



MEMORANDUM

TO: Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: May 25, 2023

SUBJECT: Proposed revisions to the Board Charter

Staff proposed revisions to the Board Charter at the February Board meeting. During the meeting, the Board discussed members' term limits and the service of a member beyond the term limits pending the appointment of a replacement. As a result, the Board asked staff to revise the charter further to address these issues and present the proposed new charter at the next meeting.

The policy regarding term limits and holdovers is documented in the revisions to Section II.B (Terms) of the Board Charter. The revised Section II.B acknowledges the potential conflict between term limits and holdovers, as well as the Board's reliance on the appointing authority to resolve the conflict by naming a replacement. The changes also acknowledge the approach in two North Carolina General Statutes, including the one that establishes members' term limits, that a member should remain on an appointed body until a replacement is named.

The revisions balance the tension between term limits and holdovers by:

1. Requiring staff to provide a written request to the appointing authority to name a replacement when a member becomes term-limited and every six months thereafter; and
2. Permitting a member to remain on the Board pending the appointment of a replacement, notwithstanding the term limits.

Other changes to the Board Charter include several clarifications to reflect current practice and remove outdated statutory references to members' terms.

Attached to this memo is a copy of the Board Charter with the proposed changes tracked.

Recommendation

Staff recommends the Board adopt the revised Board Charter in the attachment to this memo.

Attachment – Board Charter (with revisions)

CHARTER

NORTH CAROLINA SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES

I. Purpose and Authority

The North Carolina Supplemental Retirement Board of Trustees (the “Board”), in conjunction with the North Carolina Department of State Treasurer (the “Department”), administers the Supplemental Retirement Income Plan of North Carolina (the “NC 401(k) Plan”), and the North Carolina Public Employee Deferred Compensation Plan (the “NC 457 Plan”), ~~and the North Carolina Public School Teachers’ and Professional Educators’ Investment Plan (the “NC 403(b) Program” and with T the NC 401(k) and NC 457 Plans,~~ are referred to as the “Plans”). The Board has a fiduciary duty to establish, manage, and oversee all aspects of the Plans for the exclusive benefit of participants and their beneficiaries. This Charter establishes the general structure of the Board in discharging these duties and is always ~~at all times~~ subject to the North Carolina General Statutes. N.C.G.S. §§ 135-91(a), 135-91(c), 135-91(d), 135-96, ~~115C-341.2~~, and 143B-426.24.

II. Composition

The composition of the Board and the terms of its members are established by N.C.G.S. § 135-96. The Board consists of nine members, who serve staggered terms. All members are voting members.

A. Membership

The Treasurer of the State of North Carolina serves *ex officio*. N.C.G.S. § 135-96(b)(4). The Treasurer may designate a member of the Department to act at any meeting of the Board from which the Treasurer is absent. The Treasurer’s designee may act to the same extent that the Treasurer could act if in attendance~~present in person~~ at such meeting. An ongoing designation – versus a designation for a single meeting – by the Treasurer must be in writing and filed with the Board. N.C.G.S. § 135-96(d).

Six members serve by appointment of the Governor. All six appointees must have experience in finance and investments, with one appointee being a State employee and one being a retired State or local governmental employee. These members serve at will and can be removed at any time and for any reason, upon written notice from the Governor. N.C.G.S. § 135-96(b)(1).

One member serves by appointment of the General Assembly, upon the recommendation of the Speaker of the House of Representatives. N.C.G.S. § 135-96(b)(2).

One member serves by appointment of the General Assembly, upon the recommendation of the President Pro Tempore of the Senate. N.C.G.S. § 135-96(b)(3).

B. Terms

The Treasurer, as an *ex officio* member, serves for as long as he or she holds office. N.C.G.S. § 135-96(b)(4).

~~The eight appointed members of the Board serve three-year terms. The two members appointed by the General Assembly shall serve initial terms of three years, from July 1, 2016 to June 30, 2019. Thereafter, such members shall serve three-year terms.~~

~~Three of the members appointed by the Governor shall serve initial terms of one year, from July 1, 2016 to June 30, 2017. Thereafter, such members shall serve three-year terms.~~

~~Three of the members appointed by the Governor shall serve initial terms of two years, from July 1, 2016 to June 30, 2018. Thereafter, such members shall serve three-year terms.~~

An appointed member shall continue to serve on the Board until the member's successor is appointed, but such holdover does not affect the expiration date of the successor's term. N.C.G.S. § 135-96(c1).

