

## TREASURY—GENERAL

(a)

### DIVISION OF PENSIONS AND BENEFITS

#### STATE POLICE RETIREMENT SYSTEM

#### Disability Rules, COVID-19 Accidental Disability, and Accidental Death Rules

#### Proposed Amendments: N.J.A.C. 17:5-4.2, 5.1, 5.4, 5.6, 5.13, and 6.1

#### Proposed New Rules: N.J.A.C. 17:5-5.8, 5.12, and 8

Authorized By: State Police Retirement System Board of Trustees, William Tedder, Secretary.

Authority: N.J.S.A. 53:5A-3 et seq., specifically, 53:5A-30.h.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-151.

Submit comments by January 20, 2023, to:

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The agency proposal follows:

#### Summary

The Division of Pensions and Benefits (Division) is responsible for reviewing the State Police Retirement System (SPRS) rules at N.J.A.C. 17:5. When a change in the law, or a court decision occurs that could affect the administration and operation of the State-administered retirement systems, the rules are reviewed and, if amendments or new rules are required, steps are taken to propose amendments or new rules to those chapters. Additionally, the rules are periodically reviewed to determine whether existing rules reflect the current procedures and practices of the Division in administering its governing statutes.

On July 1, 2020, Governor Murphy signed P.L. 2020, c. 54 (Act), which permitted eligible law enforcement officers enrolled in the SPRS to receive an accidental disability retirement allowance for disability resulting from contracting COVID-19, provided they test positive for SARS-CoV-2 during the public health emergency declared by the Governor in Executive Order No. 103 (2020). In order to implement the provisions of the Act, which has an effective date of March 6, 2020, the State Police Retirement System Board of Trustees (Board) must promulgate proposed amendments and new rules.

On January 18, 2022, Governor Murphy signed P.L. 2021, c. 399, which permits SPRS members to purchase service credit from public employment in another state or with the United States Government. The member may purchase credit by paying the actuarially required amount, as applicable to the member, based on the member's age and salary at the time of purchase, or the highest annual compensation for service in this State, whichever is greater.

On January 18, 2022, Governor Murphy signed P.L. 2021, c. 428, which permits members of the SPRS to extend service up to 90 days past their mandatory retirement date during a declared public health emergency or state of emergency. The law also gives the Superintendent of the State Police discretion in permitting and terminating these extensions of service based on the need to supplement available staffing, or in consideration of the member's specific assignment or expertise. This law applies to any request already made, as well as future requests. A member may make only one request for an extension, including any request made prior to the effective date of P.L. 2021, c. 428. The effective date of P.L. 2021, c. 428 is February 17, 2022, and the new law shall apply with respect to any declaration of a public health emergency declared, or in effect, on or after February 17, 2022.

Therefore, the Board proposes the following amendments and new rules affecting retirements and claims within the SPRS.

#### Subchapter 4. Purchases and Eligible Service

The Board proposes to amend N.J.A.C. 17:5-4.2, Optional purchases of eligible service, to implement the provisions at P.L. 2021, c. 399, and to add language to specify that active members of SPRS who wish to purchase service credit, in accordance with P.L. 2019, c. 251, must purchase such credits by paying into the annuity savings fund, the amount derived by applying the factor, supplied by the actuary, as being applicable to the member's age at the time of the purchase, to the member's salary at that time. In addition, the Board proposes to add paragraphs (a)5 and 6 to specify that active members of SPRS who wish to purchase service credit earned from public employment in another state or with the United States Government may do so in accordance with P.L. 2021, c. 399. Such service credit purchased will be equivalent to service in the State Police as of the date of the purchase. A member may purchase service credit for all or a portion of such service, up to five years. However, this service is only eligible for purchase if a member does not have a vested right to retirement benefits in another retirement system based in whole, or in part, upon that service.

#### Subchapter 5. Retirement

The Board proposes to amend N.J.A.C. 17:5-5.1, Applications, to add language at subsection (d), that will require an SPRS member to request a reasonable accommodation from his or her employer prior to applying for disability retirement. The certifying officer, as defined at N.J.A.C. 17:2-1.5, will certify that the member requested a reasonable accommodation and whether such request was able to be provided. The certifying officer will provide this information upon completion of the Certification of Service and Final Salary.

