

**MINUTES of SERS Board Special Meeting – Friday, May 1, 2020**

**CALLED TO ORDER: 11:45 a.m. by Chair David R. Fillman**

**TELE-CONFERENCE MEETING**

**ATTENDEES:**

**Members and Designees**

David R. Fillman – Chairperson

Glenn E. Becker

Dan B. Frankel

Vincent J. Hughes

Gregory K. Jordan

Mary A. Soderberg

Gregory C. Thall

Michael G. Tobash

James Bloom – Designee for Acting Secretary Richard Vague

Lloyd Ebright – Designee for Treasurer Joseph M. Torsella

Alan Flannigan – Designee for Acting Secretary Richard Vague

Toni Marchowsky – Designee for Senator Vincent J. Hughes

Dan Ocko – Designee for Representative Dan B. Frankel

Jill Vecchio – Designee for Representative Michael G. Tobash

**Executive Staff**

Alicia James

N. Joseph Marcucci

James Nolan

Terrill Sanchez

Joseph Torta

**Consultants**

Brent Mowery, Korn Ferry Hay Group

## **MINUTES of the SERS Board Special Meeting Friday, May 1, 2020**

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### 1. CALL TO ORDER

Chair Fillman called the meeting to order at 11:45 a.m.

### 2. WELCOME AND ROLL CALL

Executive Director Terri Sanchez conducted a roll call of board members who were on the tele-conference call.

### 3. OLD BUSINESS – NONE

### 4. NEW BUSINESS

A. Retirement Board relief from 95-day limit for annuitants to return to service during the COVID-19 emergency

Messrs. Torta and Marcucci provided an update to the board regarding a request that came from the Office of Administration.

#### **MOTION: 2020-26**

By motion that was moved, seconded, and approved by board members, it was

**RESOLVED:** That the board approves the attached order of the State Employees' Retirement Board that approves the request of the Office of Administration for relief from the 95-day limit that annuitants may return to State service with agencies, boards, or commissions under the Governor's jurisdiction to perform service related to the COVID-19 disaster emergency proclaimed by the Governor on March 6, 2020;

And further, if the board receives any additional requests from the Office of Administration to amend the request for relief addressed in this motion or receives requests from other agencies, boards, commissions, or employers that are not under the Governor's jurisdiction for purposes of 71 Pa. C.S. §5706(a.1) for relief similar to the relief requested by the Office of Administration, the board delegates to the Secretary the authority to approve or deny the requests of those agencies, boards, commissions, or employers for annuitants who return to State service during the period of disaster emergency proclaimed by the Governor with those agencies, board, commissions, or employers to perform service related to the COVID-19 disaster emergency under the terms and conditions set forth in the order approved by this motion (ATTACHMENT A).

### 5. BOARD COMMENTS/ANNOUNCEMENTS/DATES TO REMEMBER

The next regular meeting of the SERS board is scheduled for June 9-10, 2020.

### 6. MOTION TO ADJOURN

#### **MOTION: 2020-27**

By motion of Chair Fillman, the board unanimously agreed to adjourn the meeting at 12:00 p.m.

Respectfully submitted,



Terrill (Terri) J. Sanchez  
Executive Director

## STATE EMPLOYEES' RETIREMENT BOARD

### **RELIEF FROM THE 95-DAY LIMIT THAT ANNUITANTS MAY RETURN TO STATE SERVICE RELATED TO THE COVID-19 DISASTER EMERGENCY**

May 1, 2020

#### **MOTION: 2020-26**

By motion that was moved, seconded, and approved by Board members, it was

**RESOLVED:** That the Board approves the attached order of the State Employees' Retirement Board that approves the request of the Office of Administration for relief from the 95-day limit that annuitants may return to State service with agencies, boards, or commissions under the Governor's jurisdiction to perform service related to the COVID-19 disaster emergency proclaimed by the Governor on March 6, 2020;

And further, if the Board receives any additional requests from the Office of Administration to amend the request for relief addressed in this motion or receives requests from other agencies, boards, commissions, or employers that are not under the Governor's jurisdiction for purposes of 71 Pa. C.S. §5706(a.1) for relief similar to the relief requested by the Office of Administration, the Board delegates to the Secretary the authority to approve or deny the requests of those agencies, boards, commissions, or employers for annuitants who return to State service during the period of disaster emergency proclaimed by the Governor with those agencies, board, commissions, or employers to perform service related to the COVID-19 disaster emergency under the terms and conditions set forth in the order approved by this motion.

