



North Carolina
Total Retirement Plans



Dale R. Folwell, CPA
STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA

MINUTES

BOARD OF TRUSTEES

OF THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM

The special meeting of the Board of Trustees was called to order at 2:00 p.m., March 7, 2018, by the Chair, State Treasurer Dale R. Folwell, CPA. The meeting was held in the Dogwood Conference Room of the Longleaf Building at 3200 Atlantic Avenue, Raleigh, NC 27604. The Chair began the meeting by leading the Pledge of Allegiance.

Members Present (by telephone)

The Board members present were: Treasurer Dale R. Folwell, Lentz Brewer, David Dear, Vernon Gammon, Brenda Howerton, Claire Miller (on behalf of Superintendent Mark Johnson), Greg Patterson, Sally Sandy, Carson Smith, Mark Stohlman and Ashley Wooten.

Members Absent

The Board members absent were Kevin Gordon and Aaron Meredith.

Guests Present

The guests attending were: Jody Newsome from the Attorney General's Office; Margaret Foreman from the North Carolina Association of Educators (by phone); Lanier McRae from the North Carolina Office of State Budget and Management; and Richard Bostic from the North Carolina School Boards Association (by phone).

Department of State Treasurer Staff Present

The staff members present were: Thomas Causey, Chris Farr, Jaclyn Goldsmith, Sam Hayes, Timeka Holden, Patrick Kinlaw, Frank Lester, Karah Manning, Mallori Morris-Bloom, Laura Rowe, Edgar Starnes, Christina Strickland, Steve Toole and Sam Watts.

Ethics Awareness and Identification of Conflicts or Potential Conflicts of Interest

The Chair asked, pursuant to the ethics rules, about conflicts of interest of board members. No conflicts of interest were identified by the board members.

Overview of Contribution-Based Benefit Cap (CBBC) Proposed Rules and Fiscal Note

The Chair recognized Christina Strickland, Retirement Systems Division (RSD) General Counsel, to provide an overview of the CBBC law and actions taken by the Board. Ms. Strickland stated that the General Assembly enacted Session Law 2014-88: Fiscal

Integrity/Pension-Spiking Prevention Act to address situations where employees receive substantial increases in compensation late in their careers that were not anticipated which cause unusually high liabilities for the North Carolina Retirement Systems. Prior to the enactment of the law, these costs would be paid by all employers in the System. The law shifted the additional costs to the retiree's final employer.

Ms. Strickland stated that the law required the TSERS Board to adopt a CBBC factor to be used in a calculation to determine whether an additional employer contribution is required, when an employee retires with an Average Final Compensation of \$100,000 or greater, that would fund the increased cost to the Retirement System. Based on the advice of the actuary, the Board adopted a cap factor of 5.1 at its October 23, 2014 meeting. Based on the advice of the actuary, the Board adopted the cap factor of 4.7 at its October 22, 2015 meeting. Ms. Strickland stated that the department and the Board previously took the position that rulemaking through the Administrative Procedure Act (APA) was not required, but out of an abundance of caution, the decision was made to adopt the CBBC factor through the APA rulemaking process. Therefore, at its December 4, 2017 meeting, it proposed the rule text of 4.5 as the CBBC factor for TSERS that it previously adopted at its October 22, 2015 meeting.

The Chair recognized Sam Watts, Policy Director, to give a presentation on the fiscal note. Mr. Watts stated that the legislation requires the Boards to adopt a value recommended by the actuary at its quarterly meeting, and the Boards adopted the midpoint of acceptable ranges of factors. He noted that the fiscal note was approved by the North Carolina Office of State Budget and Management (OSBM) and the note analyzes the financial impact on the entire state of the cap factors chosen by the Boards. Mr. Watts referenced Table 10 of the fiscal note that showed the net economic impact of rules, including the impact on state government, local government and the private sector, as a present value of net savings accruing to taxpayers of \$11.3 million 2018 through July 1, 2042. He stated that the rule is economically neutral from the perspective of the Retirement Systems, as all retirement costs are ultimately paid regardless, but that according to the fiscal note, the CBBC provision reduces nominal future expenditures system-wide by \$63.5 million through savings in interest payments. He explained that according to estimates from the fiscal note, approximately \$73.6 million will be paid by employers (or members) over a 12-year period to satisfy CBBC liabilities. If the CBBC provision had not been enacted, these payments would have been spread out over a 23-year period, with nominal costs of approximately \$137 million. Of that \$137 million, \$67.8 million would have been paid by "spiking employers" and \$69.2 million by "non-spiking employers", as those terms are used in the fiscal note. The CBBC provision addresses this discrepancy by requiring "spiking employers" to pay costs as they arise and eliminating the obligation for "non-spiking employers" to share costs associated with such situations.

Mr. Watts stated that the additional nominal cost to spiking employers will be the difference in the \$67.7 million they would already have to pay, and the \$73.6 million they would pay, or \$5.9 million more to the Retirement Systems over 25 years, while non-spiking employers will pay \$69.2 million less.

