

43:16A-1

**LEGISLATIVE HISTORY CHECKLIST**  
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**NJSA:** 43:16A-1

(PFRS--officers  
working in other  
departments--grant  
certain benefits)

**LAWS OF:** 1991

**CHAPTER:** 57

**Bill No:** S2070

**Sponsor(s):** Lynch

**Date Introduced:** Pre-filed

**Committee: Assembly:** State Operations

**Senate:** State Government

**Amended during passage:** No

**Date of Passage: Assembly:** February 4, 1991

**Senate:** May 17, 1990

**Date of Approval:** March 13, 1991

**Following statements are attached if available:**

**Sponsor statement:** Yes

**Committee Statement: Assembly:** Yes

**Senate:** Yes

**Fiscal Note:** Yes

**Veto Message:** No

**Message on signing:** No

**Following were printed:**

**Reports:** No

**Hearings:** No

See ruling by Division of Pensions--attached:

**KBG/SLJ**

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P.L.1991, CHAPTER 57, approved March 13, 1991  
1990 Senate No. 2070

1 AN ACT concerning the eligibility for certain benefits in the  
2 Police and Firemen's Retirement System of New Jersey and  
3 supplementing P.L.1944, c.255 (C.43:16A-1 et seq.).  
4

5 BE IT ENACTED by the Senate and General Assembly of the  
6 State of New Jersey:

7 1. Notwithstanding any other law, rule or regulation to the  
8 contrary, a member who is employed by a municipal police  
9 department and who is assigned by that department to duties in  
10 another municipal police department shall be eligible while  
11 performing the assigned duties for the benefits provided to the  
12 member or the survivors of the member under sections 7 and 10  
13 of P.L.1944, c.255 (C.43:16A-7 and 10).

14 2. This act shall take effect immediately.  
15  
16

17 STATEMENT  
18

19 This bill provides that a member of the Police and Firemen's  
20 Retirement System who is employed by a municipal police  
21 department and who is assigned by that department to duties in  
22 another municipal police department shall be eligible while  
23 performing the assigned duties for accidental disability  
24 retirement and for the payment of an accidental death benefit to  
25 the survivors of the member.

26 A recent ruling from the Division of Pensions has raised doubts  
27 about the coverage of police officers for these benefits in cases  
28 where the officers are assigned by their departments to the  
29 departments of other municipalities. The ruling has meant that  
30 municipalities are no longer able to employ police officers from  
31 neighboring municipalities in order to provide police protection  
32 during special events.  
33  
34

35 PUBLIC EMPLOYEE BENEFITS  
36

37 Provides certain benefits in PFRS for police officer who is  
38 assigned to duties in another department.

SENATE, No. 2070

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator LYNCH

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ASSEMBLY STATE OPERATIONS AND PERSONNEL  
COMMITTEE

STATEMENT TO

SENATE, No. 2070

STATE OF NEW JERSEY

DATED: OCTOBER 11, 1990

The Assembly State Operations and Personnel Committee reports favorably Senate, No. 2070.

This bill provides that a member of the Police and Firemen's Retirement System who is employed by a municipal police department and who is assigned by that department to duties in another municipal police department shall be eligible while performing the assigned duties for accidental disability retirement and for the payment of an accidental death benefit to the survivors of the member.

A ruling by the Division of Pensions has raised doubts about the coverage of police officers for these benefits in cases where officers are assigned by their departments to departments in other municipalities. The ruling has had the effect of preventing municipalities from being able to employ police officers from neighboring municipalities to provide police protection during special events.

SENATE STATE GOVERNMENT AND FEDERAL  
AND INTERSTATE RELATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2070

STATE OF NEW JERSEY

DATED: APRIL 26, 1990

The Senate State Government and Federal and Interstate Relations Committee reports favorably Senate Bill No. 2070.

This bill provides that a member of the Police and Firemen's Retirement System who is employed by a municipal police department and who is assigned by that department to duties in another municipal police department shall be eligible while performing the assigned duties for accidental disability retirement and for the payment of an accidental death benefit to the survivors of the member.

A ruling by the Division of Pensions has raised doubts about the coverage of police officers for these benefits in cases where officers are assigned by their departments to departments in other municipalities. The ruling has had the effect of preventing municipalities from being able to employ police officers from neighboring municipalities to provide police protection during special events.