The Board proposes to amend N.J.A.C. 17:5-5.4 to remove the phrase "that reflects an intentional or purposeful deviation from the standard of care exercised by a reasonable person in similar circumstances." That phrase was added at N.J.A.C. 17:5-5.4(a) in 2019, but declared inoperative by the court in *In re N.J.A.C. 17:2-6.5* 468 N.J. Super. 229 (App. Div. 2021).

N.J.A.C. 17:5-5.6(b)5 is proposed for deletion to remove job abolishment as a reason that would prevent a member for applying for a disability retirement. That reason was added at N.J.A.C. 17:5-6.5(b) in 2019, but declared inoperative by *In re Adoption of N.J.A.C. 17:1-6.4, 17:1-7.5 & 17:1-7.10*, Docket No. A-2171-16T3 (App. Div. 2018).

The Board proposes new N.J.A.C. 17:5-5.8, Outstanding arrears; back deductions; shortages. This proposed new section details how outstanding arrears or shortages are handled at retirement. As an employee's monthly retirement allowance is based in part on employee contributions, all outstanding arrears and shortages must be paid in full prior to a retirement check being issued. The Division has indicated that, for timely and efficient processing, all outstanding obligations to the pension fund must be satisfied within 90 days or the request for retirement will be cancelled. This timeframe is consistent with the time the Division allows an employee to submit additional information needed to process any retirement application. The employee will qualify to receive a retirement check on the first of the month following receipt of the outstanding amount in its entirety, provided 30 days following the retirement, or 30 days following the approval of the retirement by the Board of Trustees has elapsed, whichever is later.

The Board proposes to add N.J.A.C. 17:5-5.12, Extension of service during a declared public health emergency or state of emergency, to implement the provisions at P.L. 2021, c. 428, which permits SPRS members to extend service for up to 90 days past their mandatory retirement date during a public health emergency or state of emergency. The law also gives the Superintendent of the Division of the State Police discretion in permitting and terminating these extensions of service based on a need to supplement available staffing or in consideration of the member's specific assignment or expertise. This law applies to any request already made, as well as future requests. A member may make only one request for an extension, including any request made prior to February 17, 2022, the effective date of P.L. 2021, c. 428. The law shall apply with respect to any declaration of a public health emergency or state of emergency declared, or in effect, on or after February 17, 2022.

N.J.A.C. 17:5-5.13, Compulsory retirement, is proposed for amendment to include the provisions at P.L. 2021, c. 428, which permits

members of the SPRS to extend service up to 90 days past their mandatory retirement date during a public health emergency or state of emergency.

**Subchapter 6. Transfers**

N.J.A.C. 17:5-6.1, Honorable service; interfund transfers; other State systems, subsection (c) is proposed for amendment to add language to specify that active members of SPRS who wish to transfer service credit, in accordance with P.L. 2019, c. 251, may transfer such previously purchased credit by paying into the annuity savings fund the amount required by applying the factor, supplied by the actuary, as being applicable to the member’s age at the time of the purchase, to the member’s salary at that time. Such purchases may be made in regular installments equal to at least half of the normal contribution to the retirement system, over a maximum period of 10 years.

Additionally, the Board proposes to amend N.J.A.C. 17:5-6.1(d) to specify that SPRS members who wish to transfer service credit in accordance with P.L. 2019, c. 251, will be required to pay a cost differential from the non-SPRS credit to full SPRS credit. The actuary will calculate the cost differential and the member will have 30 days to decide whether he or she wants to interfund transfer to SPRS. A waiver must be signed by the member if he or she wishes to decline his or her interfund transfer rights.

