EXECUTIVE ORDER NO. 115

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, on March 9, 2020, through Executive Order No. 103 (2020), the facts and circumstances of which are adopted by reference herein, I declared both a Public Health Emergency and a State of Emergency (the "Emergency") throughout the State due to the public health hazard created by COVID-19; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, on March 16, 2020, through Executive Order No. 104 (2020), the facts and circumstances of which are adopted by reference herein, I established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, in recognition that the Centers for Disease Control ("CDC") has advised that social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease and that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another, I issued Executive Order No. 107 (2020), on March 21, 2020, the facts and circumstances of which are adopted by reference herein, which ordered steps to mitigate community spread of COVID-19; and

WHEREAS, as of April 5, 2020, according to the World Health Organization, there were over 1,133,000 confirmed cases of COVID-19 worldwide, with over 62,000 of those cases having resulted in death; and

WHEREAS, as of April 5, 2020, according to the CDC, there were over 304,000 confirmed cases of COVID-19 in the United States, with over 7,600 of those cases having resulted in death; and

WHEREAS, as of April 5, 2020, there were over 37,500 positive cases of COVID-19 in New Jersey, with at least 917 of those cases having resulted in death; and

WHEREAS, even as we institute social distancing measures, the number of COVID-19 cases in New Jersey is anticipated to continue to increase for the immediate future, meaning that we must take all possible steps to expand our healthcare system's capacity to treat those who require emergency or intensive care; and

WHEREAS, at the same time, the State must take all feasible steps to expand our law enforcement agencies' and first responders' capacity to respond to threats to public health and safety; and

WHEREAS, my Administration has already taken a series of steps to address the need to expand our healthcare system's capacity and to expand the capacity of law enforcement agencies and other first responders to respond to threats to public health and safety; and

WHEREAS, on March 23, 2020, through Executive Order No. 109 (2020), the facts and circumstances of which are adopted by reference herein, I suspended elective surgeries and invasive procedures, which necessarily draw upon the skill and time of critical healthcare professionals and involve the use of equipment and supplies that may be needed to treat those who are critically ill, and took other actions to protect and conserve the resources of our healthcare system; and

WHEREAS, on March 28, 2020, through Executive Order No. 111 (2020), the facts and circumstances of which are adopted by reference herein, I ordered healthcare facilities to begin reporting daily data on their capacity and supplies, including bed capacity, ventilators, and Personal Protective Equipment (PPE); and

WHEREAS, on April 1, 2020, through Executive Order No. 112 (2020), the facts and circumstances of which are adopted by reference herein, I recognized that responding to the high volume of COVID-19 cases in New Jersey will likely require the skills and time of more healthcare professionals across the State; and

WHEREAS, Executive Order No. 112 (2020) included measures to expeditiously expand the supply of available and qualified healthcare professionals permitted to treat New Jersey patients, by temporarily reactivating the licenses of recently retired New Jersey healthcare professionals; by temporarily authorizing the practice in New Jersey of foreign doctors in good standing in other jurisdictions; and by facilitating the ability of appropriately credentialed healthcare professionals to safely prescribe controlled dangerous substances to New Jersey residents; and

WHEREAS, Executive Order No. 112 (2020) included measures to expand the scope of practice of certain healthcare professionals so that they can be deployed to meet the anticipated needs of the State in relation to COVID-19; and

WHEREAS, although the actions taken to date will enable the State to better respond to the COVID-19 pandemic, the Commissioner of DOH has determined that, throughout the duration of the Emergency, the State needs the help of additional qualified health, mental health, and related professionals to supplement our healthcare capacity on a temporary basis; and

WHEREAS, through a Law Enforcement Guidance issued on March 16, 2020, the facts and circumstances of which are adopted by reference herein, the Attorney General advised law enforcement agencies on strategies for addressing personnel challenges relating to COVID-19, including through expanded reliance upon the Special Law Enforcement Officers' Act, N.J.S.A. 40A:14-146.8, et seq., and mutual aid agreements between municipalities; and

WHEREAS, those personnel challenges have continued to grow, and as of April 5, 2020, there were thousands of law enforcement officers in New Jersey currently unable to report to duty, the vast majority of which because they tested positive for COVID-19 or are currently in quarantine; and

WHEREAS, the Attorney General, who is the State's chief law enforcement officer, has determined that, for the duration of the Emergency, the return of retired officers to bolster the ranks of law enforcement agencies, as well as the expanded retention of Special Law Enforcement Officers on an hourly basis, will supplement law enforcement agencies' ability to provide for public health and safety during the COVID-19 pandemic; and

WHEREAS, certain retirees enrolled in the State's various retirement systems possess the necessary skills and training to immediately assist with New Jersey's COVID-19 emergency, including law enforcement officers who are retired from the New Jersey Police and Firemen's Retirement System ("PFRS"), N.J.S.A. 43:16A-1 et seq., or the New Jersey State Police Retirement System ("SPRS"), N.J.S.A. 53:5A-1 et seq.; health workers at University Hospital who are retired from the Public Employees' Retirement System ("PERS"), N.J.S.A. 43:15A-1 et seq.; and other former State and local government employees who are now retired and have the skills required for the State to respond to the COVID-19 emergency; and

WHEREAS, PFRS, SPRS and PERS are considered qualified governmental plans under the Internal Revenue Code requiring that certain rules be followed including that when a State or local employee retires and returns to employment with the same employer, the person have had a "bona fide" retirement, which means that there was no pre-arrangement between the retiree and the employer regarding their return to employment; and

