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Department of State Treasurer  
ATTN: Rulemaking Coordinator  
3200 Atlantic Avenue  
Raleigh, NC 27604

Dear Rulemaking Coordinator:

The following comments on Proposed Rule — 20 NCAC 02B .0405 ANTI-PENSION SPIKING CONTRIBUTION-BASED BENEFIT CAP FACTOR (TSERS) are heretofore respectfully submitted by the North Carolina School Boards Association on behalf of the 115 local boards of education in North Carolina.

- (1) Rulemaking requires agencies to “quantify the costs and benefits of all parties to the proposed rule.” NCGS 150B-19.1(e). If the proposed rule had an aggregated economic impact on all affected parties of more than \$1 million in a 12 month period, then the agency must offer at least two alternatives to the proposed rule (NCGS 150B-19.1(f) and 150B-21.4(b1)). In 2015, TSERS assessed \$1,287,847.67 to members. In 2016, \$3,844,895.99 was assessed to members. In 2017, \$3,645,856.94 was assessed to members. In the first two months of 2018, \$587,105.83 has been assessed to members. This previous history of assessments clearly demonstrates that the impacted on affected parties in a 12 month period has consistently exceeded the million threshold. The retirement system has failed to set forth the two alternatives and thus is in plain violation of the statute. Additionally, by not setting forth alternatives, information is not available as to how various cap factors may have a different impact on the amounts owed by member employers, including local boards of education. Alternatives would give the Board of Trustees the opportunity to analyze these impacts and make an informed decision on both the impact to the retirement system and on the affected employers.
- (2) The Board of Trustees has the option to adopt a lower cap factor that would affect fewer retirements, and thereby reduce the burden on boards of education. “The Board of Trustees shall adopt a contribution-based benefit cap factor recommended by the actuary, based upon actual experience, such that *no more than* three-quarters of one percent (0.75%) of retirement allowances are expected to be capped.” N.C. Gen. Stat. § 135-5(a3). The language “no more than” grants discretion to the Board of Trustees to decide how many of retirements will be impacted, which in theory could be anywhere from almost none up to 0.75% of retirements. The Board of Trustees has the actual experience of understanding how its decision impacts public education in North Carolina and could set a factor that does not impose the same outsized burdens on public schools. At a time when resources are already strained and more than ever is being asked of school districts, NCSBA urges the Board of Trustees to consider how many school boards will be impacted by its cap factor decision and select a factor that has a minimal, manageable impact, not one in the millions of dollars.



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- (3) The Board of Trustees should factor in the unique nature of school districts in determining the level of the cap factor. School districts are separate governmental entities that do not have the ability to generate any of their own revenue. Thus, when a school district is assessed a pension spiking charge, resources are taken away from educating students to satisfy the amount owed to the retirement system. Many of the assessments that have been made against school districts are caused by the natural progression of employees as they move up the ladder in roles and responsibilities. Many of our superintendents, central office administrators and principals spent many years in the classroom as teachers. As they have assumed leadership roles in our school districts, their salaries have been enhanced (mostly state dollars). School districts and taxpayers in those communities are now being penalized for recognizing talent and paying a salary that reflects the roles and responsibilities associated with such. It is imperative for the sake of the success of our educational system that school districts be able to continue to recognize talent. The process of providing retirement benefits should not discourage school districts from advancing excellent educators who are willing and able to take on new leadership role.

In conclusion, the North Carolina School Boards Association respectfully requests that the Board of Trustees put forth two alternative proposals as required by law. The alternatives available should ideally reduce the cap factor to a level that will both keep the pension plan healthy and catch employers and employees who are abusing the system, while avoiding the imposition of penalties on school systems for the natural progression of salary compensation for those who have spent years teaching but are willing and able to take on the leadership roles and responsibilities.

Sincerely,

Leanne E. Winner  
Director of Governmental Relations  
North Carolina School Boards Association