FISCAL NOTE TO  
SENATE, No. 2070  
STATE OF NEW JERSEY

DATED: June 14, 1990

Senate Bill No. 2070 of 1990 provides that a member of the Police and Firemen's Retirement System (PFRS) who is employed by a municipal police department and who is assigned by that department to duties in another municipal police department shall be eligible while performing the assigned duties for accidental disability retirement and for the payment of an accidental death benefit to the survivors of the member.

The Division of Pensions states that enactment of this legislation will not incur additional expenses to the retirement system or to the employers.

The Office of Legislative Services concurs.

This fiscal note has been prepared pursuant to P.L.1980, c.67.



Douglas C. Berman  
State Treasurer

State of New Jersey  
DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS  
CN 295  
Trenton, New Jersey  
08625-0295  
(609) 292-7524

LOCATION  
One State Street Square  
50 West State Street  
Trenton

Douglas R. Forrester  
Director

FEBRUARY 1990

TO: CERTIFYING OFFICERS  
POLICE AND FIREMEN'S RETIREMENT SYSTEM  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

FROM: DOUGLAS R. FORRESTER, DIRECTOR *DF*  
DIVISION OF PENSIONS

SUBJECT: OFF-DUTY OR OUTSIDE EMPLOYMENT BY POLICE OFFICERS

In August 1989, I issued an informational memorandum on the subject of coverage under the Police and Firemen's Retirement System (PFRS) and the Public Employees' Retirement System (PERS) for police officers who are injured during off-duty or outside employment. In general, this memorandum stated that to be fully covered under the retirement systems an officer had to be performing regular or assigned duties for his or her public employer. It further stated that indications that an officer is performing regular or assigned duties for his or her public employer included the following:

1. the officer is considered to be on-duty by the department;
2. all aspects of the employer-employee relationship between the officer and the department are applicable to the particular duty; and,
3. the officer is receiving regular compensation for the duty on a regular or overtime basis.

As a result of comments and questions we have received in response to the memorandum, we have reviewed this subject further and determined that a further clarification is necessary. A number of police departments provide outside employment for their officers arranged through the department at a flat rate of pay or at a rate different from their regular compensation. This is permitted under the Federal Fair Labor Standards Act and the regulations of the U. S. Department of Labor under this act. The time worked under such arrangements is not counted in determining overtime compensation for the officers involved. The question arose whether outside employment under these circumstances would be fully covered under the retirement systems. Because of this question, we think it is necessary to revise and restate the criteria for determining if an officer is fully covered under the state retirement systems for outside employment as follows:

1. The officer **must** be working for his or her employing department and be subject to its supervision and control.
2. The officer **must** be paid by his or her employing department but the rate of pay need not be the regular compensation or overtime rate for the officer. The rate could be a flat rate for all officers participating in the outside employment but it **must** be paid by the department. The department may be reimbursed by the outside employer.

(over)

*New Jersey Is An Equal Opportunity Employer*

Douglas R. Forrester  
February 1990  
**Off-Duty or Outside Employment by Police Officers**  
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The issue of which aspects of the regular employer-employee relationship apply to outside employment is important for the departments and officers involved in outside employment. However, it is not necessary that it determine whether the officers are fully covered by the retirement systems. The important criteria for full pension coverage is that the officers (1) must be working for their employing departments and be subject to departmental discipline and control; and (2) must also be paid by their departments but the rate of pay need to be their regular or overtime rate.

We hope this will be the final clarification necessary on this subject. If you do have questions on this subject, you may contact my Executive Assistant for Legal Affairs, Thomas P. Bryan, at (609)292-9012.





State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS

CN 295  
TRENTON, NEW JERSEY 08625-0295

FEATHER O'CONNOR  
STATE TREASURER

DOUGLAS R. FORRESTER  
DIRECTOR  
(609) 292-3463

*Recd 10/21/89*

MEMORANDUM

To: Certifying Officers  
Police and Firemen's Retirement System  
Public Employees' Retirement System

From: Douglas R. Forrester, Director  
Division of Pensions *DRF*

Date: August 1989

Subject: Off-Duty or Outside Employment by Police Officers

We have received a number of inquiries recently concerning coverage under state-administered retirement systems for police officers who are injured during off-duty or outside employment. The two state systems in which police officers are enrolled are the Police and Firemen's Retirement Systems (PFRS) and the Public Employees' Retirement System (PERS). These inquiries were occasioned by our responses to previous individual inquiries on this subject which indicated that police officers injured during off-duty or outside employment would not be fully covered under state-administered retirement systems. The purpose of this memorandum is to clarify this issue for all participating employers and employees and to explain the coverage status under PFRS and PERS for those police officers engaged in off-duty or outside employment.

