action, suit or proceeding by or in the right of SERS), whether civil, criminal, administrative, investigative or through arbitration. If a Board member, officer or employee of SERS serves as a director, officer, employee, agent, partner or fiduciary of another entity and i. SERS has at least 50% equity in such other entity and such person has no equity interest in such other entity or ii. such other entity is directly or indirectly controlled by SERS, such person shall be presumed (unless SERS produces clear and convincing evidence to the contrary) to be serving in the position with the other entity at the request and for the benefit of SERS.

(b) Defense of Proceedings.

(i) Upon an Indemnitee's receipt of notice of the commencement of any Proceeding for which such Indemnitee intends to seek indemnification under this Policy for Indemnification, such Indemnitee shall give prompt written notice to SERS (to the attention of the Executive Director and the Chief Counsel) ("Indemnification Request"). In the defense of such Proceeding, the Indemnitee may either: (1) retain counsel of his or her choice at Reasonable Prevailing Market Rates, with SERS to advance the fees and expenses of such counsel, subject to Section 1 (b)(iii) ("Indemnitee Retained Counsel"), or (2) request SERS to assume the defense through counsel of SERS' choice ("SERS Counsel"). As used in this Policy, the term "Reasonable Prevailing Market Rates" shall mean the rates charged by attorneys with similar experience and expertise within the particular geographic area as Indemnitee Retained Counsel.

(ii) The Indemnification Request shall include Indemnitee's election ("Indemnitee's Election") to either retain Indemnitee Retained Counsel, along with the identity of Indemnitee Retained Counsel and their rates applicable to the engagement ("Counsel Fee Rates"), or to have SERS Counsel assume the defense.

(iii) If Indemnitee's Election provides for the engagement of Indemnitee Retained Counsel, SERS shall as soon as reasonably practicable; but not more than five (5) business days after the receipt of the Indemnification Request, review the Counsel Fee Rates to determine whether said Counsel Fee Rates are Reasonable Prevailing Market Rates and give written notice to Indemnitee of SERS' determination, as to whether they are Reasonable Prevailing Market Rates or not ("Reasonableness Determination"). If the Reasonableness Determination provides that the Counsel Fee Rates are not reasonable, SERS shall indicate the maximum Counsel Fee Rate that it will advance, with the Indemnitee to assume responsibility for the difference. If Indemnitee is unwilling to assume responsibility for the difference, Indemnitee may, within five (5) business days of Indemnitee's receipt of the Reasonableness Determination, request SERS Counsel pursuant to Section 1 (b)(i) above.

(iv) If Indemnitee's Election provides for the engagement of SERS Counsel, SERS shall notify Indemnitee of the identity of counsel appointed to represent the Indemnitee. If SERS does appoint counsel to represent an Indemnitee, the Indemnitee may engage other

counsel to participate in the defense of such Proceeding, but the fees and expenses of such other counsel shall be paid solely by the Indemnitee and shall not be reimbursed by SERS unless SERS shall otherwise agree. SERS shall have authority to settle any claim involving only monetary relief to be paid solely by SERS. SERS shall not settle any other claim without the prior written consent of the Indemnitee.

(c) Claims for Indemnification and Advancement of Expenses. To the extent that an Indemnitee has incurred actual expense in defense of any Proceeding or in defense of any claim, issue or matter therein, and has not been determined by a court to have engaged in criminal conduct, willful misconduct or recklessness pursuant to Section 1(a)(i) above, giving rise to said Proceeding, SERS shall indemnify such person against expenses (including attorneys' fees, but subject to the limitations in Section 1(a)(i) and subsection (b) above) actually and reasonably incurred by such person in connection therewith. If indemnification under this Section 1 or advancement of expenses are not made or paid by SERS, or on its behalf, within ninety (90) days after a written claim for indemnification or a request for an advancement of expenses by an Indemnitee has been received by SERS, such Indemnitee may, at any time thereafter, bring suit against SERS to recover the unpaid amount of the claim and/or the advancement of expenses. The right to indemnification and advancement of expenses provided hereunder shall be enforceable by an Indemnitee in the Board of Claims, and if indemnification and/or advancement of expenses is obtained by an Indemnitee in whole or in part, the expenses reasonably incurred by such Indemnitee in connection with obtaining such indemnification and/or advancement of expenses shall also be indemnified by SERS.

(d) Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses provided in this Policy for Indemnification shall not be exclusive of any other rights that any person may have or hereafter may acquire under any statute, regulation, management directive or otherwise.

(e) Insurance. SERS may self-insure or purchase and maintain insurance, at its expense, for the benefit of any person on behalf of whom insurance is permitted to be purchased by Pennsylvania law against any expense, liability or loss, in whole or in part, whether or not SERS would have the power to indemnify such person under Pennsylvania law. SERS may also self insure or purchase and maintain insurance to insure its indemnification obligations whether arising hereunder or otherwise.

(f) Fund for Payment of Indemnification Obligations. To the extent permitted by law, SERS may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise may secure in any manner its indemnification obligations under this Policy for Indemnification.

(g) Limitations on Indemnification. Notwithstanding the foregoing provisions,

(i) indemnification of an Indemnitee for any one claim or series of related claims based on the same action or failure to take action shall be limited to twenty-five million dollars (\$25,000,000);

(ii) no indemnification shall be provided to the extent an Indemnitee receives reimbursement under insurance policies or state programs of self-insurance, but in the event that such a claim is covered under an insurance policy maintained by SERS or a self-insurance plan established by SERS, the twenty-five million (\$25,000,000) dollar limit of indemnification stated in this section 1(g) shall be applied to cover any liability that is in excess of the limit of liability of such insurance policy or self-insurance plan; and

(iii) no indemnification shall be provided in cases involving any personal profit or advantage to which an Indemnitee was not legally entitled.

**Section 2. Amendment.** The provisions of this Policy for Indemnification shall constitute a contract between SERS and each Indemnitee that may be modified as to any Indemnitee only with that person's consent or as specifically provided in this Section 2. This Policy for Indemnification may be repealed or amended without the consent of an Indemnitee for whom such repeal or amendment is adverse so long as such repeal or amendment applies to such Indemnitee only on a prospective basis and does not limit the rights of such Indemnitee to indemnification or to the advancement of expenses with respect to any action or failure to act occurring prior to the time of such repeal or amendment.

### Document Properties

- a. **Document Owner:** Executive Office
- b. **Document Author:** SERS Legal Office
- c. **Summary of Changes:**

<b>Date</b>	<b>Version</b>	<b>Author</b>	<b>Summary</b>
January 14, 2004	2004 POL- EO-01	SERS Legal Office	Adopted January 14, 2004 and assigned Policy Number November 10, 2015
January 9, 2018	2018 POL- BD-01	SERS Legal Office	Amendment to policy and assigned new policy number.