No appointed member of the Board may serve longer than any of the following (collectively, the "Term Limits"): (1) two consecutive three-year terms; (2) three consecutive terms of any length; or (3) eight consecutive years, regardless of term lengths. N.C.G.S. § 135-96(c1). The first of the three limits in the preceding sentence that applies to a member is referred to as the "Member's Term Limit."

Notwithstanding the foregoing, the Board acknowledges:

1. An appointing authority may fail to appoint a successor prior to the end of a Member's Term Limit;
2. The Board is not legally authorized to appoint a replacement in the absence of action by the appointing authority;
3. N.C.G.S. § 135-96(c1) permits a member to serve on the Board until the member's successor is appointed;
4. N.C.G.S. § 128-7 states that "[a]ll officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified;" and
5. North Carolina Constitution Art. VI, Sec. 10 states that "[i]n the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified."

Therefore, the Board:

- a. Directs Departmental staff to provide a written request to the appointing authority to name a replacement upon the expiration of a Member's Term Limit and every six months thereafter; and
- b. Permits a member to remain on the Board pending the appointment of a replacement by the appointing authority, notwithstanding the Term Limits.

III. Officers

A. Chair

The Treasurer serves as Chair of the Board *ex officio*. N.C.G.S. § 135-96(b)(4). The Chair's duties and authority include, without limitation, the following: (1) conducting meetings of the Board; (2) calling special and emergency meetings of the Board; (3) appointing members and chairs of the Board's subcommittees (subject to the Board's ratification); (4) enforcing the policies of the Board; and (5) recommending the appointment or removal of members. The Chair may delegate his or her duties to another member of the Board or the Department during the Chair's absence.

B. Secretary

The Department's ~~Deputy~~ Director of the Supplemental Retirement Plans serves as Secretary of the Board; unless the Treasurer appoints a member of the Board or another member of the Department's staff. The Secretary is responsible for the following: (1) assisting the Chair in conducting meetings in an efficient and effective manner and in compliance with applicable laws and policies; (2) maintaining a current list of Board members, with their contact information and Board terms; (3) providing a meeting agenda and materials to Board members in advance of each meeting; (4) assisting the Board in scheduling meetings; (5) notifying members of the public of meetings in compliance with North Carolina's open meetings law (N.C.G.S. Chap. 143, Art. 33C, the "Open Meetings Law"); (6) accepting service of process on behalf of the Board; and (7) other duties as assigned by the Chair or the Board.

IV. Meetings

A. Schedule

The Board shall establish an annual schedule of at least quarterly meetings of the Board. Special or emergency meetings of the Board may be called by the Chair or a majority of the current members of the Board.

B. Notices and materials

The Board's and its subcommittees' annual ~~meeting~~ schedule and ~~notices of~~ all meetings ~~and notices of the Board and its subcommittees~~ shall be posted on the

Department's website and and shall be posted as otherwise required by the Open Meetings Law. The Board and its subcommittees shall post theirThe agendas and meeting materials for each meeting of the Board or a subcommittee shall be posted on the Department's website.

C. Open meetings

All meetings shall be conducted in compliance with the Open Meetings Law, which applies to meetings of the Board or a subcommittee at which a quorum is present. All meetings shall be open to the public, unless closed by vote of the Board or subcommittee in compliance with the Open Meetings Law. Members of the public shall be permitted to speak at all meetings. The Board Chair or subcommittee chair may reasonably limit the time for public comment.

D. Minutes

Departmental staff shall take the official minutes of all meetings. The minutes are subject to approval by the Board.

E. Quorum and voting

Any action by the Board or a subcommittee requires a majority vote of the members in attendance, provided that a quorum exists at the time the vote is taken. A quorum of the Board or a subcommittee requires a majority of the members currently serving on the Board or the subcommittee. All members of the Board or a subcommittee are voting members and are permitted to make motions.

F. Attendance

Each member ~~of the Board~~ is expected to attend all Board meetings ~~of the Board~~ and if a member serves on a subcommittee, allany subcommittee meetings on which the member serves. Members may attend meetings in person, ~~or (if available)~~ by phone, or by videoconference.

