

October 18, 2016

By hand delivery

TO: Steven C. Toole, Director  
Retirement Systems Division  
Department of State Treasurer  
3200 Atlantic Avenue  
Raleigh, North Carolina 27604

### **PETITION FOR RULE MAKING**

Pursuant to North Carolina General Statutes § 150B-20 and 20 North Carolina Administrative Code 01F.0103, the Johnston County Board of Education, Wilkes County Board of Education, Union County Board of Education, and Cabarrus County Board of Education petition the Board of Trustees of the Teachers' and State Employees' Retirement System (T&SERS) to adopt a rule establishing the cap factor for the contribution-based benefit cap required by G.S. 135-5(a3).

As requested by 20 N.C. Admin. Code 01F.0103(b), petitioners provide the following information:

- (1) Summary of contents — The rule would state the cap factor to be included in the formula for determining a retiree's contribution-based benefit cap as stated in G.S. 135-5(a3). Petitioners are not in a position to propose a specific cap factor because the cap factor to be adopted by the Board of Trustees is required by the statute to be based on a recommendation from the T&SERS

actuary. The cap factor to be adopted must meet the requirement of the statute that no more than .75 percent of retirement allowances are capped.

(2) Reason for the rule — The statute setting a contribution-based benefit cap, G.S. 135-5(a3), requires the Board of Trustees to “adopt a contribution-based benefit cap factor” as defined in the statute. The cap factor meets the definition of a rule in G.S. 150B-2(8a), i.e., an “agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly . . . .” Accordingly, the statute cannot be implemented without the board’s adoption of a cap factor through the rule making procedures of the Administrative Procedure Act. Until the board adopts a rule setting the cap factor the statute may not be implemented and any benefit cap imposed by T&SERS is void.

(3) Data supporting the proposed rule — Pursuant to the statute, data supporting the cap factor is to be provided by the T&SERS actuary. When provided with such data the petitioners should then be able to provide additional information as to the effect of the rule on them and on other boards of education.

(4) Effect of the proposed rule — The proposed rule will have substantial effect on petitioners and other employers within T&SERS by determining the amounts of additional contributions they may be required to make to T&SERS based on the retirement of employees who are subject to the contribution-based benefit cap. The exact financial impact depends, however,

on the cap factor adopted by the Board of Trustees and thus cannot be determined until the board proposes a specific cap factor. The creation of a contribution-based benefit cap, obligating employers within T&SERS such as petitioners to contribute additional sums when a retiree's benefits exceed the cap, represents a drastic shift in state policy as to responsibility for retirement benefits. Petitioners anticipate that this shift of responsibility from T&SERS to individual employers will result in substantial unanticipated financial difficulties for employers based on contracts entered years before the enactment of G.S. 135-5(a3).

(5) Names of those likely to be affected — The rule will affect all employers within T&SERS.

(6) Names and addresses of petitioners — The petitioners are:

Johnston County Board of Education  
2320 US 70 Business HWY East  
PO Box 1336  
Smithfield, NC 27577  
Larry Strickland, Chair

Wilkes County Board of Education  
613 Cherry Street  
North Wilkesboro, NC 28659  
Rudy Holbrook, Chair


Union County Board of Education  
400 N. Church Street  
Monroe, NC 28112  
Leslie Boyd, Chair

Cabarrus County Board of Education  
4401 Old Airport Road  
Concord, NC 28025  
Barry Shoemaker, Chair

All correspondence concerning this matter should be addressed to the undersigned attorneys for petitioners, using the contact information provided below. If this petition needs to be submitted to a different officer, please refer it to that person and inform the undersigned.

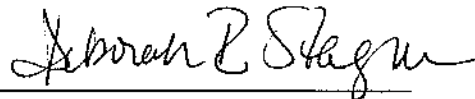
SUBMITTED this 18<sup>th</sup> day of October 2016.

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