**Subchapter 8. COVID-19 Accidental Disability and Accidental Death**

The Board proposes to add new N.J.A.C. 17:5-8, COVID-19 Accidental Disability, to implement P.L. 2020, c. 54, which extends accidental disability and accidental death benefits to active eligible law enforcement officers enrolled in SPRS who contract COVID-19 during the public health emergency declared by the Governor at Executive Order No. 103 (2020) and suffer a qualifying disability or death. The subchapter will set forth: the purpose of the subchapter, definitions, eligibility, accidental death in the line of duty, and filing requirements.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is accepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

**Social Impact**

The proposed amendments at Subchapter 4 benefit active SPRS members who wish to purchase service credit for prior employment with the Federal government or another state. These amendments will enable SPRS members to receive an enhanced benefit, as this service can be used to qualify for retirement under the minimum service requirements. The proposed amendments at Subchapter 5 comply with the provisions of the Americans with Disabilities Act of 1990; enable the Division to process retirement payments more efficiently; and benefit the public as a whole, by permitting SPRS members to extend service up to 90 days past their mandatory retirement date during a declared public health emergency or state of emergency. The new rules benefit SPRS members, retirees, and survivors of members and retirees by increasing eligibility for accidental disability and accidental death benefits for active eligible law enforcement officers who contract COVID-19 during the public health emergency declared by the Governor in Executive Order No. 103 (2020).

**Economic Impact**

The proposed amendments at Subchapter 4, which permit members of the SPRS to purchase service credit for prior employment with the Federal government or another state, will result in an annual increase in State contributions for the SPRS. According to the Legislative Fiscal Estimate, the impact cannot be determined “because the number of SPRS members who may purchase the service credit, and the details of each purchase, are not known.” The proposed amendments at Subchapter 6, which permit service credit transferred from another State-administered retirement system to be recognized as creditable service in the SPRS has potentially no expenditure increase to the State General Fund, if such purchases cover the full cost of the credit established. The amendments that limit the extension of mandatory retirement to 90 days from the SPRS during emergencies will result in a periodic expenditure decrease to the State General Fund. According to the Legislative Fiscal Estimate, the “savings will result from reduced compensation and benefit costs as members retire. The savings cannot be determined because the members who delay retirement, and their salary and benefit costs, are not known.” The

proposed new rules will result in an increase in contributions by the State for the SPRS. According to the fiscal estimate produced by the Office of Legislative Services, “extending accidental disability and accidental death benefits to certain members of the Public Employees’ Retirement System (PERS), the Police and Firemen’s Retirement System (PFRS), and the State Police Retirement System (SPRS) due to the coronavirus disease 2019 (COVID-19) will result in indeterminate increases in the unfunded liabilities of, normal costs of, and employer contributions to the three retirement systems.”

**Federal Standards Statement**

The proposed amendments and new rules meet the applicable Federal standards set forth at 26 U.S.C. § 403(b). There are no other Federal standards applicable to the subject matter of this chapter, therefore a Federal standards analysis is not required.

**Jobs Impact**

The proposed amendments and new rules are not anticipated to have any effect on the generation or loss of jobs in the State.

**Agriculture Industry Impact**

The proposed new rules and amendments will not have any impact on the agriculture industry.

**Regulatory Flexibility Statement**

N.J.A.C. 17:5 affects SPRS members, retirees, and survivors of members and retirees. Thus, the proposed amendments and new rules do not impose any reporting, recordkeeping, or other compliance requirements upon small businesses, as defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

**Housing Affordability Impact Analysis**

The proposed new rules and amendments will have no impact on the affordability of housing in New Jersey, nor will it involve a change in the average costs associated with housing, because the proposed amendments and new rules pertain only to administration of the SPRS for members, retirees, and survivors of members and retirees.

**Smart Growth Development Impact Analysis**

The proposed new rules and amendments will not have any impact on the achievement of smart growth; nor will it involve a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the proposed amendments and new rules pertain to administration of the SPRS for members, retirees, and survivors of members and retirees.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Division has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 4. PURCHASES AND ELIGIBLE SERVICE

17:5-4.2 Optional purchases of eligible service

(a) [The] **Notwithstanding the provisions at (a)5 and 6 below**, the types of purchases indicated below will be calculated on the basis of the actuarial factor established for the member’s age at the time of the purchase times the member’s current salary:

1. (No change.)