~~G. Proxy~~

~~A Board or subcommittee member may delegate his or her vote during a meeting in which such member is absent. The proxy shall be in writing and shall direct the member's proxy how to vote on specific issues that are scheduled to be before the Board or the subcommittee for a vote.~~

V. Duties

A. Standard of care

Members of the Board shall act at all times:

1. Solely in the best interests of participants and beneficiaries and for the exclusive purpose of providing their benefits; and
2. With the care, skill, and prudence exercised by reasonable ~~trustees~~ people in similar situations.

B. Responsibility

The Board is responsible at all times for the administration of the Plans, including plan design, investment managers and vendors, plan documents, fees, and policies. The Board may delegate primary administrative responsibilities to Departmental staff, Board subcommittees, and vendors but shall always remain responsible ~~at all times~~ for the Plans and for the oversight of such delegees.

C. Plan design

The Board is responsible for selecting, monitoring, and (as necessary) replacing the investment options and features of the Plans, including any asset allocation model or target-date fund.

D. Investment managers and vendors

The Board shall select, monitor, and ~~(as necessary)~~ replace investment managers and funds and the recordkeeper, custodian, auditor, investment consultant, and any other key vendor, as determined by the Board.

E. Plan documents, fees, and policies

The Board is responsible for establishing, monitoring, and ~~(as necessary)~~ revising the plan documents, administrative fees, policies, and ~~(as warranted)~~ rules for the administration of the Plans.

F. Delegation

The Board may delegate primary responsibility for the following matters to Departmental staff, a subcommittee of the Board, an investment consultant, and/or another entity or person retained by the Board: (1) selection of non-key vendors; (2) contracting with investment managers and funds and other vendors; (3) day-to-day compliance, monitoring, operations, management, and legal affairs; (4) performance and cost monitoring and reporting; (5) plan design monitoring and reporting; (6)

recommendations regarding investment options, managers, ~~and~~ funds, and plan features; (7) preparation of financial statements and auditing; and (8) communications and marketing. As noted above, the Board remains ultimately responsible at all times for the Plans and for the oversight of any delegees.

G. Ethics and training

Board members shall file all disclosures and complete all ethics training that are required by the North Carolina State Ethics Commission or state law. Board members shall complete orientation training within 90 days of joining the Board and shall complete fiduciary training on an annual basis. The orientation and fiduciary training shall be provided by Departmental staff.

VI. Subcommittees

The Board has one standing subcommittee – the Audit Subcommittee. In addition, the Board may appoint ad hoc subcommittees as needed to address specific issues of limited scope. Subcommittees consist of at least three but not more than four Board members. Members and chairs of subcommittees are appointed by the Board Chair and ratified by Board Members. The chair of a subcommittee may delegate his or her duties to another member of the subcommittee during the chair's absence.

The Audit Subcommittee oversees the audit process for the NC 401(k) and NC 457 Plans, discusses audit-related issues with the external auditor, accepts the financial statements of the NC 401(k) and NC 457 Plans, and reports to the Board following the subcommittee's meetings. The subcommittee also ensures Departmental and vendor accountability on internal controls, including following up on any management letter comments from the previous year. The subcommittee has two regularly-scheduled meetings – an initial meeting with the external auditor in February and a meeting in July to hear the auditor's report and accept the financial statements.

The primary responsibility for monitoring investment options, managers, and policies rests with the full Board, instead of a separate investment subcommittee. The duties of the investment subcommittee, as described in the Plans' investment policy statements, are consolidated with the functions of the full Board. However, the Board may create an investment subcommittee on a temporary or ad hoc basis as necessary to address specific investment-related issues. In discharging its duties, the Board or an investment subcommittee shall obtain the assistance of an investment consultant and/or Departmental staff and any other parties as determined by the Board or the subcommittee.

VII. Staff

The Treasurer may appoint members of the Department to serve as staff to the Board and its subcommittees, subject to removal or replacement by the Board. The Board and its subcommittees may request legal, compliance, operational, communications, and/or other assistance from staff.

Adopted by the Board, this ~~25th~~^{20th} day of ~~May~~^{June}, 20~~23~~¹⁹.

Dale R. Folwell, CPA
North Carolina State Treasurer
Chair, North Carolina Supplemental Retirement Board of Trustees