

1 BEFORE THE NORTH CAROLINA DEPARTMENT OF STATE TREASURER

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6 RULEMAKING HEARING

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11 BEFORE: Steve Toole, Retirement Systems Director

12 Sam Watts, Policy Director

13 Patrick Kinlaw, Director of Policy,

14 Planning and Compliance

15 Laura Rowe, Rulemaking Coordinator

16 Christina Strickland, General Counsel

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21 At Raleigh, NC

22 January 25, 2018

23 2:00 p.m. - 4:00 p.m.

24 Taken by: Linda S. Garrett, CCR

1 P R O C E E D I N G S

2 MS. ROWE: It is 2:00, so I'll call this public
3 hearing to order. It's Thursday, January 25th, 2018.
4 We're at the Dogwood Conference Room at the Department of
5 State Treasurer's Office at 3200 Atlantic Avenue. This
6 is an open public hearing to accept public comment on two
7 rules being proposed for adoption by the Teachers' and
8 State Employees' Retirement System Board of Trustees and
9 the Local Governmental Employees' Retirement System Board
10 of Trustees.

11 The rules being proposed are cited as 20 NCAC
12 02B.0405 for TSERS to establish a contribution-based
13 benefit cap factor of 4.5, and for the LGERS Rule cited
14 as 20 NCAC 02C.405 to establish a contribution-based
15 benefit cap factor of 4.7.

16 These proceedings are being taken on the record
17 by our court transcriptionist. We'll ask any members of
18 the public to sign in on the hearing sheet and to
19 identify themselves when providing public comment.

20 We'll introduce staff that are present. My
21 name is Laura Rowe, and I'm Rulemaking Coordinator for
22 DST.

23 MS. STRICKLAND: I am Christina Strickland.
24 I'm the General Counsel for the retirement system.

25 MR. KINLAW: I am Patrick Kinlaw. I'm the

1 Director of Policy, Planning and Compliance for the
2 retirement system.

3 MS. ROWE: Thank you. We have two members
4 attending. Do you have a public comment that you'd like
5 to speak to?

6 MR. CROWELL: My name is Michael Crowell. I'm
7 a lawyer in Carrboro. I'm here representing the Johnston
8 County Board of Education, the Wilkes County Board of
9 Education, the Cabarrus County Board of Education, and
10 the Union County Board of Education. On behalf of those
11 boards and myself, I'd like to appreciate -- I'd like to
12 express our appreciation to the Board of Trustees for
13 their decision to proceed to rulemaking and to allow
14 public comment. We wish this had occurred earlier.
15 We're glad that it is occurring now. I'm going to speak
16 just very briefly today, and then we intend to submit
17 written comments which I believe are due March 5th or
18 6th.

19 We wish that the Board members that were
20 members of the Board of Trustees were here today, and I
21 guess our fondest wish would have been that this would be
22 the springboard to a discussion of the effect of the
23 pension cap law and how it might be modified. The law
24 and the cap factor that's been previously adopted by the
25 Board has a significant effect on the boards and the

1 school boards because of contracts they entered well
2 before the statute was ever passed. With its retroactive
3 effect, it means that the boards could not have done
4 anything to avoid the consequences of the pension cap
5 law.

6 No one defends intentional pension spiking, but
7 we're not sure that legislators understood the scope of
8 the law and the situations it can cover where there has
9 been no spiking. School boards have been hit
10 particularly hard because of early retirements prompted
11 by the anticipated expiration of the qualified excess
12 benefit arrangement.

13 We wish that the Trustees could understand the
14 special vulnerability of the school boards. These are
15 agencies that have no authority to raise money on their
16 own. They're entirely dependent on state appropriations
17 for supplemental funds from boards of county
18 commissioners, so when they're faced with a huge
19 unexpected financial burden, they have no choice but to
20 cover that cost from educational activities.

21 Now, I realize that this is not an occasion for
22 discussion about altering pension cap laws not within the
23 Board's authority, but we do believe the Board could --
24 should consider these factors and these circumstances
25 when it establishes the cap factor.

1 The statute gives the Board a great deal of
2 discretion. The only guidance in the statute is that the
3 cap factor be set so that it does not affect more than
4 three-quarters of 1 percent of retirees. Back in October
5 of 2014, when Buck Consultants first presented a range of
6 cap factors to consider to the Board, they had a chart
7 showing percentage of retirees that would be affected
8 depending on whether the cap factor was 4.1, 4.2, 4.3, up
9 to 5.0. We know that the effect on individual
10 retirements vary enormously, depending on where the
11 factor was set within that range.