2. Former membership service established in another State-supported retirement system: In accordance with P.L. 2019, c. 251, for all retirements effective on November 1, 2019, and thereafter, such service can be used to qualify for retirement under the minimum service requirements. All or a portion of the service from a former membership may be included in the purchase of such service. This service shall be included in the computation of a retirement allowance on the basis of one percent of final compensation for each year of such service credit.

i. Any active member shall be permitted to purchase such credits by paying, into the annuity savings fund, the amount required by applying the factor, supplied by the actuary, as being applicable to the member's age at the time of the purchase, to the member's salary at that time.

3.-4. (No change.)

5. **Public employment in another state:** In accordance with P.L. 2021, c. 399, for all retirements effective February 1, 2022, and thereafter, such service credit purchased will be equivalent to service credit acquired in the service in the State Police, as of the date of the purchase. A member may purchase service credit for all, or a portion of, such service up to the nearest number of years and months, but not to exceed five years. However, this service is only eligible for purchase if a member does not have a vested right to retirement benefits in another retirement system based in whole, or in part, upon that service. A member may purchase service credit for the service by paying into the annuity savings fund the amount required by applying the factor, supplied by the actuary as being applicable to the member's age at the time of the purchase, to the member's salary at the time, or to the highest annual compensation for service in this State for which contributions were made during any higher fiscal year, whichever is greater.

6. **United States Government:** In accordance with P.L. 2021, c. 399, for all retirements effective February 1, 2022, and thereafter, such service credit purchased will be equivalent to service in the service in the State Police, as of the date of the purchase. A member may purchase service credit for all or a portion of such service, up to five years. However, this service is only eligible for purchase if a member does not have a vested right to retirement benefits in another retirement system based in whole, or in part, upon that service. A member may purchase service credit for the service by paying, into the annuity savings fund, the amount required by applying the factor, supplied by the actuary, as being applicable to the member's age at the time of the purchase, to the member's salary at the time, or to the highest annual compensation for service in this State for which contributions were made during any higher fiscal year, whichever is greater.

## SUBCHAPTER 5. RETIREMENT

### 17:5-5.1 Applications

(a)-(c) (No change.)

(d) [As to an application for disability retirement, the following shall apply:] A member must request a reasonable accommodation, as defined by the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101 through 12213, prior to filing for a disability retirement. Upon completion of the Certification of Service and Final Salary, the employer's designated certifying officer will certify that a reasonable accommodation was requested and if such accommodation could be provided.

(e) **In addition to the requirements at (a), (b), (c), and (d) above, the following shall apply when an application for disability is filed:**

1.-4. (No change.)

[(e)] (f) (No change in text.)

### 17:5-5.4 Willful negligence

(a) For purposes of determining an accidental disability, willful negligence is defined as follows:

1. Deliberate act or deliberate failure to act [that reflects an intentional or purposeful deviation from the standard of care exercised by a reasonable person in similar circumstances]; or

2.-3. (No change.)

### 17:5-5.6 Disability retirement application and termination of service

(a) (No change.)

(b) Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:

1.-2. (No change.)

3. Loss of licensure or certification required for the performance of the member's specific job duties; or

4. Voluntary separation from service for reasons other than a disability[; and].

[5. Job abolishment.]

(c) (No change.)

### 17:5-5.8 [(Reserved)] Outstanding arrears; back deductions; shortages

(a) Members who apply for retirement will receive a quotation of retirement benefits upon the completion of the retirement calculation. For members of retirement systems that provide for optional survivor benefits, the retirement quotations will include a description of the various options available. If the member named a spouse as the pension beneficiary on the application and provides the spouse's birth date, all survivor options will be included in the quotation, in addition to the maximum allowance.