May 1, 2020

COMMONWEALTH OF PENNSYLVANIA  
STATE EMPLOYEES' RETIREMENT BOARD

**ORDER**

**WHEREAS**, a novel coronavirus (now known as “COVID-19”) emerged in Wuhan, China, began infecting humans in December 2019, and has since spread to numerous countries, including the United States;

**WHEREAS**, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, has determined that this threat of imminent disaster and emergency situation throughout the Commonwealth is of such magnitude and severity as to render essential the Commonwealth’s supplementation of emergency resources and mutual aid to the county and municipal governments of this Commonwealth and to require the activation of all applicable state, county, and municipal emergency response plans;

**WHEREAS**, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. § 7101, *et seq.*, on March 6, 2020, the Governor proclaimed the existence of a disaster emergency throughout the Commonwealth;

**WHEREAS**, as part of that proclamation, the Governor suspended the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency and further proclaimed that Commonwealth agencies may implement emergency assignments without regard to procedures required by other laws, except mandatory constitutional requirements, pertaining to performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and expenditures of public funds; and

**WHEREAS**, on April 29, 2020, V. Reid Walsh, Deputy Secretary for Human Resources and Management, Governor’s Office of Administration, on behalf of Michael Newsome, Secretary, Governor’s Office of Administration, pursuant to authority delegated to them by the Governor, requested that the State Employees’ Retirement Board grant relief from the 95-day limit of Section 5706(a.1) of the State Employees’ Retirement Code that annuitants of the State

Employees' Retirement System can return to State service in an emergency without loss of their annuity for certain annuitants during the COVID-19 emergency to enable the Commonwealth to meet its obligations to respond to the COVID-19 emergency, a copy of which request is attached to this order;

***NOW THEREFORE, it is hereby ORDERED that from the period of March 6, 2020, through the end of the disaster emergency proclaimed by the Governor, as provided in 35 Pa. C.S. §7301(c), the following relief is granted:***

1. Annuitants so designated by the Governor or his designees who return to State service with an agency, board, or commission under the Governor's jurisdiction as provided in 71 Pa. C.S. §5706(a.1) during the disaster emergency and who perform service related to the COVID-19 emergency shall not have the days in which such work was performed count against the 95-day limit that an annuitant may return to State service in a calendar year as a result of an emergency without their annuity ceasing.
2. Annuitants who had returned to State service with an agency, board, or commission the Governor's jurisdiction 71 Pa. C.S. §5706(a.1) prior to the Governor's disaster emergency proclamation and who subsequently perform service related to the COVID-19 emergency and who are so designated by the Governor or his designees shall not have the days in which such work was performed count against the 95-day limit that an annuitant may return to State service in a calendar year as a result of an emergency without their annuity ceasing.
3. Days worked by the annuitants identified in paragraphs 1 and 2 that do not count towards the 95-day limit shall not result in the annuitant being enrolled in the State Employees' Retirement System ("SERS") as an active member and shall not result in credited State service, the earning of retirement covered compensation, or any form of member or employer contributions to SERS.
4. For purposes of determining who the annuitants identified in paragraphs 1 and 2 are, annuitants who return to the following agencies, boards, or commissions will be included, in addition to any other agencies under the Governor's jurisdiction, because the Governor's approval that an emergency exists for these agencies is made under 71 Pa. C.S. §5706(a.1): Environmental Hearing Board, Fish and Boat Commission, Game Commission, Historical and Museum Commission, Pennsylvania Liquor Control Board, Pennsylvania Municipal Retirement Board, Pennsylvania Human Relations Commission, PENNVEST, Public School Employees' Retirement System, State Employees' Retirement System, and the State Tax Equalization Board.