12 I have an example that I was given, based on
13 the calculations made when the cap factor was first set
14 in October 2014. This is an example of a superintendent
15 who would retire at age 60 with 30 years of service, an
16 average compensation, final compensation of \$175,000, for
17 purposes of this a total accumulated contribution to be
18 credited of 215,000. That superintendent would have a
19 pension of about 95,000.

20 If the cap factor were set at 4.8, the school
21 board would be responsible for an additional contribution
22 of 14 and half thousand dollars. If it were set at 4.5,
23 it would be \$79,000. If the cap factor were set at 4.2,
24 it would be \$148,500 additional contribution required.
25 All of those were within the range that Buck Consultants

1 presented to the Board, and there's a huge -- obviously,
2 there's a huge difference in effect depending on what
3 factor is chosen.

4 Because of the Board's discretion, the wide
5 range it has, we hope that it would, in considering
6 setting the cap factor, consider the effect on individual
7 boards. We would hope that the factor would be set to
8 minimize the economic burden to employers who entered
9 contracts well before the law was passed, were not
10 engaged in any pension spiking intending to increase the
11 pension, increasing compensation toward the end of a
12 person's career, but were caught up primarily because of
13 early retirements.

14 We are disappointed that there was no
15 discussion in October of 2014 or October of 2015 on how
16 the Board would decide where to set the factor within the
17 range -- within the range, all the possibilities, it
18 would keep the cap factor from affecting no more than
19 point three-quarters of a percent. There was no
20 discussion then on what goal the Board was trying to
21 achieve by setting the cap factor where it did. Was it
22 trying to come as close as possible to the .75 percent?
23 Was it trying to minimize the economic destruction to
24 employers? There was nothing in the discussion, there
25 was no discussion of how the Board was going to exercise

1 its discretion, and we don't see anything in the
2 materials presented for this rulemaking hearing about how
3 the Board should choose the factor within the very wide
4 range that's allowed.

5 We would hope -- believe that the Board should
6 discuss and articulate the policy guiding its decision
7 and allow affected employers to comment on what goal it
8 is the Board is trying to accomplish.

9 Again, very much appreciate a belated
10 rulemaking hearing. We hope the Board will take these
11 comments into account and begin the discussion that we
12 have requested. We will be submitting written comments,
13 and I'll be glad to answer any questions if you wish.

14 MS. ROWE: Thank you.

15 MR. CROWELL: Unsurprisingly, there are no
16 questions. Thank you very much.

17 MS. ROWE: Before you speak, can we have the
18 two new staff persons from Retirement identify
19 themselves?

20 MR. TOOLE: Want me to go? Steve Toole,
21 Director of the Retirement Systems.

22 MR. WATTS: Sam Watts, Public Policy Director
23 for Retirement.

24 MS. CORNETTO: Good afternoon. My name is
25 Katie Cornetto. I'm with the law firm of Schwartz & Shaw

1 here in Raleigh. Our law firm does exclusively education
2 law on behalf of many local boards of education
3 statewide. In particular, we have representation of
4 several counties who are impacted adversely by this
5 proposed cap. And for all of the reasons that Mr.
6 Crowell has articulated, we intend to provide written
7 comments to this rule on behalf of those local boards.

8 And, also, we do implore you all to have the
9 Board of Trustees consider how it is making its
10 calculation and realize that educational decisions are
11 being impacted on a grand scale in a community of
12 employers who have very little discretionary income, if
13 any at all. And if there aren't any questions, that
14 concludes my comments.

15 MS. ROWE: Thank you. Okay. Right now there's
16 no one else in line to comment, so we'll wait to see if
17 anyone else comes.

18 (Off the record from 2:12 p.m. to 4:00 p.m.)

19 MS. ROWE: Okay. We're showing that the time
20 is 4:00. The record will reflect that we only had two
21 members of the public come in and provide comment. I
22 want to thank everyone who joined us today. That will
23 conclude this hearing, and we'll adjourn here at 4:00.
24 Thank you.

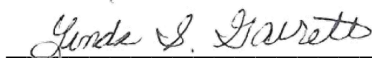
25 (Whereupon, the proceedings adjourned.)

C E R T I F I C A T E

I, Linda S. Garrett, Court Reporter and Notary Public, the officer before whom the foregoing proceeding was conducted, do hereby certify that the proceedings were taken by me to the best of my ability and thereafter transcribed under my supervision; and that the foregoing pages, inclusive, constitute a true and accurate transcription of the proceedings.

I do further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in which this proceeding was conducted, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereof, nor financially or otherwise interested in the outcome of the action.

This the 12th day of February, 2018.



Linda S. Garrett

Notary Public No. 19971700150