(b) The quotation of retirement benefits will also include any outstanding arrears or shortages due to delinquent enrollment, back deductions, purchases of service credit, and audits. All outstanding arrears or shortages must be paid in full by the employee prior to any retirement check being issued. Failure to pay the outstanding amount in its entirety within 90 days from the Division's notification to the member of the outstanding obligation will result in the retirement application being cancelled. If the retirement application is cancelled, the member will be required to file a new application with a future retirement date. If the outstanding obligation is paid within 90 days of the Division's notification, but beyond the original retirement date, the member will qualify to receive a retirement check on the first of the month following receipt of the outstanding amount in its entirety, provided the conditions at N.J.A.C. 17:3-6.2 are met. No retroactive checks will be issued.

### 17:5-5.12 [(Reserved)] Extension of service during a declared public health emergency or state of emergency

(a) A member of the SPRS may extend his or her service up to 90 days beyond his or her mandatory retirement date during a declared public health emergency or state of emergency, pursuant to P.L. 2021, c. 428.

(b) The Superintendent of the Division of the State Police shall have discretion in permitting and terminating extensions of service pursuant to (a) above, based on the need to supplement available staffing or in consideration of the member's specific assignment or expertise.

(c) This section applies to any request already made, as well as future requests. A member may make only one request for an extension, including any request made prior to February 17, 2022, the effective date of P.L. 2021, c. 428.

(d) This section is effective as of February 17, 2022, and shall apply to any declaration of a public health emergency or state of emergency declared, or in effect, on or after February 17, 2022.

### 17:5-5.13 Compulsory retirement

(a) [Compulsory] Except as provided for at P.L. 2021, c. 428, compulsory retirement at age 55 is applicable to all members.

(b) (No change.)

## SUBCHAPTER 6. TRANSFERS

### 17:5-6.1 Honorable service; interfund transfers; other State systems

(a)-(b) (No change.)

(c) Membership credit transferred [under] pursuant to this section shall be included in the computation of a retirement allowance. In accordance with P.L. 2019, c. 251, for all retirements effective on November 1, 2019, and thereafter, such credits can be used to satisfy the statutory requirements of those benefits which specifically require a minimum number of years of creditable service as a State police employee. **Any active member shall be permitted to transfer such previously purchased credit by paying into the annuity savings fund the amount required by applying the factor, supplied by the actuary as being applicable to the member's age at the time of the purchase, to the member's salary at that time. Such purchase may be made in regular installments equal to at least half of the normal contribution to the retirement system, over a maximum period of 10 years.**

(d) The system will transfer membership to any State-administered system as follows:

1. A member, desiring to transfer service credit and contributions from one State-administered retirement system to another shall file an Application of Interfund Transfer and an "Enrollment Application" in place of the customary "Application for Withdrawal." This application will void all possible claims against the former system and all rights and benefits under the former system, when approved, and the new membership is commenced in the new system. The member will be required to pay a cost differential from the non-SPRS credit to full SPRS credit. The actuary will calculate the cost differential and the member will have 30 days to decide whether they want to interfund transfer to SPRS. A waiver must be signed by the member if they wish to decline their interfund transfer rights.

2.-4. (No change.)

(e)-(g) (No change.)

## SUBCHAPTER 8. COVID-19 ACCIDENTAL DISABILITY AND ACCIDENTAL DEATH

### 17:5-8.1 Purpose

P.L. 2020, c. 54, extends accidental disability and accidental death benefits to active eligible law enforcement officers enrolled in the State Police Retirement System who are totally and permanently disabled as a result of contracting COVID-19 during the public health emergency in the State declared by the Governor in Executive Order No. 103 (2020). The purpose of this subchapter is to establish the rules necessary to implement the provisions of this law.

### 17:5-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"COVID-19" means a highly contagious respiratory disease caused by the SARS-CoV-2 virus.

"Public health emergency" means the health emergency in the State of New Jersey, as defined by the Governor in Executive Order No. 103 (2020).

"SARS-CoV-2" means severe acute respiratory syndrome coronavirus 2. It is the virus that causes COVID-19 (the disease).