5. Nothing in this Order grants relief from the other requirements of the State Employees' Retirement Code that an annuitant who returns to State service must either be over Normal Retirement Age, as defined in the State Employees' Retirement Code and determined by this Board, or have been an annuitant for more than one year, or any other requirement under law.



**DATE:** April 29, 2020

**TO:** Terrill J. Sanchez  
Secretary  
Pennsylvania State Employees' Retirement Board

**FROM:** V. Reid Walsh *V. Reid Walsh*  
Deputy Secretary for Human Resources and Management  
Governor's Office of Administration

On behalf of  
Michael Newsome  
Secretary  
Governor's Office of Administration

**SUBJECT:** Request for Relief From the 95-day Limit of Section 5706(a.1) of the State Employees' Retirement Code<sup>1</sup> for Annuitants during the Novel Coronavirus ("COVID-19") Emergency

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On March 6, 2020, pursuant to Section 7301(c) of the Emergency Management Services Code, 35 Pa.C.S. § 7301(c), Governor Wolf issued a Proclamation of Disaster Emergency ("Proclamation") related to the novel coronavirus disease ("COVID-19") outbreak. Through the Proclamation, Governor Wolf suspended the provisions of any regulatory statutes prescribing the procedures for conducting Commonwealth business, as well as the orders, rules, and regulations of any Commonwealth agency, for which strict compliance would in any way prevent, hinder, or delay necessary action in coping with the disaster emergency.

To mitigate the spread of COVID-19, on March 16, 2020, Governor Wolf strongly encouraged the closure of all non-essential businesses, including entertainment, hospitality, retail, and recreational facilities. Additionally, the Governor ordered all restaurants to close their dine-in amenities. This closure was expanded to all Executive Branch Commonwealth offices on March 17, 2020. To further mitigate the spread of COVID-19, on March 19, 2020, Governor Wolf issued an Order prohibiting the operation of non-life sustaining businesses in Pennsylvania. Beginning on March 23, 2020, Governor Wolf, utilized a measured approach by issuing Stay at Home Orders on a county-by-county basis. By April 1, 2020, all 67 Pennsylvania counties were under a Stay at Home Order.

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<sup>1</sup> Section 5706(a.1) of the State Employees' Retirement Code permits a Commonwealth employer to return an annuitant, who is over normal retirement age or who has been an annuitant for more than one year, to state service if, due to an emergency, there is an increased workload that negatively impairs service to the public. 71 Pa.C.S. § 5706(a.1).

Due to these mitigation efforts and the Stay at Home Orders, many Pennsylvanians have applied for unemployment compensation benefits, resulting in a need for additional staff to process claims. In addition, numerous Commonwealth agencies under the Governor's jurisdiction, have seen a dramatically increased need for certain services and programs due to the extraordinary nature of the circumstances that the COVID-19 outbreak presents.

In order to address the dramatic increase in the demand for certain services and programs, and in order to provide some continued level of stability and predictability in the delivery of such services and programs, agencies under the Governor's jurisdiction require the flexibility to plan for and immediately utilize the services of certain annuitants to perform mission-critical tasks without the time limitation of the 95-day per calendar year cap imposed by Section 5706(a.1) of the State Employees' Retirement Code.<sup>2</sup> Furthermore, it is imperative that Commonwealth agencies under the Governor's jurisdiction be able to provide these essential services to Pennsylvanians throughout the entirety of the COVID-19 outbreak. As it has been widely reported that the COVID-19 outbreak could last through the end of this year, and perhaps into the beginning of 2021, the 95-day per calendar year limitation could prove to be problematic for annuitants who are returned to state service in the coming weeks or are required to continue working in response to the COVID-19 emergency.