Mr. Watts discussed why the two affected Retirement Systems may have different cap factors. He stated that there are different benefit accrual rates and actuarial assumptions are specific to each system. He stated that by using the same selection strategy, the Boards made decisions with similar proportional impacts on each system.

Lastly, Mr. Watts summarized that the fiscal note had three central findings: economic neutrality for the Retirement Systems, \$11.3 million in savings to taxpayers and shifting the costs from non-spiking employers to spiking employers.

Consideration of Public Comments

The Chair recognized Laura Rowe, DST's Rulemaking Coordinator, to speak on the consideration of public comments. Ms. Rowe outlined her role in assisting DST and its divisions in following the steps of the rulemaking process. She noted that one of the steps is to publish the language of proposed rules, along with any fiscal note, in order to allow the public to provide written or oral comments. As the Rulemaking Coordinator, she collected all comments received for consideration by the rulemaking entity.

In this instance, the proposed TSERS and LGERS cap factor rules and fiscal note were published in the NC Register and on the DST website for the public to review and provide comment as required under the Administrative Procedure Act. The required comment period is 60 days. In this instance, the comment period for the CBBC rules ran from January 2, 2018, to March 5, 2018. Ms. Rowe outlined that she collected comments from the public hearing held January 25, 2018, from 2-4p.m. in the Dogwood Conference Room of DST. These comments were given by Katie Cornetto, attorney with Schwartz and Shaw, PLLC, and Michael Crowell, attorney representing plaintiffs in the CBBC litigation.

During the comment period, DST also received written comments from the following entities: N.C. School Boards Association, Johnston County Board of Education, Wilkes County Board of Education, Cabarrus County Board of Education, Union County Board of Education, Pender County Board of Education, Wilson County Board of Education and Dare County Board of Education.

Treasurer's Remarks on Adoption of the Contribution-Based Benefit Cap Proposed Rules and Fiscal Note

Prior to the adoption of the rules and fiscal note, the Chair addressed the Boards regarding the litigation against the anti-pension-spiking law. The Chair gave the following remarks:

"In my role as Treasurer, and as your Chair, I have watched the continuous efforts from the four school systems engaging in litigation against the anti-pension spiking law and their association, and I'm convinced their objective is to undermine the intent of the General Assembly to hold employing agencies responsible for decisions they make which create visible winners and invisible losers. The anti-pension spiking statutes level the playing field by holding those in power accountable for their decisions, when they create visible winners.

"As is also clear in the ongoing litigation over the cap factors, the four school systems who provided comments and their association oppose the policies behind the anti-pension spiking statute. Similarly, in superior court, the school boards' counsel explained their goal: 'the School Boards darn well don't want to pay the assessments' under the anti-pension-spiking statute. The arguments in the litigation and in the comment letters are just tools for an effort to disable the anti-pension-spiking statute. We don't choose which laws to follow and who to apply them to.

"In the lawsuit, the school boards hope to use the Administrative Procedures Act to defeat the anti-pension-spiking statute, and in their comment letters they seek to set the department up to fail by placing us in an endless loop of considering and reconsidering alternatives, hoping that we will conclude that action is impossible.

"For example, the School Boards Association in its court filings warns that if the APA applies, any cap factor rule 'must be "reasonably necessary" to implement the law taking into account the "cumulative effect" of all rules.' And, the comment letters argue the agency must offer at least two alternative rules, each of which could only be different cap factors as required by the anti-pension spiking law.

"Reading the comment letters in conjunction with the court filings from the same parties, it becomes clear that the school boards would use these legal tests to attack the cap factors that the trustees have already adopted. Worse still, the school boards would use those tests to attack any new or different cap factor rules that the trustees tried to adopt. For instance, school boards could argue that any two cap factors that the trustees propose are not different enough to qualify as real alternatives under the APA. Alternatively, school boards could repackage their arguments that the anti-pension spiking statute is unfair, as arguments that proposed cap-factor rules are not reasonably necessary.

"I cannot support inaction and endless bureaucratic hand-wringing.

"Local School Boards have authority to set compensation of their most highly compensated employees. With that authority comes the responsibility to pay for the costs of their decisions without shifting that cost to others, and that is what this debate is about.

"I urge you as trustees to stay the course with the rulemaking and to provide final adoption of the proposed rules."

David Dear moved to accept and fully consider the public comments, seconded by Vernon Gammon, and unanimously approved by the Board.

Public Comment Period

The Chair asked if there were any organizations to be recognized during the public comment. Seeing that there were none, the public comment period closed.

Adoption of the Contribution-Based Benefit Cap Proposed Rules and Fiscal Note

At conclusion of the Chair's remarks and closing of the public comment period, Greg Patterson moved to adopt the proposed LGERS rule and fiscal note, seconded by Sally Sandy, and unanimously approved by the Board.

Board of Trustees Comments

The Chair inquired if there were any comments from Board members. No comments were given by any board member.

Staff Comments

RSD Executive Director, Steve Toole, thanked the Board for their participation in the rule-making process and accommodating the request for a special board meeting.

Local System Adjournment

There being no further business before the Board, Carson Smith moved to adjourn, which was seconded by Greg Patterson, and the meeting was unanimously adjourned at 2:21 p.m.

Chair

Secretary