### 17:5-8.3 Eligibility

(a) For purposes of subsection a of section 10 at P.L. 1965, c. 89 (N.J.S.A. 53:5A-10), permanent and total disability shall be deemed to have occurred as a direct result of a traumatic event occurring during, and as a result of, the performance of regular or assigned duties if:

1. The member contracts COVID-19 during the public health emergency;

2. The member is permanently and totally disabled as a result of COVID-19;

3. The member's regular or assigned duties required the member to interact with the public, or to directly supervise other personnel so interacting with the public, on any date during the public health emergency; and

4. The member interacted with the public or directly supervised personnel that interacted with the public within 14 calendar days prior to the appearance of symptoms consistent with COVID-19, confirmed, in writing, by a licensed health care provider on a form approved by the Board of Trustees and also confirmed by a positive test result for SARS-CoV-2.

(b) A member who retired during the public health emergency shall be eligible to apply for a retirement allowance, and, if approved, the retirement allowance, pursuant to this subchapter, shall be made retroactive to the date of the initial retirement date.

(c) This section shall not apply to any member who had retired and subsequently returned to employment pursuant to P.L. 2020, c. 115, Executive Order No. 115 (2020), or any other executive order similarly permitting a retired member to return to employment

without reenrollment, to assist during the public health emergency and state of emergency.

(d) New onset diseases and chronic psychological diseases resulting from prior exposure to, and recovery from, COVID-19 shall not be deemed a permanent and total disability resulting from COVID-19.

### 17:5-8.4 Accidental death in the line of duty attributable to COVID-19

(a) For purposes of subsection a of section 14 at P.L. 1965, c. 89 (N.J.S.A. 53:5A-14), a member whose death is attributable to COVID-19, complications therefrom, or the aggravation or acceleration of a preexisting condition caused thereby, shall be deemed to have occurred as the result of an accident met in the actual performance of duty at some definite time and place if:

1. The member contracted COVID-19 and the member's death occurs after receiving a positive test result for SARS-CoV-2 during the public health emergency in this State declared by the Governor in Executive Order No. 103 (2020);

2. The member dies as a result of COVID-19; and

3. The member's regular or assigned duties required the member to interact with the public or directly supervise personnel who interact with the public, and the member so interacted with the public or directly supervised such personnel, on any date during the public health emergency in this State declared by the Governor in Executive Order No. 103 (2020), and as extended, and within 14 calendar days prior to the appearance of symptoms consistent with COVID-19, which diagnosis has been confirmed, in writing, by a licensed health care provider on a form approved by the Board and by a positive test result for SARS-CoV-2.

(b) The filing of an accident report with the State Police Retirement System shall not be required for an accidental death benefit allowed pursuant to this subchapter.

(c) If a member dies during the public health emergency declared by the Governor in Executive Order No. 103 (2020) and the benefit has been approved, pursuant to a provision other than this subchapter or section 14 at P.L. 1965, c. 89 (N.J.S.A. 53:5A-14) prior to the effective date of this act (March 9, 2020), P.L. 2020, c. 54, a beneficiary may apply for a benefit pursuant to this subchapter and, if approved, the benefit approved pursuant to this subchapter shall be made retroactive to the initial retirement date.

(d) This subchapter shall not apply to any member who has retired and subsequently returned to employment, pursuant to P.L. 2020, c. 115, Executive Order No. 115 (2020), or any other executive order similarly permitting a retired member to return to employment without reenrollment to assist during the public health emergency and state of emergency.

### 17:5-8.5 Filing requirements

(a) To apply for benefits pursuant to this subchapter, a member or retiree must file a COVID-19 Medical Questionnaire form (available on the Division's website) in its entirety and provide all requested documents.

(b) Required documents are:

1. A copy of positive COVID-19 test results; and

2. A certification from a licensed health care provider. If an accident report is available, it shall be provided to the Division.

(c) The required licensed health care provider's certification, as required pursuant to (b)2 above, must document that:

1. The member or retiree is totally and permanently disabled as a result of his or her exposure to COVID-19 during work-related duties; and

2. The work-related duties required interaction with the public, or directly supervising other personnel so interacting with the public, during the public health emergency declared by the Governor in Executive Order 103 (2020).

i. The interaction or supervision required pursuant to (c)2 above occurred within the 14 days preceding the appearance of symptoms consistent with COVID-19.