The primary question which arises with respect to off-duty or outside employment of police officers is whether or not they are covered by the accidental disability and accidental death provisions of PFRS and PERS. To be eligible for accidental disability retirement under these systems, a member must be permanently and totally disabled as a direct result of a traumatic event "occurring during and as a direct result of the performance of his regular or assigned duties" (N.J.S.A. 43:16A-7; 43:15A-43). For a widow, children or dependent parents of a member to be eligible for accidental death benefits, a member must have died in active service "as a result of an accident met in the actual performance of duty at some definite time and place" (N.J.S.A. 43:16A-10; 43:15A-49).

Another provision which is pertinent to this issue concerns service which is creditable under the retirement systems. "Only service as a policeman or fireman paid by an employer" is considered creditable service under PFRS (N.J.S.A. 43:16A-4). There is a comparable provision under PERS (N.J.S.A. 43:15A-39). The reference to 'employer' in these systems is clearly to a public employer.

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participating in the retirement system. It is under these provisions that it must be determined if particular service by a member is covered by the accidental disability and death provisions of the retirement systems.

It is clear from the pension statutes that for a police officer to be covered by the accidental disability and accidental death provisions of PFRS and PERS, the officer must be performing regular or assigned duties for his employer which is participating in the retirement system. Indications that an officer is performing regular or assigned duties for his employing department include the following:

1. the officer is considered to be on-duty by the department;
2. all the aspects of the employer-employee relationship between the officer and the department are applicable to a particular duty; and
3. the officer is receiving regular compensation for the duty on a regular or over-time basis.

If a particular duty of a police officer meets these criteria, the officer would be covered by the accidental disability and death provisions of the retirement systems.

Questions about pension coverage for police officers during off-duty or outside employment have arisen because this type of employment is usually arranged through the police departments for which they work. These arrangements have come about as a result of opinions from the Attorney General's office concerning the performance of police-related activities by police officers during their off-duty hours. There was a question if police officers could engage in these activities without being subject to the provisions of the Private Detective Act. These opinions indicated that police officers could engage in police-related activities during off-duty hours for private persons or entities without being subject to the Private Detective Act if arrangements for use of policemen for these purposes is made through the employing municipalities with compensation for the service channeled through the municipalities. These opinions did not address the issue of pension coverage while performing these activities.

The types of employment which have raised questions about coverage under the state retirement systems have usually been described as off-duty or outside employment. This in itself raises an immediate question about coverage for this service under the retirement systems. It seems to connote services which are not part of regular duty or for an employer other than the police department for which the member works. However, coverage under the retirement systems for particular service will be determined by the nature of the service and not the name used to describe it. The key to coverage under the retirement systems is that the police officers must be working for their employing departments on the same basis that they normally work and be receiving their regular compensation on either a regular or over-time basis. If an officer is working under an arrangement between his department and another person or entity whereby the officer is not considered on-duty with the department, or is receiving compensation on a basis other than his

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regular compensation, the officer would not be covered by the accidental disability or death provisions of the retirement systems.

While a police officer may not be covered by the accidental disability and death provisions of the state retirement systems for off-duty or outside employment, the officer would be covered by the ordinary disability and active death benefit provisions. Eligibility for these benefits is not based upon job-related injury or death. A situation could also arise where an officer encountered criminal activity while engaged in outside employment and was disabled or killed while attempting to thwart the criminal activity or apprehend the perpetrator. An officer could be covered by the accidental disability or death provisions in such a situation depending on the circumstances.

I hope this will help to clarify the subject of pension coverage for police officers engaged in off-duty or outside employment. If you have further questions on this subject, you may contact my Executive Assistant for Legal Affairs, Thomas P. Bryan at (609) 292-9012.

**PLEASE SEND A COPY OF THIS LETTER TO BOTH YOUR  
MAYOR AND CHIEF OF POLICE.**