The advantages of providing relief from 95-day per calendar year limitation for annuitants who are working or returned to service in response to the COVID-19 outbreak are vast. For instance, by securing the services of known annuitants, precious time is saved by the agency in not seeking, interviewing and vetting qualified applicants to fill vacant mission critical positions. In addition, by returning to state service annuitants who, in most cases, have already served in the position for many years, agencies may greatly reduce, and in many cases eradicate the time it takes to train a newly hired individual. As a result, the annuitant can quickly begin to provide mission-critical assistance to the agencies that desperately need it the most. Finally, because numerous mission-critical positions are currently being completed via telework, an experienced annuitant can effectively and quickly perform the duties of the position without the heightened in-person supervision and/or assistance that would otherwise be necessary for inexperienced employees.

Therefore, to ensure that Commonwealth agencies under the Governor's jurisdiction are able to maintain mission-critical operations for the duration of the COVID-19 emergency, the Office of Administration (OA), requests that the State Employees' Retirement Board (Board) suspend or toll the running of the 95-day per calendar year limitation of Section 5706(a.1) of the State Employees' Retirement Code<sup>3</sup> beginning on March 6, 2020, the initial date of the Governor's

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<sup>2</sup> The State Employees' Retirement Code defines "Annuitant" as "any member on or after the effective date of retirement until his annuity is terminated." 71 Pa.C.S. § 5102.

<sup>3</sup> In its entirety, Section 5706(a.1) of the Code provides that: "When, in the judgment of the employer, an emergency creates an increase in the work load such that there is serious impairment of service to the public, an annuitant who is over normal retirement age or who has been an annuitant for more than one year may be returned to State service for a period not to exceed 95 days in any calendar year without loss of his annuity. In computing the number of days an annuitant has returned to State service, any amount of time less than one-half of a day shall be counted as one-half of a day. For agencies, boards and commissions under the Governor's jurisdiction, the approval of the Governor

Emergency Proclamation for those annuitants who are working or are returned to service to perform COVID-19 emergency-related services. At this time, it is not possible to predict if the Governor's Emergency Proclamation, which is set to expire on June 4, 2020, will be extended by the Governor. Therefore, OA further requests that the relief provided by the Board be coterminous with the March 6<sup>th</sup> Emergency Proclamation and run through any extension or renewal period of the Proclamation.

OA requests that during the tolling of the 95-day limitation, those individuals for whom the running of the 95-days is tolled would continue to receive their SERS annuity. During the tolling period, they would not be re-enrolled in SERS as active members, would not make SERS member contributions, would not earn SERS service credit or retirement covered compensation, and their employer would not make SERS member contributions. OA recognizes that OA will be responsible for any adjustments, changes or corrections to other benefits for these individuals.

Finally, this request is being made only on behalf of the Commonwealth agencies, boards or commissions under the Governor's jurisdiction for which OA certifies that an emergency exists before an annuitant can be returned to State service in accordance with Section 5706(a.1) of the State Employees' Retirement Code.<sup>4</sup> OA is not requesting any change regarding the "over normal retirement age" or "must be an annuitant for a year" requirements of Section 5706(a.1).

Thank you for your consideration of this request.

If you have any questions, or would like to discuss this memorandum further, please contact Tara Long, Director, Bureau of Employee Benefits.

cc: Tara Long, Director, Bureau of Employee Benefits  
Jason Swarthout, Director, Talent Management Office  
Sandra W. Stoner, Chief Counsel

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that an emergency exists shall be required before an annuitant may be returned to State service." 71 Pa.C.S. § 5706(a.1).

<sup>4</sup> Besides the agencies under the Gov's jurisdiction, this includes the following agencies: Environmental Hearing Board, Fish and Boat Commission, Game Commission, Historical and Museum Commission, PA Liquor Control Board, Municipal Retirement Board, PA Human Relations Commission, Pennvest, PSERS, SERS, State Tax Equalization Board.