WHEREAS, the Division of Pensions and Benefits (the "Division of Pensions") in the New Jersey Department of the Treasury has adopted a rule at N.J.A.C. 17:1-17.14 ("Return to Employment Rule") which sets forth the terms upon which a retiree can return to employment with the same employer; and

WHEREAS, the Division of Pensions has administered the Return to Employment Rule to require that there be a six (6) month period between the date of retirement and the return to employment, and also that there has been no pre-arrangement of that return between the employee and the former employer; and

WHEREAS, the Division of Pensions has administered the Return to Employment Rule to require that retirees returning to work with the same employer and wishing to continue to collect their pension while also getting paid for their work cannot work full time, since working full time may require re-enrollment in the applicable retirement system; and

WHEREAS, in order to obtain additional staffing resources, State departments, agencies, boards, commissions and independent authorities and local municipal and county governments ("Government Agencies") may need to enlist the efforts of retirees on a full-time basis and within the six (6) month period specified in the Return to Employment Rule; and

WHEREAS, because these retirees will be returning to their former employment specifically in response to the unprecedented emergency created by the COVID-19 pandemic, there is less reason to fear that they did not have a "bona fide" retirement; and

WHEREAS, in addition to hiring retirees, Government Agencies may also need to hire new employees, who will need and desire to have health insurance coverage under the State Health Benefits Plan ("SHBP") immediately upon hire, and cannot feasibly complete the sixty (60) day waiting period under State law between the date of

hire of a new employee and the new employee becoming eligible to participate in the SHBP; and

WHEREAS, while law enforcement agencies can address certain of their personnel challenges through the retention of Special Law Enforcement Officers, N.J.S.A. 40A:14-146.17 limits the number of Class Two special law enforcement officers ("SLEO IIs") in communities other than resort municipalities to 25 percent of the number of regular officers, hindering these agencies' ability to fully grow their capacity to respond to the myriad public health and safety challenges presented by this Emergency; and

WHEREAS, for these reasons, among others, strict enforcement of certain statutory provisions that delay the State's efforts to rapidly respond to the spread of COVID-19 is detrimental to the public welfare; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. For the duration of this Emergency, retirees may return to employment by Government Agencies in any capacity, including but not limited to full-time employee, part-time employee, or special law enforcement officer, without having to re-enroll in any retirement system, if the following conditions are met:

   a. The retiree has retired before the date of this Order; and

   b. The retiree has completed at least a thirty day

separation from their employer, from the date of retirement or the date of Board approval, whichever is later; and

c. The retiree's return to employment is needed because of the COVID-19 pandemic.

2. Where either (i) a retiree has been retired from public employment for less than six months, and that retiree is returning to their most recent Government Agency employer in any capacity, or (ii) a retiree is returning to work as a full-time employee with their most recent Government Agency employer, then that employer must complete a form provided by the Division of Pensions substantiating that the retiree's return to employment is needed because of the COVID-19 pandemic, based on that retiree's skills and/or experience, and detailing the retiree's general duties, before that retiree may return to employment pursuant to Paragraph 1 of this Order.

3. Any retiree returning to employment under Paragraph 1 of the Order shall, for purposes of any retirement system, continue to be a retiree. If such retiree is already enrolled in the SHBP as a retiree, they shall continue to maintain such coverage during their temporary return to employment.

4. To the degree that they are inconsistent with Paragraph 1 of this Order, the provisions of N.J.S.A. 43:15A-7(d), N.J.S.A. 43:15A-57.2, N.J.S.A. 43:15A-65, N.J.S.A. 43:16A-3, N.J.S.A. 43:16A-15.3, N.J.S.A. 53:5A-5, N.J.S.A. 53:5A-28, and N.J.A.C. 17:1-17.14, are suspended for the duration of this Emergency. Any provisions of these statutes and regulations that are not inconsistent with this Order remain in full force and effect. Nothing in Paragraph 1 of this Order suspends any other statute or regulation governing employees of Government Agencies, including but not limited to job qualifications and age limits.

5. For the duration of this Emergency, any person who is hired by a Government Agency in response to the COVID-19 pandemic, and who is hired on or after the date of issuance of Executive Order No. 103 (2020), may immediately enroll in the SHBP. The Government Agency employer shall complete a form provided by the Division of Pensions substantiating that the new hire was employed in response to the COVID-19 pandemic. To the degree that they are inconsistent with this Order, the provisions of N.J.S.A. 52:14-17.26, N.J.S.A. 52:14-17.31 and N.J.A.C. 17:9-2.6 (for State employees), and N.J.A.C. 17:9-2.7 (for local government employees), requiring a sixty (60) day waiting period to become eligible for participation in the SHBP, are suspended for the duration of this Emergency. Any provisions of these statutes and regulations that are not inconsistent with this Order remain in full force and effect.

6. The Division of Pensions shall publish a form by April 7, 2020, that employers can fill out to satisfy their obligations relating to retirees under Paragraph 2 of this Order. The Division of Pensions shall publish a separate form by April 7, 2020, that employers can fill out to satisfy their obligations relating to new hires under Paragraph 5 of this Order. Both forms shall be published on the Division of Pensions' Internet website.

7. For the duration of this Emergency, municipalities may employ the number of SLEO IIs as are necessary in the judgment of that law enforcement agency to address public health and safety. The provisions of N.J.S.A. 40A:14-146.17 stating that the number of SLEO IIs in communities other than resort municipalities shall not exceed 25 percent of the total number of regular officers are suspended for the duration of this Emergency.

8. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other

governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Executive Order, and to cooperate fully with Administrative Orders issued pursuant to this Executive Order.

9. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

10. This Order shall take effect immediately and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this 6th day of April, Two Thousand and Twenty, and of the Independence of the United States, the Two Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor