

Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02B and 02C Further Responses & Rule Text Revisions
Attachments: TSERS and LGERS Final Rules.xlsx

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, February 13, 2023 9:55 AM
To: Rowe, Laura <laura.rowe@nctreasurer.com>
Cc: Melton, Timothy M <Timothy.Melton@nctreasurer.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] 20 NCAC 02B and 02C Further Responses & Rule Text Revisions

Good morning,

Thanks for sending these in. Based on your responses and revisions, I will recommend approval of 02B .0308, 02B .0501, and 02C .0501.

According to my records, I will be recommending approval of all of your rules, but the final versions have not yet been sent to oah.rules@oah.nc.gov for filing. It looks like we have several rules where no changes were made (i.e. the originally filed rule would be the final version), some where the final version was sent to me on 1/9/23, some where the final version was sent on 2/9/23, and two that came in on 2/10/23.

I'm attaching a spreadsheet I have been working from, which documents when the final version of each rule came in, for your convenience. If you wouldn't mind, please send the final version of any rule for which changes have been made to oah.rules@oah.nc.gov, and I will let Dana know these are the final versions for RRC review.

Brian

Brian Liebman
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02B Rule	TSERS Status	Final Version	Approve/Object	Filed?
.0101		1/9/2023	Approve	No
.0202	Repeal	1/9/2023	Approve	No
.0210		1/9/2023	Approve	No
.0211		1/9/2023	Approve	No
.0213	Repeal	1/9/2023	Approve	No
.0301		1/9/2023	Approve	No
.0302		1/9/2023	Approve	No
.0303		1/9/2023	Approve	No
.0304		1/9/2023	Approve	No

.0305		1/9/2023	Approve	No
.0307		1/9/2023	Approve	No
.0308		1/9/2023	Approve	No
.0401		1/9/2023	Approve	No
.0402		1/9/2023	Approve	No
.0404		1/9/2023	Approve	No
.0405	Repeal	Original	Approve	No
.0501		2/10/2023	Approve	No
.0502		1/9/2023	Approve	No
.0503	Repeal	Original	Approve	No
.0504		1/9/2023	Approve	No
.0510		1/9/2023	Approve	No
.0701		2/9/2023	Approve	No
.0706		1/9/2023	Approve	No
.0801	Repeal	Original	Approve	No
.0802		1/9/2023	Approve	No
.0803		1/9/2023	Approve	No
.0804		1/9/2023	Approve	No
.0805		2/9/2023	Approve	No
.0806		1/9/2023	Approve	No
.0807		2/9/2023	Approve	No
.0810		2/9/2023	Approve	No
.0901	Repeal	Original	Approve	No
.0902		2/9/2023	Approve	No
.0903		1/9/2023	Approve	No
.0904		1/9/2023	Approve	No
.0905		2/9/2023	Approve	No
.0906		1/9/2023	Approve	No
.1003	Repeal	Original	Approve	No
.1004		2/9/2023	Approve	No
.1005	Repeal	Original	Approve	No
.1006		1/9/2023	Approve	No
.1007	Repeal	Original	Approve	No
.1101	Repeal	Original	Approve	No
.1102	Repeal	Original	Approve	No
.1104	Repeal	Original	Approve	No
.1204	Repeal	Original	Approve	No
.1205	Repeal	Original	Approve	No
.1207	Repeal	Original	Approve	No

02C	LGERS	Final		
Rule	Status	Version	Approve/Object	Filed?
.0101		1/9/2023	Approve	No
.0201	Repeal	1/9/2023	Approve	No
.0204	Repeal	1/9/2023	Approve	No
.0205		1/9/2023	Approve	No

.0301		1/9/2023	Approve	No
.0302		1/9/2023	Approve	No
.0303		1/9/2023	Approve	No
.0304		1/9/2023	Approve	No
.0306		1/9/2023	Approve	No
.0307	Adoption	1/9/2023	Approve	No
.0402		1/9/2023	Approve	No
.0403		1/9/2023	Approve	No
.0404		1/9/2023	Approve	No
.0405	Repeal	Original	Approve	No
.0501		2/10/2023	Approve	No
.0502		1/9/2023	Approve	No
.0503	Repeal	Original	Approve	No
.0504		1/9/2023	Approve	No
.0704		1/9/2023	Approve	No
.0901		2/9/2023	Approve	No
.0902	Repeal	Original	Approve	No
.0904		1/9/2023	Approve	No
.0906		1/9/2023	Approve	No
.0907		2/9/2023	Approve	No
.0908		1/9/2023	Approve	No
.0909		Original	Approve	No
.1001	Repeal	Original	Approve	No
.1002		1/9/2023	Approve	No
.1003		1/9/2023	Approve	No
.1004		1/9/2023	Approve	No
.1006		2/9/2023	Approve	No
.1007		1/9/2023	Approve	No
.1201	Repeal	Original	Approve	No
.1301	Repeal	Original	Approve	No
.1302	Repeal	Original	Approve	No
.1501	Repeal	Original	Approve	No
.1503	Repeal	Original	Approve	No
.1504	Repeal	Original	Approve	No
.1505	Repeal	Original	Approve	No
.1506	Repeal	Original	Approve	No

Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02B and 02C Further Responses & Rule Text Revisions
Attachments: 20 NCAC 02B .0501 (2.10.2023).docx; 20 NCAC 02C .0501 (2.10.2023).docx

From: Laura Rowe <Laura.Rowe@nctreasurer.com>
Sent: Friday, February 10, 2023 2:51 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Melton, Timothy M <Timothy.Melton@nctreasurer.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] 20 NCAC 02B and 02C Further Responses & Rule Text Revisions

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Good Afternoon Brian,
Thank you for your review. Below are additional responses to your remaining questions in red. We have attached the rule revisions for 02B .0501 and 02C .0501.

We hope we've addressed your concerns and we look forward to discussing any remaining questions ahead of the February meeting, if needed.

Thanks,
Laura

Laura Rowe

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NORTH CAROLINA
DEPARTMENT OF STATE TREASURER



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d parties by an authorized state official.

1 20 NCAC 02B .0501 is readopted with changes as published in 36:23 NCR, page 1846, with changes, as follows:

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SECTION .0500 - TYPES OF RETIREMENT

20 NCAC 02B .0501 DISABILITY RETIREMENT EXAMINATION

The ~~director~~ Director Medical Board is authorized to conduct an examination in doubtful cases of disability to determine the condition of the disability, whether the member continues to be eligible for a disability retirement pursuant to G.S. 135-5(c), paying the expense of the same from the Pension Accumulation Fund, pension accumulation fund.

*History Note: Authority G.S. 135-2; 135-5(c); 135-6(f);
 Eff. February 1, 1976;
 Readopted Eff. September 21, ~~1977~~.1977;
 Readopted Eff.*

Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02B Additional Responses to Additional Request for Changes; Rule Text Revisions

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Friday, February 10, 2023 11:00 AM

To: Rowe, Laura <laura.rowe@nctreasurer.com>

Cc: Melton, Timothy M <Timothy.Melton@nctreasurer.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] 20 NCAC 02B Additional Responses to Additional Request for Changes; Rule Text Revisions

Hi Laura and Tim,

I've reviewed all your responses to 02A, 02B, and 02C. First, I just want to say thanks for bearing with me on what I am sure has been a frustrating process for you, for providing many long and well-researched answers to my change requests, and for making changes that I'm sure you're thinking are nit-picky.

After reviewing the resubmitted rules, I will be recommending approval of 02A .0103 and .0401. I think you made a compelling case on the authority for the delegation to the director, and given your arguments and the fact that the Director is appointed by the Chair of the Board and is ultimately answerable to the Board, I think it squeaks through. However, I think it's a close call, and if this rule comes back before another of my colleagues, they might not see it the same way. You may want to think about getting a legislative fix to make the delegation explicit.

As for 02B and 02C, I will recommend approval of everything except 02B .0308 and 02B .0501/02C .0501. I still have questions about those, which are below.

02B .0308

You're suggesting that you can tell whether the rule should be triggered "based on whether the designation of the beneficiary for the death benefit was made on a form that did not also allow for designation of a beneficiary for the return of contributions." I am assuming from this response then that you are maintaining copies of the actual forms filed by members, rather than just a database of the information indicated on the form? Otherwise, I don't see how you can determine that the designation occurred "at a time when there were separate forms...."

02B .0501 and 02C .0501

According to your response, "it is possible for the Medical Board to review a medical examination, and to request another medical examination to ascertain details not provided in the first one, so that the Medical Board can certify whether the person meets the statutory definition of disability, all prior to the commencement of benefits."

This makes sense to me, and it comports with what I see in the statutes. What I continue to be confused about is where the Director comes in, when both TSERS and LGERS statutes give the authority to make this determination explicitly to the Medical Board. If you want to edit the Rule to say that "The Medical Board is authorized to conduct an examination...." I think that might be more accurate.

Thanks,
Brian

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Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02B Additional Responses to Additional Request for Changes; Rule Text Revisions

Attachments: 2. 02B Additional Responses to Additional Request for Changes (2.9.2023).docx; 20 NCAC 02B .0501 (2.9.2023).docx; 20 NCAC 02B .0701 (2.9.2023).docx; 20 NCAC 02B .0805 (2.9.2023).docx; 20 NCAC 02B .0807 (2.9.2023).docx; 20 NCAC 02B .0810 (2.9.2023).docx; 20 NCAC 02B .0902 (2.9.2023).docx; 20 NCAC 02B .0905 (2.9.2023).docx; 20 NCAC 02B .1004 (2.9.2023).docx

From: Laura Rowe <Laura.Rowe@nctreasurer.com>
Sent: Thursday, February 9, 2023 10:22 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Melton, Timothy M <Timothy.Melton@nctreasurer.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] 20 NCAC 02B Additional Responses to Additional Request for Changes; Rule Text Revisions

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Good Morning Brian,
Attached are additional written responses to additional questions and requests for changes to 02B. Also attached are the additional rule revisions in response to the additional requests for changes.

Thank you for your review. We hope we've addressed your concerns and we look forward to discussing any remaining questions ahead of the February meeting, if needed.

Laura

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Hi Laura and Tim,

Time for round 2, Subchapter 02B. Again, I think most of these Rules are good to go. I will recommend approval of the following rules from 02B: .0101, .0202, .0211, .0213, .0302, .0303, .0304, .0305, .0307, .0401, .0402, .0404, .0405, .0502, .0503, .0504, .0510, .0801, .0802, .0804, .0901, .0903, .0905, .0906, .1003, .1005, and then .1007-.1207 (which are all repeals).

I don't have any comments on Rule .0806 yet, because as you noted in your response, it correlates with 02C .0908. I think they'll probably both be fine, but until I looked at both of them together, I don't want to say definitively yet and have to back track on you.

As for the rules not mentioned above, see below for my further comments.

.0210

With respect to the quorum requirement, is this consistent with the Public Meetings Act? The Medical Board is not a public body. Quorum is the minimum number of members that must be present to make a meeting of the Medical Board valid. We believe that the Open Meetings Law, Article 33C of G.S. 143, does not reference "quorum."

Can you cite to something about the Medical Board not being a "public body"? Because G.S. 143-318.10 has a fairly broad definition of the term, and case law (for example, see DTH Publishing Corp v. UNC Chapel Hill, 128 N.C.App. 534, 537-539) also suggests a very broad construction of "public body". Similarly, G.S. 143-318.10(d) defines "official meeting" as "a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body." (emphasis added) So here, where you're requiring 3 of the 5 members to attend, I think that is in accordance with the Open Meetings Act (my apologies for getting the name wrong earlier).

However, I think the issue is if the Medical Board is permitted to transact business *other* than approving applications for disability retirement when less than 3 of the members are present. It sounds from your answer to another of my change requests like the Medical Board meets to determine disability retirements and also to make eligibility determinations for the Disability Income Plan. Do they have any other official duties? As long as a majority of the members are present when transacting the business of the Board, I think it's fine. Just want to make sure.

The Medical Board reviews applications for disability retirement and DIPNC benefits, as to the applicant's medical or disability status. They do not have any other official duties.

.0301

On line 9, what “form” are you referring to? A form must either go through rulemaking, or its contents or substantive requirements must be described in another Rule or statute. See G.S. 150B-2(8a)d. This is referencing forms that members use to designate their beneficiaries for various purposes. The substantive requirements of these forms are described by statute. For TSERS, members use Form 2C to designate beneficiaries for the active death benefit (G.S. 135-5(l)) and the return of contributions (G.S. 135-5(f)). They use Form 336 to designate beneficiaries for the guaranteed refund (G.S. 135-5(g1)). They use Form 336401K and Form 336457 to designate beneficiaries for the guaranteed refund resulting from a transfer benefit from their 401(k) or 457 Plans respectively (G.S. 135-5(m1) or (m2)). They use Form 6E to designate a monthly survivorship beneficiary (G.S. 135-5(g)). They use a Form 6ER to redesignate a new spouse as the beneficiary if their first beneficiary was a spouse who predeceased the member (G.S. 135-5(g)). Some of these forms have both paper and online formats; others are paper-only.

I checked these statutes, and while I see that the designation has to occur on “a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees,” I don’t see where the statute actually states what the applicant has to put on the form in order for the Board to consider it complete or acceptable. Let me know what has to go in the form. If, as I suspect, it’s a fairly simple form with just the beneficiary’s name, SS number, and a date, for instance, I think we probably don’t need to do anything here. But if the applicant has to include information that goes beyond just identifying the beneficiary, I think you’ll need to describe the contents of the form in a rule.

On the paper forms, members must provide identifying information about themselves. The form would be accepted in this respect if it contained only a Member Identification Number. Therefore, only the Member Identification Number is required “in order for the Board to consider it complete or acceptable” (from your question). As to further information about the member, the form also requests optional items (the member’s name, date of birth, last four digits of Social Security Number, mailing address, and phone number) that would help to verify the member’s identity should there be an illegibility or error in filling out the Member Identification Number. The member must sign and date the paper form and have it notarized. The required information identifying the designated beneficiary is the beneficiary’s name, date of birth, Social Security Number, and whether they are a principal or contingent beneficiary. The member can also enter optional information (address, etc.) that would help the Retirement System locate the beneficiary more expediently after the member’s death; but these optional fields are not required “in order for the Board to consider it complete or acceptable” (from your question).

For online beneficiary designations, because the member’s identity is authenticated through the login, the member’s identifying information, signature, date, and notarization are not required, except for Forms 6E and 6ER due to the requirement of G.S. 135-5(g) that the designation be “duly acknowledged.” For online beneficiary designations, the required information identifying the beneficiary is the same as for the paper form.

We believe all the substantive requirements on these forms are described by statute. You seemed to understand already that basic information identifying the beneficiary is required by statute. In addition, information identifying the member is obviously required to connect a designated beneficiary to the member who designated them. Signatures, dates, and notarizations, where required, are also described by statute.

.0307

In (2), lines 10-11, I don't understand the phrase "until such time as the retired member's last day of active service is greater than 180 days prior to the change". Does this just mean the member has to wait at least 180 days from the last day of active service to make a change? Please revise for clarity. We have edited to say, "provided the change is submitted within 180 calendar days after the member's last day of active service."

Thanks for making the change here. Does the new language change the meaning? My understanding of the prior language was that a member couldn't make a change until after 180 days had elapsed from his last day. This new language reads as if he has to make the change within 180 days of his last day of service. Can you clarify and revise?

The meaning has not changed. The text approved by the Board of Trustees allowed the retiree to change a beneficiary designation for the active death benefit under G.S. 135-1) "until such time as the retired member's last day of active service is greater than 180 days prior to the change." In other words, the change could be made if the last day of active service was 180 or fewer days before the member submitted the change. It could not be made if the last day of active service was 181 or more days before the member submitted the change. The revised wording states that the member can make the change "provided the change is submitted within 180 calendar days after the member's last day of active service." This means the same thing.

Also, in your comment on Rule 02C .0306, you indicated you had an additional question about Rule 02B .0307 that you did not send with your set of comments on 02B. That question was about what information must be included on beneficiary designation forms for various purposes to consider them complete. This is addressed in our latest response regarding Rule 02B .0301, above.

.0308

This is in reference to the statutory authority question, which I will not re-paste here due to length. I think because you do have the unique statutory authority to adopt rules to "prevent injustice and inequalities that might otherwise arise", this will be OK. Thanks for including G.S. 135-6(f).

In (1), lines 8-9, please clarify the phrase "at a time when there were separate forms for designation...." When was that? For some time after July 1, 1967. Current staff is not aware of the exact end date of this period.

If you don't know when the period was, how can you enforce this? How does the public know when they're eligible? I think you need to specify dates.

Condition (1) limits the Rule to beneficiary designations made "at a time when there were separate forms for designation of beneficiary for return of contributions and designation of beneficiary for the death benefit." Therefore, the "enforcement" (or administration) of the Rule is obvious based on whether the designation of the beneficiary for the death benefit was made on a form that did not also allow for designation of a beneficiary for the return of contributions.

.0501

Where is your statutory authority for this Rule? G.S. 135-5(c) and 135-5(e) give the Medical Board the power to examine and re-examine disability beneficiaries, but I don't see anything giving that power to the Director. G.S. 135-5(c) provides (twice) that the person "may be retired by the Board of Trustees." Rule 02A .0103 allows this decision to be made by the Director. See response to comment on Rule 02A .0103 for further discussion.

I think the concerns I have about Rule 02A .0103 spill over into this Rule. Just on that basis alone, I would like to see what statutory authority you have for the delegation to the Director before recommending approval of this Rule.

See discussion of Rule 02A .0103.

On line 8, what is the standard for whether a case is "doubtful"? Who makes that determination? This has never come up in recent memory. Reading the statute, it seems this provision would be invoked if the Medical Board expressed doubt in its determination of disability status.

Please note, although this statutory provision has not been repealed, it applies only to events that occurred before 1988. We view Rules 02B .0501 through .0504 as similar to "inchoate rights" situations (described later in this document) where the Rules should not be revised materially.

I understand the inchoate rights argument you are making here, but again, I don't think clarifying your rules or bringing them in line with statutory authority is akin to materially revising them.

With that said, I read 135-5(c) to say that the Board of Trustees can retire someone "Provided, that the medical board, after a medical examination of such member, shall certify" that the member is incapacitated, that the incapacity was incurred during the employment, etc. The statute then goes on to say when the Medical Board "shall not certify" a member as disabled. 135-5(e) allows that the Board of Trustees can require a disability beneficiary to undergo a medical exam on a routine basis.

If I read your statutes correctly, the Medical Board makes the determination that someone is entitled to a disability retirement after a medical examination, and that thereafter, the Board

of Trustees can require routine medical examinations to determine if the person remains disabled. I don't see a route for someone to receive a disability retirement without a medical examination in the first place, so I don't understand how there's room here for a "doubtful case" that would be asked to take a medical examination vs. a "non-doubtful case" that would not be subject to a medical examination. Maybe I've misunderstood something.

All that said, if the Rule is just requiring that these initial and then periodic examinations be paid from the Pension Accumulation Fund, that makes more sense to me. Although you would need to revise the rule to actually say that.

It is possible for the Medical Board to review a medical examination, and to request another medical examination to ascertain details not provided in the first one, so that the Medical Board can certify whether the person meets the statutory definition of disability, all prior to the commencement of benefits. We do wish to emphasize again that TSERS disability retirements under G.S. 135-5(c) are exceptionally rare, to the point that we do not know if there will ever be one again; but the Board's purpose in retaining this Rule with only very minor grammatical changes in the decennial process was to ensure that the rights of any future applicants or disability retirement recipients are protected.

On lines 8-9, what does "condition of the disability" mean? Whether the disability meets the condition of G.S. 135-5(c). See also the response to the third comment.

I don't think revision to clarify this term would materially change the Rule, and stating "whether the member continues to be eligible for a disability retirement pursuant to G.S. 135-5(c)" is much clearer.

We have edited to make this change.

On line 8, what are the parameters of such "examination" by the Director? What details can be gathered and by what means? It could include any information the member or their physician might submit to support their application for disability retirement. See also the response to the third comment.

So is this a medical examination or is it broader? I am not clear.

Please see response to lengthy comment above.

.0701

Is the definition of "stipend" in (a) a quote from another source? This question is described on page 14 of the impact analysis. It is a combination of a dictionary definition with words from G.S. 135-8(b)(5).

I don't believe I received a copy of the impact analysis. Can you point me in the right direction?

It is available, for example, at <https://www.myncretirement.com/media/3493/open>. Please see pages 14-15.

What is the definition or usage of “other living expenses” in (a)? We expect this would have the dictionary meaning, subject to the restriction in the Rule that they are expenses “resulting from participation in a full-time degree program.” For example, it could include items such as housing or academic books.

What dictionary are you referring to in both of these responses? Regardless, the point here is that the term is unclear, and some definition should be included in the Rule. As currently written, you’re defining a stipend without actually saying what the term means in large part. Without a definition, “other living expenses” can mean different things to different people.

We have revised “other living expenses” to say “other expenses.” We believe the resulting definition, in context, has the same practical meaning.

.0706

How is the regulated public meant to know the rules established prior to July 1, 1983? Are these rules published anywhere? If so incorporate by reference pursuant to G.S. 150B-21.6. At minimum, these Rules are part of the Board’s meeting minutes, which are public record. The importance of this provision is to preserve rights that people had in 1983 without diminishment, similar to the discussions later in this document about inchoate rights.

I understand, but the point is that you’re saying the rights of people who want to purchase credible service for leaves prior to 7/1/83 are defined by Rules that are possibly no longer in the Code. You’re leaving it to the applicant to suss out whether the current versions of Section .1200 were in effect whenever they took their leave, and to find the historical versions of these rules on their own. I think at the very least you can point your regulated public to wherever old versions of Section .1200 have been preserved.

We do not believe we are leaving members of our regulated public in a bind trying to sort through current and prior versions of rules within 02B Section .1200. The History Note of each rule in Section .1200 provides the date of the last rule action, which would inform which rules were in effect at the time the member took his or her leave before 1983. Members also have access to a Service Purchase Estimator to calculate the cost and are always able to contact our Retirement Division Call Center for questions on any service purchase being considered. We are reviewing whether we can make former versions of the repealed and expired Rules available online as a courtesy (they are already public record); however do not believe a reference to such a location is needed for the rule to be valid.

.0803

In (1), line 5, what is meant by “when the member first entered service”? First year? The first period of service for which membership was reported by an employing unit, which would be a month or a part of a month.

Similarly, in (2), line 7, what does “at that time” mean? The period of time coincident with the first period of membership service.

I’m going to group these two change requests together here. I understand you don’t want to edit these inchoate rules in a material way, and I agree with your approach generally. However, I think providing more clarity here would not be making a material change. For instance, if you were to say “1/12 of the annualized rate of compensation the member earned in his or her first year of membership,” or something equivalent, would not change what the rule does, but would describe what the rule does more intelligibly for your regulated public. Similarly, in the second instance, to say “the employee contribution rate during the employee’s first year of membership...” would achieve the same goal.

This suggestion would not work because, as explained above, “when the member first entered service” may be a month or a part of a month. TSERS has hundreds of employers with different payroll periods and practices, and each employer reports employee service to TSERS depending on its own payroll periods and practices. We believe the Rules as submitted to you in the previous round are as clear as they can be made without rendering them inapplicable to certain employers.

.0805

What are “service connected disability” and “longevity retirement” referring to? Are these terms defined elsewhere? If so, please incorporate by reference in compliance with G.S. 150B-21.6. The terms are used by the programs administered by the U.S. Department of Veterans Affairs (often known as “VA benefits”). Please see also the response to the next comment.

I had a hunch that these were terms from the VA system. Again, I understand that you don’t want to materially change the rule, but these terms appear to have been specifically defined in the VA system, and you are using them in that manner. If the term carries a definition—that you are and have been using in enforcement of this Rule—I believe for clarity’s sake you need to incorporate that definition by reference pursuant to G.S. 150B-21.6.

Additionally, I noticed you edited the Rule to take “service connected disability” out of quotation marks, but left “longevity retirement” in quotations. Please leave any term that is being defined in quotations.

We have amended the Rule to incorporate definitions by reference and to restore the quotation marks. In making these references, we learned that “retired pay” is the term used in the United States Code for what is sometimes colloquially called “longevity retirement” from the U.S. Armed Services. We have amended the Rule to clarify this.

.0807

What provisions are being referred to by “any change in benefits resulting from these provisions”? If this Section or Chapter is the relevant portion, then it needs to be

referenced. This refers to the change in the pension benefit that results from having purchased service under the authorizing statute, i.e. the repealed version of G.S. 135-4(f)(6). See also the response to the next comment.

I don't think clarifying what "these provisions" means is materially changing the Rule. If you merely mean "resulting from the purchase of credit pursuant to Section .0800 of this Subchapter", I think that clarifies rather than materially changes what the Rule is doing.

We have edited according to this suggestion.

.0810

I have some statutory authority concerns here. I looked through G.S. 135-4(f), and I didn't see anything that looked on all fours with this Rule. Can you point to particular language, or a different statute? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

In addition, G.S. 135-4(f)(4) provides for the Board to adopt rules allowing TSERS service credit for periods of military leave.

I reviewed the provisions of law repealed by SL 1981 C.636 and the only one relevant was 135-4(f)(6). While (f)(6) allowed for members to purchase credit for military service, I don't see that it authorized the purchase of credit for all of the member's contributions prior to withdrawal:

teachers and other State employees not otherwise allowed service credit for service in the armed forces of the United States may, upon completion of 10 years of membership service, purchase such service credit by paying in a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time, with sufficient interest added thereto so as to equal one half the cost of allowing such service, plus a fee to cover expense of handling payment to be determined by the Board of Trustees and assessed the member at the time of payment; provided that credit will be allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submit satisfactory evidence of the service claimed and that service credit be allowed only for that period of active service in the armed forces of the United States not creditable in any other retirement

system, except the national guard or any reserve component of the armed forces of the United States.

Is there another statutory provision, either currently in effect or repealed at some point, which provides that a former member who withdrew his or her funds may pay the full balance back and receive credit? It looks like 135-4(k) allowed this, but it was repealed in 2021 and to my reading the SL repealing it (2021-57) did not create inchoate rights.

G.S. 135-4(k1) allows it on and after January 1, 2022. We have added this to the Authority. Also, as G.S. 135-4(k1) allows no more than five years to be purchased, we have clarified in the Rule text that the purchase of withdrawn service is “to the extent permitted by law” and that the resulting credit is for the “associated” period of military leave.

.0902

On line 5, the individual must pay for “all or such portion in full years...” Portion of what? The portion of their out-of-state service period.

I suggest you clarify the rule by stating that.

Agreed and edited.

.0904

In (1), line 6, what is meant by “when the member first entered membership”? First year? The first period of service for which membership was reported by an employing unit, which would be a month or a part of a month.

Similarly, in (2), line 8, what does “at that time” mean? The period of time coincident with the first period of membership service.

See my notes to Rule .0803, which I think apply equally here.

See discussion on Rule .0803.

.0905

Although your 1/27/2023 message about 02B indicated you had no concerns about Rule 02B .0905, your 1/30/2023 message about 02C added a comment about Rule 02B .0905. The comment was: “Consider acknowledging the repeal [of G.S. 135-4(l)] and pointing your regulated public to where the text of the repealed statute can be found.”

We have edited to add “as repealed by Session Law 1981-636, Section 1, where the text of the repealed statutory provision may be found in the Editor’s Note to G.S. 135-4 in the 2021 Edition of the General Statutes of North Carolina...”

In (a), how shall an eligible member “apply for the purchase”? By completing the appropriate form, currently Form 443.

As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe “Inchoate Rights Only.” That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved.

Also, what type of “certification” must be submitted, and who must submit it? The Rule describes it as “employer certification.” The employer must certify information on the form that is submitted. The form is submitted by the member. See also the response above regarding inchoate rights.

In (a), line 9, the Rule refers to an application. What must the member submit as part of the application? They must submit the form, currently Form 443. See also the response above regarding inchoate rights.

As an initial question, what is the inchoate right being preserved here? I looked at SL 2020-29, and it made fairly widespread changes to Ch. 135. I saw that 135-4(p1) had been repealed, but did not see language preserving inchoate rights, so I am not sure what I’m supposed to be looking at.

This Rule is under the Authority of G.S. 135-4(p), not (p1). The last sentence of (p) currently provides: “Notwithstanding any provision of this Article to the contrary, any inchoate or accrued rights of such a member to purchase creditable service that existed before December 31, 2021, may not be diminished and may be purchased as creditable service with this Retirement System under the same conditions which would otherwise have applied.” These are the inchoate rights being preserved.

As I mentioned earlier, unless the substantive contents of a form are described in another rule or in statute, the Form itself is subject to rulemaking. You’re amending the Rule to remove reference to Form 222, so I don’t think that adding a reference to Form 443 would materially change the Rule. You’ll just need to state what information should be included on the form so that it is considered “complete” by the agency. Again, since you’re already requiring this information, merely stating it in the Rule is not materially changing the rule.

As form numbers may change, we prefer to describe the information that is included on the form rather than to include the form number (443) in the Rule. We have edited the Rule to add at the end of (a):

The application shall include the member's Member Identification Number; last employer under the Retirement System; and the member's signature and signature date. For each temporary position for which the member desires to purchase credit, the application shall identify the government employer, position title, start date, end date, and the member's last name while working in the position. The employer's certification shall include the position title, start and end date of the eligible period, number of months in the annual contract to perform services, beginning and ending months of the annual contract period for retirement service purposes, and the name, position, employer, email address, telephone number, signature, and signature date of the employer contact certifying the information.

Thanks again for your patience, and all the hard work.

Best, and have a great weekend,
Brian

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1 20 NCAC 02B .0501 is readopted with changes as published in 36:23 NCR, page 1846, with changes, as follows:

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SECTION .0500 - TYPES OF RETIREMENT

20 NCAC 02B .0501 DISABILITY RETIREMENT EXAMINATION

The ~~director~~ Director is authorized to conduct an examination in doubtful cases of disability to determine the condition of the disability; whether the member continues to be eligible for a disability retirement pursuant to G.S. 135-5(c), paying the expense of the same from the Pension Accumulation Fund. ~~pension accumulation fund.~~

*History Note: Authority G.S. 135-2; 135-5(c); 135-6(f);
 Eff. February 1, 1976;
 Readopted Eff. September 21, ~~1977~~.1977;
 Readopted Eff.*

1 20 NCAC 02B .0701 is readopted as published in 36:23 NCR, page 1846, **with changes**, as follows:

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4 **SECTION .0700 - LEAVES OF ABSENCE**

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6 **20 NCAC 02B .0701 EDUCATIONAL LEAVES OF ABSENCE**

7 ~~(a) All members, who request approval to purchase creditable service and who fulfill all of the requirements of law~~
8 ~~and the rules of the board, shall be allowed to purchase the service in accordance with the law and the rules of the~~
9 ~~board.~~

10 ~~(b) Payments to be made for purchases on account of current leave of absence shall be submitted on Form 224,~~
11 ~~Payment of Contributions for a Current Leave of Absence, which shall be submitted as required by law. If the~~
12 ~~employer will make the monthly contributions equal to the normal and accrued liability contribution, the employer~~
13 ~~shall submit the total payment. If the member will make the entire payment, the member shall submit the total~~
14 ~~payment. In any case in which the employer continues to make salary payments, in whole or part, the director may~~
15 ~~make an agreement with the employer on how to make the payments which is not inconsistent with the law or the~~
16 ~~rules of the board.~~

17 ~~(c) Contributions for purchase of service shall not be accepted unless the member has applied for permission to~~
18 ~~purchase the service not later than the due date of the payment for the first month for which credit is to be purchased.~~
19 ~~Applications after the last day of the first month for which service is to be purchased and the due date thereof shall be~~
20 ~~accompanied by a check in payment of the contribution for said month.~~

21 ~~(d) Payment shall be deemed to have been made on the date received by the board, provided that a payment made by~~
22 ~~mail which is clearly postmarked on or before the due date shall be deemed paid when due.~~

23 ~~(e) Purchases of service credit for leaves of absence prior to July 1, 1981 shall be made in the same manner as~~
24 ~~prescribed in 20 NCAC 2B .1200, DELAYED PURCHASE OF SERVICE CREDITS.~~

25 (a) For the purposes of G.S. 135-8(b)(5), "stipend" shall mean a **["a]** fixed sum of money paid periodically for services
26 and to defray the cost of travel, housing, meals, or other **[living]** expenses resulting from participation in a full-time
27 degree **program. [program.]**

28 (b) If the employer makes the monthly employer contribution equal to the normal and accrued liability contribution,
29 the employer shall submit the total employer payment to the Retirement System.

30 (c) If the member makes the entire payment, the member shall submit the total employer and employee contribution
31 to the Retirement System.

32 (d) A member, who is currently making contributions to purchase service for an educational leave of absence, and
33 whose position before the leave of absence was paid on a less than 12-month basis, shall make the payment in the
34 month after the regularly scheduled due date for payment of salary and shall earn service credits for **the said**
35 contributions in the same manner ~~the member~~as he would if ~~the member~~he was currently being employed in that last
36 position.

1 *History Note: Authority G.S. 135-6(f); 135-8(b)(5);*
2 *Eff. February 1, 1976;*
3 *Readopted Eff. September 21, 1977;*
4 *Amended Eff. March 1, ~~1982-1982~~;*
5 *Readopted Eff.*
6

1 20 NCAC 02B .0805 is readopted as published in 36:23 NCR, page 1847, with changes, as follows:

2
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4 **20 NCAC 02B .0805 SERVICE CONNECTED DISABILITY**

5 The ~~exclusion~~ exclusion, for purchase of service in the Armed Forces of the United States as it pertains to credit in
6 any other retirement ~~system~~ system, shall not include “service connected disability” ~~“service connected disability”~~
7 benefits received from the Veteran's Administration of the Federal Government except when such benefits are a
8 supplement of a ~~“longevity retirement”~~ military longevity retirement (“retired pay”) benefit. The term “service
9 connected disability” has the same meaning as used in Title 38, Chapter 11 of the United States Code which is hereby
10 incorporated by reference, including subsequent additions and amendments, and is available online, at no cost, at
11 <https://uscode.house.gov/browse/prelim@title38/part2&edition=prelim>. The term “retired pay” has the same meaning
12 as used in Title 10, Chapter 71 of the United States Code which is hereby incorporated by reference, including
13 subsequent additions and amendments, and is available online, at no cost, at
14 <https://uscode.house.gov/browse/prelim@title10/subtitleA/part2/chapter71&edition=prelim>.

15
16 *History Note:* Authority G.S. 135-4(f)(6); 135-6(f); S.L. 1981, C. 636;

17 *Eff. February 1, 1976;*

18 *Readopted Eff. September 21, 1977-1977;*

19 *Readopted Eff.*

20

1 20 NCAC 02B .0807 is readopted as published in 36:23 NCR page, 1847, with changes, as follows:

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4 **20 NCAC 02B .0807 CHANGE IN BENEFITS**

5 For members already retired, any change in benefits resulting from ~~these provisions~~ the purchase of credit pursuant to
6 Section .800 of this Subchapter shall become effective as of the first of the month following receipt of the required
7 payment.

8

9 *History Note:* Authority G.S. 135-4(f)(6); 135-6(f); S.L. 1981, C. 636;

10 *Eff. February 1, 1976;*

11 *Readopted Eff. September 21, ~~1977~~.1977;*

12 *Readopted Eff.*

13

1 20 NCAC 02B .0810 is readopted with changes as published in 36:23 NCR, page 1847, with changes, as follows:

2

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4 **20 NCAC 02B .0810 RESTORING MEMBERSHIP**

5 When a member on military leave has withdrawn all of ~~his~~ the member's contributions, ~~he~~ the member ~~shall~~ will be
6 permitted to pay back the amount withdrawn, to the extent permitted by law, restore ~~his membership~~ membership, and
7 receive credit for the associated period of ~~his~~ military leave.

8

9 *History Note:* Authority G.S. 135-4(f); 135-4(k1); 135-6(f); S.L. 1981, C. 636;

10

Eff. February 1, 1976;

11

Readopted Eff. September 21, ~~1977~~.1977;

12

Readopted Eff.

13

1 20 NCAC 02B .0902 is readopted with changes as published in 36:23 NCR, page 1847, with changes, as follows:

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4 **20 NCAC 02B .0902 QUALIFYING FOR CREDIT**

5 In order to qualify for out-of-state service credit, each individual must pay for all or such portion of the member's out-
6 of-state service period in full years as the member~~he~~ desires of out-of-state service for which the member~~he~~ is eligible.

7

8 *History Note:* Authority G.S. 135-4(l); 135-6(f); S.L. 1981, C. 636;

9

Eff. February 1, 1976;

10

Readopted Eff. September 21, ~~1977~~.1977;

11

Readopted Eff.

12

1 20 NCAC 02B .0905 is readopted as published in 36:23 NCR, page 1848, with changes, as follows:

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4 **20 NCAC 02B .0905 RECALCULATION OF BENEFITS**

5 For members already retired who ~~avail themselves of the provisions for out of state service purchase service under~~
6 G.S. 135-4(l), as repealed by Session Law 1981-636, Section 1, where the text of the repealed statutory provision may
7 be found in the Editor's Note to G.S. 135-4 in the 2021 Edition of the General Statutes of North Carolina, any
8 recalculation of benefits shall be based on the law in effect at the time of the individual's retirement. The calculation
9 of both the benefit and the cost of the credit shall include the effects of ~~retirement including~~ the additional service
10 credit ~~resulting from the purchase~~ and ~~effect shall be given for~~ all benefit increases subsequent to the date of retirement.
11 ~~retirement which shall be a part of the total cost of providing the additional service credit.~~

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History Note: Authority G.S. 135-4(l); 135-6(f); S.L. 1981, C. 636;
Eff. February 1, 1976;
Readopted Eff. September 21, ~~1977~~1977;
Readopted Eff.

1 20 NCAC 02B .1004 is readopted as published in 36:23 NCR, page 1848, with changes, as follows:

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3
4 **20 NCAC 02B .1004 TEMPORARY SERVICE PURCHASE (INCHOATE RIGHTS ONLY)**

5 (a) A member eligible under G.S. 135-4(p) to purchase service for temporary State employment shall ~~make the~~
6 ~~application on Form 222, apply for the purchase. Application to Purchase Service Credits for Full Time Temporary~~
7 ~~State Employment.~~ Employer certification of temporary State employment and the compensation received for such
8 service shall ~~be made on Form 222-A, Employer Certification of Full Time Temporary Service, and shall accompany~~
9 the application. The application shall include: the member's Member Identification Number; last employer under the
10 Retirement System; and the member's signature and signature date. For each temporary position for which the
11 member desires to purchase credit, the application shall identify the government employer, position title, start date,
12 end date, and the member's last name while working in the position. The employer's certification shall include the
13 position title, start and end date of the eligible period, number of months in the annual contract to perform services,
14 beginning and ending months of the annual contract period for retirement service purposes, and the name, position,
15 employer, email address, telephone number, signature, and signature date of the employer contact certifying the
16 information.

17 (b) Temporary State employment means employment under which the member would have been unconditionally
18 required to make contributions at the time of employment if not classified at the time of employment as a "temporary"
19 employee.

20 (c) ~~Since the actual cost to fund the liability created on account of the purchase has a direct relationship to the~~
21 ~~purchasing member's current level of compensation, the employer cost will be computed on the member's level of~~
22 ~~compensation at the time of purchase.~~ The employer cost, ~~therefore~~, shall be equal to the total employee and employer
23 rates of contribution at the member's level of compensation at the time of purchase and for the period of service being
24 purchased, less the required member contribution.

25 ~~(d) No purchases shall be allowed for 36 months or less.~~

26
27 *History Note: Authority G.S. 135-4(p); 135-6(f); S.L. 2020-29;*
28 *Eff. March 1, 1982;*
29 *Amended Eff. March 1, 1985; September 1, 1982; ~~1982-1-1~~*
30 *Readopted Eff.*
31

Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

From: Timothy Melton <Timothy.Melton@nctreasurer.com>
Sent: Wednesday, February 1, 2023 11:58 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rowe, Laura <laura.rowe@nctreasurer.com>
Subject: RE: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

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Brian,
Thanks for the clarification. We will target Wednesday (2/8) to get our responses back to you. We appreciate the flexibility.
Have a great day.

Timothy M. Melton
Assistant General Counsel
Retirement Systems Division
Office: (919) 814-4186

3200 Atlantic Avenue, Raleigh, NC 27604
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Dale R. Folwell, CPA
STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA

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Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Tuesday, January 31, 2023 5:22 PM

To: Melton, Timothy M <Timothy.Melton@nctreasurer.com>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rowe, Laura <laura.rowe@nctreasurer.com>

Subject: RE: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

Tim, Laura,

My apologies for any confusion here. I thought we were aiming for 2/3, but ultimately the point is not to be doing things last minute before the 2/16 meeting. While there are several rules that I do have concerns about, in my view, the majority of the rules I came back to you with comments on need very little work. Thus, if you need to go into next week, that's completely fine. However, if you resubmit all of the rules I sent back to you at 5 PM on Friday, that will leave me very little time to review. Rather than Friday, can you shoot for Wednesday, 2/8?

Thanks,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

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Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

From: Timothy Melton <Timothy.Melton@nctreasurer.com>
Sent: Tuesday, January 31, 2023 2:35 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rowe, Laura <laura.rowe@nctreasurer.com>
Subject: RE: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

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Good Afternoon Brian,

We are in receipt of your additional questions and request for changes for the set of 02C retirement rules (the last set), received yesterday, Monday January 30, 2023. We are now in receipt of all three sets from your review (02A, 02B and 02C), thank you for your review and input. In your Friday January 27, 2023 email communication, you indicated that there was a prior understanding to return our responses and rule revisions back for all three sets (02A, 02B & 02C) by this Friday February 3, 2023. We do not recall such an understanding. The last time we (yourself, Laura Rowe & I) spoke on Tuesday January 17, 2023 we discussed the need for RRC staff to push consideration of the rules to the February 16, 2023 meeting because your additional review of the 02B and 02C set of rules was not yet completed and would not be completed in time for the Thursday January 19, 2023 RRC meeting.

After the Tuesday January 17, 2023 call, we were anticipating receipt of any outstanding questions or request for changes for the 02B and 02C rules shortly thereafter. However, we only received 02B on Friday January 27, 2023 and 02C on Monday January 30, 2023.

Regarding a timeline for the February meeting, we recall discussing Friday February 10, 2023 (Friday before the RRC meeting). We will attempt to have responses to you by Friday February 3, 2023, but in all likelihood they will not be submitted until next week, but no later than Friday February 10, 2023.

Please contact us if you have any questions. Thanks.

Timothy M. Melton

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

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Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Friday, January 27, 2023 6:04 PM

To: Rowe, Laura <laura.rowe@nctreasurer.com>

Cc: Melton, Timothy M <Timothy.Melton@nctreasurer.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

Hi all,

Just to be clear, as we have previously discussed, I would like a response to everything by 2/3, so we can hammer out any issues that remain in the following week and have everything completed by the Friday before the meeting. I know I still need to get you 02C, which I am working on, and I hope to have to you Monday. Again, as discussed, the 02C changes should be fairly analogous to the 02B changes, so hopefully this won't be too much of a lift.

Have a nice weekend,
Brian

Brian Liebman
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From: Liebman, Brian R

Sent: Friday, January 27, 2023 3:27 PM

To: Laura Rowe <Laura.Rowe@nctreasurer.com>

Cc: Melton, Timothy M; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

Hi Laura and Tim,

Time for round 2, Subchapter 02B. Again, I think most of these Rules are good to go. I will recommend approval of the following rules from 02B: .0101, .0202, .0211, .0213, .0302, .0303, .0304, .0305, .0307, .0401, .0402, .0404, .0405, .0502, .0503, .0504, .0510, .0801, .0802, .0804, .0901, .0903, .0905, .0906, .1003, .1005, and then .1007-.1207 (which are all repeals).

I don't have any comments on Rule .0806 yet, because as you noted in your response, it correlates with 02C .0908. I think they'll probably both be fine, but until I looked at both of them together, I don't want to say definitively yet and have to back track on you.

As for the rules not mentioned above, see below for my further comments.

.0210

With respect to the quorum requirement, is this consistent with the Public Meetings Act? The Medical Board is not a public body. Quorum is the minimum number of members that must be present to make a meeting of the Medical Board valid. We believe that the Open Meetings Law, Article 33C of G.S. 143, does not reference “quorum.”

Can you cite to something about the Medical Board not being a “public body”? Because G.S. 143-318.10 has a fairly broad definition of the term, and case law (for example, see DTH Publishing Corp v. UNC Chapel Hill, 128 N.C.App. 534, 537-539) also suggests a very broad construction of “public body”. Similarly, G.S. 143-318.10(d) defines “official meeting” as “a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body.” (emphasis added) So here, where you’re requiring 3 of the 5 members to attend, I think that is in accordance with the Open Meetings Act (my apologies for getting the name wrong earlier).

However, I think the issue is if the Medical Board is permitted to transact business *other* than approving applications for disability retirement when less than 3 of the members are present. It sounds from your answer to another of my change requests like the Medical Board meets to determine disability retirements and also to make eligibility determinations for the Disability Income Plan. Do they have any other official duties? As long as a majority of the members are present when transacting the business of the Board, I think it’s fine. Just want to make sure.

.0301

On line 9, what “form” are you referring to? A form must either go through rulemaking, or its contents or substantive requirements must be described in another Rule or statute. See G.S. 150B-2(8a)d. This is referencing forms that members use to designate their beneficiaries for various purposes. The substantive requirements of these forms are described by statute. For TSERS, members use Form 2C to designate beneficiaries for the active death benefit (G.S. 135-5(l)) and the return of contributions (G.S. 135-5(f)). They use Form 336 to designate beneficiaries for the guaranteed refund (G.S. 135-5(g1)). They use Form 336401K and Form 336457 to designate beneficiaries for the guaranteed refund resulting from a transfer benefit from their 401(k) or 457 Plans respectively (G.S. 135-5(m1) or (m2)). They use Form 6E to designate a monthly survivorship beneficiary (G.S. 135-5(g)). They use a Form 6ER to redesignate a new spouse as the beneficiary if their first beneficiary was a spouse who predeceased the member (G.S. 135-5(g)). Some of these forms have both paper and online formats; others are paper-only.

I checked these statutes, and while I see that the designation has to occur on “a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees,” I don’t see where the statute actually states what the applicant has to put on the form in order for the Board to consider it complete or acceptable. Let me know what has to go in the form. If, as I suspect, it’s a fairly simple form with just the beneficiary’s name, SS number, and a date, for instance, I think we probably don’t need to do anything here. But if the applicant has to include information that goes beyond just identifying the beneficiary, I think you’ll need to describe the contents of the form in a rule.

.0307

In (2), lines 10-11, I don’t understand the phrase “until such time as the retired member’s last day of active service is greater than 180 days prior to the change”. Does this just mean the member has to wait at least 180 days from the last day of active service to make a change? Please revise for clarity. We have edited to say, “provided the change is submitted within 180 calendar days after the member’s last day of active service.”

Thanks for making the change here. Does the new language change the meaning? My understanding of the prior language was that a member couldn't make a change until after 180 days had elapsed from his last day. This new language reads as if he has to make the change within 180 days of his last day of service. Can you clarify and revise?

.0308

This is in reference to the statutory authority question, which I will not re-paste here due to length. I think because you do have the unique statutory authority to adopt rules to "prevent injustice and inequalities that might otherwise arise", this will be OK. Thanks for including G.S. 135-6(f).

In (1), lines 8-9, please clarify the phrase "at a time when there were separate forms for designation...." When was that? For some time after July 1, 1967. Current staff is not aware of the exact end date of this period.

If you don't know when the period was, how can you enforce this? How does the public know when they're eligible? I think you need to specify dates.

.0501

Where is your statutory authority for this Rule? G.S. 135-5(c) and 135-5(e) give the Medical Board the power to examine and re-examine disability beneficiaries, but I don't see anything giving that power to the Director. G.S. 135-5(c) provides (twice) that the person "may be retired by the Board of Trustees." Rule 02A .0103 allows this decision to be made by the Director. See response to comment on Rule 02A .0103 for further discussion.

I think the concerns I have about Rule 02A .0103 spill over into this Rule. Just on that basis alone, I would like to see what statutory authority you have for the delegation to the Director before recommending approval of this Rule.

On line 8, what is the standard for whether a case is "doubtful"? Who makes that determination? This has never come up in recent memory. Reading the statute, it seems this provision would be invoked if the Medical Board expressed doubt in its determination of disability status.

Please note, although this statutory provision has not been repealed, it applies only to events that occurred before 1988. We view Rules 02B .0501 through .0504 as similar to "inchoate rights" situations (described later in this document) where the Rules should not be revised materially.

I understand the inchoate rights argument you are making here, but again, I don't think clarifying your rules or bringing them in line with statutory authority is akin to materially revising them.

With that said, I read 135-5(c) to say that the Board of Trustees can retire someone "Provided, that the medical board, after a medical examination of such member, shall certify" that the member is incapacitated, that the incapacity was incurred during the employment, etc. The statute then goes on to say when the Medical Board "shall not certify" a member as disabled. 135-5(e) allows that the Board of Trustees can require a disability beneficiary to undergo a medical exam on a routine basis.

If I read your statutes correctly, the Medical Board makes the determination that someone is entitled to a disability retirement after a medical examination, and that thereafter, the Board of Trustees can require routine medical examinations to determine if the person remains disabled. I don't see a route for someone to receive a disability retirement without a medical examination in the first place, so I don't understand how there's room here for a "doubtful case" that would be asked to take a medical examination vs. a "non-doubtful case" that would not be subject to a medical examination. Maybe I've misunderstood something.

All that said, if the Rule is just requiring that these initial and then periodic examinations be paid from the Pension Accumulation Fund, that makes more sense to me. Although you would need to revise the rule to actually say that.

On lines 8-9, what does “condition of the disability” mean? Whether the disability meets the condition of G.S. 135-5(c). See also the response to the third comment.

I don’t think revision to clarify this term would materially change the Rule, and stating “whether the member continues to be eligible for a disability retirement pursuant to G.S. 135-5(c)” is much clearer.

On line 8, what are the parameters of such “examination” by the Director? What details can be gathered and by what means? It could include any information the member or their physician might submit to support their application for disability retirement. See also the response to the third comment.

So is this a medical examination or is it broader? I am not clear.

.0701

Is the definition of “stipend” in (a) a quote from another source? This question is described on page 14 of the impact analysis. It is a combination of a dictionary definition with words from G.S. 135-8(b)(5).

I don’t believe I received a copy of the impact analysis. Can you point me in the right direction?

What is the definition or usage of “other living expenses” in (a)? We expect this would have the dictionary meaning, subject to the restriction in the Rule that they are expenses “resulting from participation in a full-time degree program.” For example, it could include items such as housing or academic books.

What dictionary are you referring to in both of these responses? Regardless, the point here is that the term is unclear, and some definition should be included in the Rule. As currently written, you’re defining a stipend without actually saying what the term means in large part. Without a definition, “other living expenses” can mean different things to different people.

.0706

How is the regulated public meant to know the rules established prior to July 1, 1983? Are these rules published anywhere? If so incorporate by reference pursuant to G.S. 150B-21.6. At minimum, these Rules are part of the Board’s meeting minutes, which are public record. The importance of this provision is to preserve rights that people had in 1983 without diminishment, similar to the discussions later in this document about inchoate rights.

I understand, but the point is that you’re saying the rights of people who want to purchase credible service for leaves prior to 7/1/83 are defined by Rules that are possibly no longer in the Code. You’re leaving it to the applicant to suss out whether the current versions of Section .1200 were in effect whenever they took their leave, and to find the historical versions of these rules on their own. I think at the very least you can point your regulated public to wherever old versions of Section .1200 have been preserved.

.0803

In (1), line 5, what is meant by “when the member first entered service”? First year? The first period of service for which membership was reported by an employing unit, which would be a month or a part of a month.

Similarly, in (2), line 7, what does “at that time” mean? **The period of time coincident with the first period of membership service.**

I’m going to group these two change requests together here. I understand you don’t want to edit these inchoate rules in a material way, and I agree with your approach generally. However, I think providing more clarity here would not be making a material change. For instance, if you were to say “**1/12 of the annualized rate of compensation the member earned in his or her first year of membership,**” or something equivalent, would not change what the rule does, but would describe what the rule does more intelligibly for your regulated public. Similarly, in the second instance, to say “**the employee contribution rate during the employee’s first year of membership...**” would achieve the same goal.

.0805

*What are “service connected disability” and “longevity retirement” referring to? Are these terms defined elsewhere? If so, please incorporate by reference in compliance with G.S. 150B-21.6. **The terms are used by the programs administered by the U.S. Department of Veterans Affairs (often known as “VA benefits”). Please see also the response to the next comment.***

I had a hunch that these were terms from the VA system. Again, I understand that you don’t want to materially change the rule, but these terms appear to have been specifically defined in the VA system, and you are using them in that manner. If the term carries a definition—that you are and have been using in enforcement of this Rule—I believe for clarity’s sake you need to incorporate that definition by reference pursuant to G.S. 150B-21.6.

Additionally, I noticed you edited the Rule to take “service connected disability” out of quotation marks, but left “longevity retirement” in quotations. Please leave any term that is being defined in quotations.

.0807

*What provisions are being referred to by “any change in benefits resulting from these provisions”? If this Section or Chapter is the relevant portion, then it needs to be referenced. **This refers to the change in the pension benefit that results from having purchased service under the authorizing statute, i.e. the repealed version of G.S. 135-4(f)(6). See also the response to the next comment.***

I don’t think clarifying what “these provisions” means is materially changing the Rule. If you merely mean “resulting from the purchase of credit pursuant to Section .0800 of this Subchapter”, I think that clarifies rather than materially changes what the Rule is doing.

.0810

*I have some statutory authority concerns here. I looked through G.S. 135-4(f), and I didn’t see anything that looked on all fours with this Rule. Can you point to particular language, or a different statute? **As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe “Inchoate Rights Only.” That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a***

material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

In addition, G.S. 135-4(f)(4) provides for the Board to adopt rules allowing TSERS service credit for periods of military leave.

I reviewed the provisions of law repealed by SL 1981 C.636 and the only one relevant was 135-4(f)(6). While (f)(6) allowed for members to purchase credit for military service, I don't see that it authorized the purchase of credit for all of the member's contributions prior to withdrawal:

teachers and other State employees not otherwise allowed service credit for service in the armed forces of the United States may, upon completion of 10 years of membership service, purchase such service credit by paying in a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time, with sufficient interest added thereto so as to equal one half the cost of allowing such service, plus a fee to cover expense of handling payment to be determined by the Board of Trustees and assessed the member at the time of payment; provided that credit will be allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submit satisfactory evidence of the service claimed and that service credit be allowed only for that period of active service in the armed forces of the United States not creditable in any other retirement system, except the national guard or any reserve component of the armed forces of the United States.

Is there another statutory provision, either currently in effect or repealed at some point, which provides that a former member who withdrew his or her funds may pay the full balance back and receive credit? It looks like 135-4(k) allowed this, but it was repealed in 2021 and to my reading the SL repealing it (2021-57) did not create inchoate rights.

.0902

On line 5, the individual must pay for "all or such portion in full years..." Portion of what? The portion of their out-of-state service period.

I suggest you clarify the rule by stating that.

.0904

In (1), line 6, what is meant by "when the member first entered membership"? First year? The first period of service for which membership was reported by an employing unit, which would be a month or a part of a month.

Similarly, in (2), line 8, what does "at that time" mean? The period of time coincident with the first period of membership service.

See my notes to Rule .0803, which I think apply equally here.

.1004

In (a), how shall an eligible member "apply for the purchase"? By completing the appropriate form, currently Form 443.

As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS

and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved.

Also, what type of “certification” must be submitted, and who must submit it? The Rule describes it as “employer certification.” The employer must certify information on the form that is submitted. The form is submitted by the member. See also the response above regarding inchoate rights.

In (a), line 9, the Rule refers to an application. What must the member submit as part of the application? They must submit the form, currently Form 443. See also the response above regarding inchoate rights.

As an initial question, what is the inchoate right being preserved here? I looked at SL 2020-29, and it made fairly widespread changes to Ch. 135. I saw that 135-4(p1) had been repealed, but did not see language preserving inchoate rights, so I am not sure what I’m supposed to be looking at.

As I mentioned earlier, unless the substantive contents of a form are described in another rule or in statute, the Form itself is subject to rulemaking. You’re amending the Rule to remove reference to Form 222, so I don’t think that adding a reference to Form 443 would materially change the Rule. You’ll just need to state what information should be included on the form so that it is considered “complete” by the agency. Again, since you’re already requiring this information, merely stating it in the Rule is not materially changing the rule.

Thanks again for your patience, and all the hard work.

Best, and have a great weekend,
Brian

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Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions
Attachments: 1. 02B Response to Request for Changes (FINAL).docx; 20 NCAC 02B .0101.docx; 20 NCAC 02B .0202.docx; 20 NCAC 02B .0210.docx; 20 NCAC 02B .0211.docx; 20 NCAC 02B .0213.docx; 20 NCAC 02B .0301.docx; 20 NCAC 02B .0302.docx; 20 NCAC 02B .0303.docx; 20 NCAC 02B .0304.docx; 20 NCAC 02B .0305.docx; 20 NCAC 02B .0307.docx; 20 NCAC 02B .0308.docx; 20 NCAC 02B .0401.docx; 20 NCAC 02B .0402.docx; 20 NCAC 02B .0404.docx; 20 NCAC 02B .0405.docx; 20 NCAC 02B .0501.docx; 20 NCAC 02B .0502.docx; 20 NCAC 02B .0503.docx; 20 NCAC 02B .0504.docx; 20 NCAC 02B .0510.docx; 20 NCAC 02B .0701.docx; 20 NCAC 02B .0706.docx; 20 NCAC 02B .0801.docx; 20 NCAC 02B .0802.docx; 20 NCAC 02B .0803.docx; 20 NCAC 02B .0804.docx; 20 NCAC 02B .0805.docx; 20 NCAC 02B .0806.docx; 20 NCAC 02B .0807.docx; 20 NCAC 02B .0810.docx; 20 NCAC 02B .0901.docx; 20 NCAC 02B .0902.docx; 20 NCAC 02B .0903.docx; 20 NCAC 02B .0904.docx; 20 NCAC 02B .0905.docx; 20 NCAC 02B .0906.docx; 20 NCAC 02B .1003.docx; 20 NCAC 02B .1004.docx; 20 NCAC 02B .1005.docx; 20 NCAC 02B .1006.docx; 20 NCAC 02B .1007.docx; 20 NCAC 02B .1101.docx; 20 NCAC 02B .1102.docx; 20 NCAC 02B .1104.docx; 20 NCAC 02B .1204.docx; 20 NCAC 02B .1205.docx; 20 NCAC 02B .1207.docx

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, January 10, 2023 4:49 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

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From: Laura Rowe <Laura.Rowe@nctreasurer.com>
Sent: Monday, January 9, 2023 2:01 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Melton, Timothy M <Timothy.Melton@nctreasurer.com>
Subject: [External] 20 NCAC 02B Response to Request for Changes; Rule Text Revisions

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Good Afternoon Brian,
Attached please find responses to the Request for Changes to rules in 20 NCAC 02B along with rule text revisions. Please contact Tim Melton (814-4186) or me with any additional questions.

Thank you,

Laura

Laura Rowe

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NORTH CAROLINA
DEPARTMENT OF STATE TREASURER



Dale R. Folwell, CPA
STATE TREASURER OF NORTH CAROLINA
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0101

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is it necessary to have both (2) and (3)? It seems you could combine them and simply say in (2) that "The mailing address and physical address is...." **Agreed and corrected.**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0201

We believe this set of comments was intended to be for Rule 02B .0202, not Rule 02B .0201. Furthermore, we noted that Rules Review Commission Staff had a comment on Rule 02F .0104 that we believe should equally apply to Rule 02B .0202. That comment stated: "While this is not subject to rulemaking, having more clear rules within the Code when such exempt rules are codified is a concern for the Commission." Although the purpose of retaining Rule 02B .0202 in the decennial review process was to maintain transparency, we understand the Commission's potential concern and have edited the text to remove the Rule.

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 4, change "will" to "shall". See bolded red comment above regarding all comments on this Rule.

In (b), include an Oxford comma after "rates" on line 9.

In (b), line 10, what does it mean for the "file" to be "open" as well as "readily available" for the public?

In the new paragraph (c), when deleting the lettering of a paragraph, strikethrough the entire parenthetical and insert the new one. It should look like: (c)~~(d)~~

In paragraph (c), include an Oxford comma after both uses of "rates" on lines 19 and 20.

In History Note, please reorder the citations to G.S. 135, putting (f) before (m).

Also in the History Note, I suggest a citation to G.S. 150B-1(d)(30).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0210

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 4, add a comma after "(k)", and on line 5 add a comma following "physicians".
Agreed and corrected.

With respect to the quorum requirement, is this consistent with the Public Meetings Act? The Medical Board is not a public body. Quorum is the minimum number of members that must be present to make a meeting of the Medical Board valid. We believe that the Open Meetings Law, Article 33C of G.S. 143, does not reference "quorum."

On line 5, delete "being" following "three". **Agreed and corrected.**

On lines 6-7, is the quorum applicable only to meetings approving applications for disability retirement? Is there a different quorum for other meetings of the Medical Board? G.S. 135-102(d), for the Disability Income Plan of North Carolina, has the same composition (not fewer than three nor more than five physicians) and in practice, it has been the same members meeting at the same time with the same quorum.

In History Note, reinsert "1977" from the line "Readopted Eff. September 21, ~~1977~~" followed by a semi-colon. It should appear as: "...September 21, ~~1977~~; 1977;" **Agreed and corrected.**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0211

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Throughout, please capitalize "optional retirement program" as it is capitalized in G.S. 135-5.1. Agreed and corrected.

What are the applicable state universities, ranks, and positions? Is this clearly defined within G.S. 135-5.1 to the regulated public? Yes.

On lines 5-6, when discussing reclassification to an eligible rank or position, why use "rank of instructor or above"? Is there a categorization or hierarchy? Consider using "eligible rank or position". Agreed and corrected.

On line 6, consider deleting "exercise the option of electing to" and simply saying "elect to". Agreed and corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0213

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Capitalize "eff." in line 7. Agreed and corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0301

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 9, what "form" are you referring to? A form must either go through rulemaking, or its contents or substantive requirements must be described in another Rule or statute. See G.S. 150B-2(8a)d. This is referencing forms that members use to designate their beneficiaries for various purposes. The substantive requirements of these forms are described by statute. For TSERS, members use Form 2C to designate beneficiaries for the active death benefit (G.S. 135-5(l)) and the return of contributions (G.S. 135-5(f)). They use Form 336 to designate beneficiaries for the guaranteed refund (G.S. 135-5(g1)). They use Form 336401K and Form 336457 to designate beneficiaries for the guaranteed refund resulting from a transfer benefit from their 401(k) or 457 Plans respectively (G.S. 135-5(m1) or (m2)). They use Form 6E to designate a monthly survivorship beneficiary (G.S. 135-5(g)). They use a Form 6ER to redesignate a new spouse as the beneficiary if their first beneficiary was a spouse who predeceased the member (G.S. 135-5(g)). Some of these forms have both paper and online formats; others are paper-only.

Also, with respect to the form, who should make the "indication" on the form? The member? Yes, it is the member who completes these forms.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0302

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is this Rule necessary? It essentially repeats the content of the statutes cited in the History Note. We believe the Rule is necessary. The statutes generally provide for a "person or persons" in these cases, but do not provide specific details, such as the requirement of equal shares described in the Rule.

In (a), the wording of the added language in the second sentence is confusing. To avoid any confusion, would it be better to replace "so designated for the return of accumulated contributions" with "principal beneficiary"? We have edited to add the words "principal beneficiary" after "designated."

In (a), line 6, it's unclear to me to whom "those surviving" refers. We have edited to add the words "principal beneficiaries" after "surviving."

In (b) and (c), remove parentheticals and use appropriate identifiers. For example, say "beneficiary or beneficiaries" or simply "beneficiaries" if appropriate. Agreed and corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0303

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Paragraphs (a), (b), and (c) should be framed to lead and follow into the subparagraphs, such as "the following apply to designating a contingent beneficiary..."
Agreed and corrected.

Remove all parentheticals and use appropriate identifiers. Each subparagraph has at least one. For example, say "beneficiary or beneficiaries" or simply "beneficiaries" if appropriate. **Agreed and corrected.**

At the end of each subparagraph (2), consider adding language to clarify contingent beneficiaries only receive in the event all principal beneficiaries predecease the member, similar to (3). **We believe the language is clear in (2).**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0304

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What is meant by "legal representative"? Does this mean the member's administrator of the estate? More specificity is needed, as any attorney or power of attorney could be classified as a "legal representative". The authorizing statute, G.S. 135-5(g), uses the term "legal representative." We understand it to mean the administrator or executor of the estate or the collector of funds for the estate and have revised accordingly.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0305

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 4, please define or delete "duly". We have edited to delete "duly."

In (a), line 5, please change "they" to "the beneficiary" or "the guardian" to clarify which county you're referring to. As written, it's not clear whether you mean the county the minor lives in, or the county the guardian lives in. See also (b) line 6. We have edited to clarify that it is the county where the minor lives.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0307

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

At the end of Item (1), line 9, delete "or". Agreed and corrected.

In (2), please move the text on line 11 over 1 tab so it lines up with the text on line 10. Agreed and corrected.

In (2), lines 10-11, I don't understand the phrase "until such time as the retired member's last day of active service is greater than 180 days prior to the change". Does this just mean the member has to wait at least 180 days from the last day of active service to make a change? Please revise for clarity. We have edited to say, "provided the change is submitted within 180 calendar days after the member's last day of active service."

Change "must" to "shall" in line 14. Agreed and corrected.

Also on line 14, please use the active voice and state who must submit the change. Agreed and corrected.

Additionally, how shall members submit such a change in beneficiary to the Board of Trustees? By using the forms approved by the Board for designation of each type of beneficiary. See response to comment on Rule 02B .0301.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0308

DEADLINE FOR RECEIPT: **Friday, December 9, 2022.**

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Where is your statutory authority for this Rule? In 135-5(f), the statute states:

Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member there shall be paid to such person or persons as the member or former member **shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees**, if such person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of the member's accumulated contributions at the time of the member's death, unless the beneficiary elects to receive the alternate benefit under the provisions of (m) below.

This Rule seems to explicitly contradict the bolded portion of the quoted statute, and instead provides that even if the member designated someone, that designation can be undone post-mortem and supplanted by someone the System determines the member "intended" to receive the benefits.

This Rule provides for beneficiary designations for people who became members before July 1, 1967. It was approved by the Board on April 26, 1979 and has not been amended since then. The minutes of that meeting state that it "would allow payment of a return of accumulated contributions / Survivor's Alternate Benefit to a person when there is clear and convincing evidence presented to the Retirement System showing that the member thought he had or intended to have designated for the return of accumulated contributions the same person whom he designated as beneficiary for the death benefit."

Although no current Retirement Systems Division staff would have close knowledge of the process at the time, the date of July 1, 1967 is important because that was the effective date of the active death benefit under G.S. 135-5(l). Before that date, the only beneficiary that could be named for a preretirement death benefit was for the Return of Contributions (G.S. 135-5(f)), which is the basis for determining whether and to whom a Survivor's Alternate Benefit is payable under G.S. 135-5(m).

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

For some time after 7/1/1967, there were separate forms for nominating beneficiaries for the ROC and the active death benefit. It appears that this caused some confusion for members who designated or redesignated a beneficiary for the active death benefit thinking they were also updating their beneficiary for the ROC, since in the past there had been only one form.

It is evident from the meeting minutes that there was a petition before the Board in 1979 (Evelyn Budd McMillan v. TSERS) that showed the Board a need to adopt this Rule. The scanned document is hard to read, but based on RSD's understanding, a particular member had originally designated his mother as the beneficiary for the ROC, before the active death benefit was created. When the active death benefit was created, he named his wife as the beneficiary for that purpose, on a form that included wording that he was "revok(ing) my previous designation of a beneficiary or beneficiaries if any." After his death, his wife presented convincing evidence including testimony by a relative and his personal papers showing "clear and convincing" evidence that he had intended to name his wife as his beneficiary for all purposes including the ROC. The mother expressly revoked any right to the benefits (also a condition of the Rule the Board eventually adopted). The Board was also made aware of litigation related to other public retirement systems, both in the federal judiciary and other states, related to this topic.

The statutory authority for the Rule as written is G.S. 135-5(m), which in 1979 stated that the designation of a beneficiary must be on "a form provided for this purpose by the board of trustees."

RSD has not encountered this issue in recent history, because at this point, individuals who became members before 7/1/1967 have had many years to update their beneficiaries and have been encouraged to do so repeatedly. We believe in general, it is best to preserve in writing these rules that document the rights of members, when they could theoretically be invoked even if our observation is that they have not been recently invoked. The authority for adopting the rule in the first place was given as G.S. 135-5(g) as stated above, but authority to readopt could also be located in G.S. 135-6(f), particularly "preventing injustice and inequalities that might otherwise arise in administration of this Chapter." We have added G.S. 135-6(f) to the History Note.

On line 5, how is it determined who the member "intended" to receive the return? All of conditions 1 through 5 must be met. We have edited to add "all of."

On line 6 and in (1) line 8, what is meant by "properly designated"? We have edited to remove the word "properly."

In (1), lines 8-9, please clarify the phrase "at a time when there were separate forms for designation...." When was that? For some time after July 1, 1967. Current staff is not aware of the exact end date of this period.

Remove the parenthetical in Item (3), line 15. Agreed and corrected.

Also, in (3), line 15, insert an Oxford comma after “successors”. Agreed and corrected.

What is the standard for “clear and convincing evidence” presented to the Division? Is this the same standard as is used in law – e.g. substantially more likely than not? We would expect it to have the same meaning as in law.

In your History Note, provide the rulemaking authority statutes. G.S. 135-5(m) does not expressly provide for rulemaking authority. See lengthy response to the first comment. We have added G.S. 135-6(f) to the History Note.

Also in the History Note, I would suggest a reference to G.S. 135-5(f). Agreed and corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0401

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), remove the commas around the added language to avoid an unnecessary clause. Agreed and corrected.

In (a), line 9, what are "erroneous employee deductions"? For example, situations where employers erroneously report employees as earning membership service under TSERS, and therefore deduct contributions to TSERS from the member's pay. We believe this term is clear to employers affected by the Rule.

In (a), line 9, is an "employing unit" defined? Is this different than "the employer"? "Employing unit" or "unit" means "employer." It is used throughout G.S. 135 interchangeably with "employer."

In (b), remove the parentheses around the phrase "and... contributions" and consider inserting commas. Agreed and corrected.

In (c), line 17, remove the comma to avoid an unnecessary clause. Agreed and corrected.

In line 18, delete the last set of parentheses around "(f.)". Agreed and corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0402

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 4, what is a "unit"? "Employing unit" or "unit" means "employer." It is used throughout G.S. 135 interchangeably with "employer."

On line 4, please change "should" to "shall". Agreed and corrected.

In your History Note, consider either adding a reference to G.S. 135-8(f)(2), or simply deleting "(1)" so as to encompass all of subsection (f). Agreed and corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0404

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*The rule states "Raleigh **offices**" (emphasis added). Are there multiple offices which the contributions need to be sent to? **We have edited to say "office."***

Alternatively, are you referring to the address specified in Rule .0101?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0501

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is this Rule for all disability retirements or only those falling within the purview of G.S. 135-5(c)'s threshold of prior to January 1, 1988? Disability retirements prior to January 1, 1988 are the only disability retirements provided by TSERS.

Where is your statutory authority for this Rule? G.S. 135-5(c) and 135-5(e) give the Medical Board the power to examine and re-examine disability beneficiaries, but I don't see anything giving that power to the Director. G.S. 135-5(c) provides (twice) that the person "may be retired by the Board of Trustees." Rule 02A .0103 allows this decision to be made by the Director. See response to comment on Rule 02A .0103 for further discussion.

On line 8, what is the standard for whether a case is "doubtful"? Who makes that determination? This has never come up in recent memory. Reading the statute, it seems this provision would be invoked if the Medical Board expressed doubt in its determination of disability status.

Please note, although this statutory provision has not been repealed, it applies only to events that occurred before 1988. We view Rules 02B .0501 through .0504 as similar to "inchoate rights" situations (described later in this document) where the Rules should not be revised materially.

On lines 8-9, what does "condition of the disability" mean? Whether the disability meets the condition of G.S. 135-5(c). See also the response to the third comment.

On line 8, what are the parameters of such "examination" by the Director? What details can be gathered and by what means? It could include any information the member or their physician might submit to support their application for disability retirement. See also the response to the third comment.

Where is your statutory authority to allow payment for these examinations through the pension accumulation fund? If the Medical Board were unable to certify the disability

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

and the member's rights were not clear, this would be a necessary expense of administering TSERS, payable under G.S. 135-2. We have added G.S. 135-2 to the History Note with the aim of clarifying.

On line 9, I believe "pension accumulation fund" should be capitalized. Agreed and corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0502

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Remove the comma after "engaged in" in line 6. Agreed and corrected.

Capitalize "state" in line 7. Agreed and corrected.

On line 7, for clarity, remove the portion "relate back so as to". Agreed and corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0504

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What is the authority to disallow interest regardless of whether the member is currently on disability retirement or newly reinstated to active service? G.S. 135-6(f), the only cited authority, does not appear to give authority to suspend interest payments. Moreover, G.S. 135-8 suggests that "regular interest" shall be paid on all accounts.

As background: Although the statutory provision for TSERS disability retirement has not been repealed, it applies only to events that occurred before 1988 . We view Rules 02B .0501 through .0504 as similar to "inchoate rights" situations (described later in this document) where the Rules should not be revised materially.

"Accumulated contributions" become payable under G.S. 135-5(f) or G.S. 135-5(g1). These are contributions that accumulate with interest in the Annuity Savings Fund attributable to the account of a "member." When a person becomes a "beneficiary," including when they become a disability retiree, they cease to be a "member" (G.S. 135-3), and their balance in the Annuity Savings Fund is transferred to the Pension Accumulation Fund. G.S. 135-7(b) provides that "regular interest" is credited on the principal of the Annuity Savings Fund "for the preceding year." This Rule clarifies that funds that were in the Pension Accumulation Fund in "the preceding year" do not receive interest credits in the Annuity Savings Fund for the current year.

In the event a member on disability retirement is reinstated in the middle of the year, does interest accrue during the period for which the member was not on active service?
No. See prior response.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0510

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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In reviewing this Rule, the staff recommends the following changes be made:

G.S. 135-14 was repealed by Session Laws 2020-48, s. 1.12(c), effective June 26, 2020.

Remove G.S. 135-14 as authority and provide additional relevant authority, if applicable. Agreed and corrected to remove G.S. 135-14 as authority.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0701

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

To format definitions consistently, remove the quotes around the definitional language in (a). Agreed and corrected.

Is the definition of "stipend" in (a) a quote from another source? This question is described on page 14 of the impact analysis. It is a combination of a dictionary definition with words from G.S. 135-8(b)(5).

What is the definition or usage of "other living expenses" in (a)? We expect this would have the dictionary meaning, subject to the restriction in the Rule that they are expenses "resulting from participation in a full-time degree program." For example, it could include items such as housing or academic books.

What is the definition or usage of "full-time degree program" in (a)? Is this pursuant to another rule or statute? Pursuant to the authorizing provision in G.S. 135-8(b)(5).

I am not sure what you are requiring in (b). Please clarify. This response is meant to cover this comment and the following two comments. G.S. 135-8(b)(5) provides for portions of the required payment to be made by the employer, or the employee, or both, depending on the policy of the employer and whether the leave period was before July 1, 1981. This Rule provision defines who "submits" the payment, based on who is making the payment. (The member cannot choose to pay something the employer would otherwise be required to pay, and "submit" or pay it themselves.) To submit payment, members and employers follow the instructions on Form 463 or Form 463F as applicable.

In (c), what "entire payment" is being referred to?

In both (b) and (c), how are the employer and employee to "submit" the payment or contribution to the Retirement System?

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

In (d), line 34, please delete “said” and rephrase. Agreed and corrected.

In (d), is the “last position” the position the member is currently on a leave of absence from? Yes. The term “that last position” refers to earlier in the sentence, “position before the leave of absence.”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0706

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Throughout this Rule, what are the “requirements of law and the rules of the Board” or similar language meant to impose? Please be specific about what law and what rules you are enforcing here. As noted below, we have removed (a) as superfluous. The remaining references to “requirements of law” relate to the authorizing statutory provision, G.S. 135-4(r).

How is the regulated public meant to know the rules established prior to July 1, 1983? Are these rules published anywhere? If so incorporate by reference pursuant to G.S. 150B-21.6. At minimum, these Rules are part of the Board’s meeting minutes, which are public record. The importance of this provision is to preserve rights that people had in 1983 without diminishment, similar to the discussions later in this document about inchoate rights.

Why is (a) necessary? It seems to be stating the obvious, that those seeking to purchase creditable service have to comply with the law and these Rules. Removed as superfluous.

In (b), line 9, I do not think you need “Section”. The reference to .1200 is sufficient. Agreed and corrected.

Based on the language “in a manner prescribed by law”, is (c) reiterating already existing law? Is this stating said law verbatim or adding any new requirements? The term “in a manner prescribed by law” helps to preserve the different provisions of G.S. 135-4(r)(2) as opposed to G.S. 135-4(r)(3), for leaves of absence terminating on and after January 1, 1988. It clarifies that for certain aspects of the administration of leaves terminating on and after July 1, 1983, it is necessary to refer to statute and not just to the Rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0802

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What does the term "individual" encompass? Is this different than "member" as is used elsewhere? It is generally the same, but "individual" could also include a surviving spouse making a purchase for which the member had applied per G.S. 135-5(m).

G.S. 135-4(f)(6) was repealed by Session Laws 1981, c. 636, s. 1. However, in the statute it says "For proviso as to inchoate or accrued rights, see Editor's note below". Can you shed light on this? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

In this specific instance, the "Editor's Note" to the published version of G.S. 135-4 is on pages 405-406 at this link: <https://www.myncretirement.com/media/3511>. The link effectiveness or page numbering may change with subsequent annual updates to the published General Statutes.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0803

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (1), line 5, what is meant by "when the member first entered service"? First year? The first period of service for which membership was reported by an employing unit, which would be a month or a part of a month.

Similarly, in (2), line 7, what does "at that time" mean? The period of time coincident with the first period of membership service.

As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0804

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

G.S. 135-4(f)(6) was repealed by Session Laws 1981, c. 636, s. 1. However, in the statute it says "For proviso as to inchoate or accrued rights, see Editor's note below". Can you shed light on this? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

In this specific instance, the "Editor's Note" to the published version of G.S. 135-4 is on pages 405-406 at this link: <https://www.myncretirement.com/media/3511>. The link effectiveness or page numbering may change with subsequent annual updates to the published General Statutes.

Additionally what is the statutory authority for this rule? G.S. 135-6(f) is the general rulemaking authority, but where is the authority for permitting credit for military service that has already been credited in the Federal Civil Service Program? Although a response may not be necessary considering the "inchoate rights" issue described above, the following is our understanding. From language in the Editor's Note linked above, the statutory provision that was repealed with rights preserved stated: "Credit will be allowed only if no benefit is allowable in another public retirement system as a result of the service." The term "public retirement system" is somewhat open to interpretation. It appears that the Board wished in the 1970s to clarify that if a member was required to participate in the Federal Civil Service Program (which

Brian Liebman
Commission Counsel

Date submitted to agency: 12/7/22

might be viewed as a “public retirement system”) instead of Social Security (which is generally viewed as an old-age insurance program rather than a “public retirement system”), the Board did not consider the Federal Civil Service Program to be a “public retirement system.” This Rule had been adopted before the statutory provision was repealed with vested rights preserved.

On line 5, capitalize “state”. Agreed and corrected.

On line 8, should it be “Retirement System” rather than “Systems”? Agreed and corrected.

On line 8, when you say “under civil service” do you mean under the “Federal Civil Service Program” as stated on line 6? Yes; corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0805

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 5, it's not clear what the "exclusion" is. Please revise and clarify. The Rule states that the exclusion is "as it pertains to credit in any other retirement system." It is referring to the same exclusion as described in the response to the comment on Rule .0804, from the repealed language of G.S. 135-4(f)(6). We believe it is clear.

What are "service connected disability" and "longevity retirement" referring to? Are these terms defined elsewhere? If so, please incorporate by reference in compliance with G.S. 150B-21.6. The terms are used by the programs administered by the U.S. Department of Veterans Affairs (often known as "VA benefits"). Please see also the response to the next comment.

G.S. 135-4(f)(6) was repealed by Session Laws 1981, c. 636, s. 1. However, in the statute it says "For proviso as to inchoate or accrued rights, see Editor's note below". Can you shed light on this? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

In this specific instance, the "Editor's Note" to the published version of G.S. 135-4 is on pages 405-406 at this link: <https://www.myncretirement.com/media/3511>. The link effectiveness or page numbering may change with subsequent annual updates to the published General Statutes.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

Additionally what is the statutory authority for this rule? G.S. 135-6(f) is the general rulemaking authority, but where is the authority for the substance of the Rule? Please see response to previous comment.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0806

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

G.S. 135-4(f)(6) was repealed by Session Laws 1981, c. 636, s. 1. However, in the statute it says "For proviso as to inchoate or accrued rights, see Editor's note below". Can you shed light on this? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

In this specific instance, the "Editor's Note" to the published version of G.S. 135-4 is on pages 405-406 at this link: <https://www.myncretirement.com/media/3511>. The link effectiveness or page numbering may change with subsequent annual updates to the published General Statutes.

We have also made the same revision here as in Rule 02C .0908. Although you did not make that comment on this Rule, we believe it would have applied equally to this Rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0807

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What provisions are being referred to by "any change in benefits resulting from these provisions"? If this Section or Chapter is the relevant portion, then it needs to be referenced. This refers to the change in the pension benefit that results from having purchased service under the authorizing statute, i.e. the repealed version of G.S. 135-4(f)(6). See also the response to the next comment.

G.S. 135-4(f)(6) was repealed by Session Laws 1981, c. 636, s. 1. However, in the statute it says "For proviso as to inchoate or accrued rights, see Editor's note below". Can you shed light on this? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

In this specific instance, the "Editor's Note" to the published version of G.S. 135-4 is on pages 405-406 at this link: <https://www.myncretirement.com/media/3511>. The link effectiveness or page numbering may change with subsequent annual updates to the published General Statutes.

Additionally what is the statutory authority for this rule? G.S. 135-6(f) is the general rulemaking authority, but where is the authority for the substance of the Rule? Please see response to prior comment.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0810

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

I have some statutory authority concerns here. I looked through G.S. 135-4(f), and I didn't see anything that looked on all fours with this Rule. Can you point to particular language, or a different statute? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

In addition, G.S. 135-4(f)(4) provides for the Board to adopt rules allowing TSERS service credit for periods of military leave.

How does this Rule relate to G.S. 135-4(k1)? That seems to cap the amount of creditable service that may be purchased at 5 years. Please see response to prior comment. This rule is under G.S. 135-4(f), not G.S. 135-4(k1). It relates to inchoate rights preserved in a repeal. Those preserved rights would not be diminished by the five-year limitation of G.S. 135-4(k1), which was added later.

On line 5, please change "will" to "shall." Agreed and corrected.

Insert an Oxford comma after "membership" in line 6. Agreed and corrected.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0902

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 5, who does "individual" refer to? The "member"? It is generally the member, but "individual" could also include a surviving spouse making a purchase for which the member had applied per G.S. 135-5(m).

On line 5, the individual must pay for "all or such portion in full years..." Portion of what? The portion of their out-of-state service period.

If I read this sentence right, it appears that you're saying that in order to qualify, the individual has to pay for the services. Is this any different from G.S. 135-4(l2)? Thus, is it necessary? The main clarification in the Rule is that any partial purchase is made in full-year increments. For example, a person with 2.5 years of credit eligible for purchase could purchase 1, 2, or 2.5 years, but not 1.3333 years.

Similarly to previous rules, is the agency aware G.S. 135-4(l) was repealed? "Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's note below." Can you shed light on this? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

I suggest adding a reference to G.S. 135-4(l2) to the History Note. We do not agree. The Rule relates to the repealed provision of G.S. 135-4(l). See prior comment.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0903

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Similarly to previous rules, is the agency aware G.S. 135-4(l) was repealed? "Repealed by Session Laws 1981, c. 636, s. 1. For proviso as to inchoate or accrued rights, see Editor's note below." Can you shed light on this? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

I think the correct reference is to G.S. 135-4(l2), and there, the language is "governmental subdivision", not "subdivisions". The Rule is describing inchoate rights preserved under repealed language of G.S. 135-4(l). We agree that the repealed language used "subdivision" rather than "subdivisions," and have edited accordingly.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0904

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (1), line 6, what is meant by "when the member first entered membership"? First year? The first period of service for which membership was reported by an employing unit, which would be a month or a part of a month.

Similarly, in (2), line 8, what does "at that time" mean? The period of time coincident with the first period of membership service.

Similarly to previous rules, is the agency aware G.S. 135-4(l) was repealed? I think the correct reference is to 135-4(l2). As indicated by their titles, Section 02B .0800, Section 02B .0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0905

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

This Rule is essentially one long run-on sentence. Can you rephrase for clarity? We have attempted to revise for clarity. See comment below regarding inchoate rights.

On line 6, who does "individual" refer to? The "member"? It is generally the member, but "individual" could also include a surviving spouse making a purchase for which the member had applied per G.S. 135-5(m).

What is the portion "effect shall be given for all benefit increases... which shall be a part of the total cost of providing the additional service credit" attempting to impart? Please clarify. We believe the edits made to address the run-on sentence should clarify. In other words, suppose that the following events occurred in sequence: (1) the member retired; (2) the General Assembly enacted a change to the amount of TSERS benefits generally; and (3) the member then applied to purchase service under this provision. The Rule is stating that the benefit increase under (2) would be taken into account in calculating the cost of the purchase.

Similarly to previous rules, is the agency aware G.S. 135-4(l) was repealed? What is the authority for this Rule? As indicated by their titles, Section 02B .0800, Section 02B .0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .0906

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Similarly to previous rules, is the agency aware G.S. 135-4(l) was repealed? What is the authority for this Rule? As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe "Inchoate Rights Only." That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved. We have added S.L 1981, C. 636 to the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .1004

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), how shall an eligible member “apply for the purchase”? By completing the appropriate form, currently Form 443.

As indicated by their titles, Section 02B .0800, Section 02B. 0900, and Rule 02B .1004 all describe “Inchoate Rights Only.” That is, they pertain to statutory provisions that were repealed with inchoate rights preserved. A statutory provision allowed individuals to take a certain action, the statutory provision was repealed, but the legislature preserved the rights of individuals who were entitled to take that action by the time the repeal occurred. In the cases you are asking about, TSERS and LGERS had already adopted administrative rules under the statutory provisions, prior to their repeal. During this decennial process, the relevant administrative rules have been edited in immaterial ways, for example to modernize gender references or capitalize words. However, they have not been edited in any material way, and we believe they should not be. To edit them in a material way would be to change the rights that the legislature preserved.

Also, what type of “certification” must be submitted, and who must submit it? The Rule describes it as “employer certification.” The employer must certify information on the form that is submitted. The form is submitted by the member. See also the response above regarding inchoate rights.

In (a), line 9, the Rule refers to an application. What must the member submit as part of the application? They must submit the form, currently Form 443. See also the response above regarding inchoate rights.

Is “temporary employment” with the State or “Temporary State employment” defined by statute or otherwise outside of this Rule? The definition in (b) is circular. Employers classify their employees. The definition in (b) means that the employee is classified as a temporary employee by their employer, but except for the temporary classification

(which prevents them from earning TSERS membership), they meet all other requirements for TSERS membership with respect to that employment.

In (c), on line 15, revise “the employer shall be equal”. I think you erroneously deleted “cost”. Agreed and corrected.

Is (c) not circular? It sounds like you’re saying the employer’s cost is equal to the employer’s contribution, plus the employee’s contribution, minus the member’s contribution. Unless I completely misunderstood Ch. 135, isn’t the member the employee? It is not circular. Lines 15-16 describe rates of contribution (including the member rate), which are determined as averages that apply to everyone in TSERS. The member’s contribution at the end of (c) is a dollar amount related specifically for that member.

Is (d) not already covered by the requirements within G.S. 135-4(p)? We agree it was already covered by G.S. 135-4(p) when the provision was closed effective 12/31/2021 with rights preserved. Accordingly, we have removed (d) and believe the removal is immaterial.

Also, must the 36 months be consecutive? No.

Correct the History Note “Amended” language regarding 1982. Agreed and corrected. We have also added S.L 2020-29 to the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02B .1006

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

To make the definition comply with format and avoid ambiguity, while keeping the reference, rewrite it as follows: "Part-time" as used in G.S. 135-4(p2) means..." **Agreed and corrected.**

Similarly to 20 NCAC 02B .0701, what is the definition or usage of "full-time"? Is this pursuant to another rule or statutory construction? Without a definition of "full time" the definition of "part time" here does not really impart any information. **Employers classify their employees as "full time" or another category of employment. The employer reports this classification when certifying information on the member's application to purchase service.**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/7/22

1 20 NCAC 02B .0101 is amended as published in 36:23 NCR, page 1843, with changes, as follows:

2
3 **SUBCHAPTER 02B - TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM**

4
5 **SECTION .0100 - GENERAL PROVISIONS**

6
7 **20 NCAC 02B .0101 GENERAL INFORMATION**

8 The following is general information about the Teachers' and State Employees' Retirement System:

9 (1) The ~~chief officer~~ Director is the Director of the Retirement ~~Systems~~; Systems Division;

10 (2) The mailing address and physical address is Retirement Systems Division, Department of State
11 Treasurer, 3200 Atlantic Avenue, Raleigh, North Carolina 27604, 27604;

12 ~~(3) The office is located in the Longleaf Building, at 3200 Atlantic Avenue, Raleigh, North Carolina.~~

13
14 *History Note: Authority G.S. 135-6(f);*

15 *Eff. February 1, 1976;*

16 *Readopted Eff. September 21, 1977;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21,*
18 *2018;*

19 *Amended Eff. September 1, ~~2019~~, 2019;*

20 *Amended Eff.*
21

1 20 NCAC 02B .0202 is ~~repealed through readoption~~ ~~readopted~~ as published 36:23 NCR, page 1843 as follows:
2 follows; the Rule was originally proposed to be amended, but it is repealed:

3
4 **20 NCAC 02B .0202 ACTUARIAL TABLES: RATES AND ASSUMPTIONS**

5 ~~(a) Actuarial tables and assumptions will be adopted by the board [Board] of trustees [Trustees] after the presentation~~
6 ~~of the recommendations of the actuary by including the tables, rates, etc. in the minutes of the board with the resolution~~
7 ~~adopting said tables, rates or assumptions. [As provided by G.S. 150B-1(d), these actions of the Board of Trustees are~~
8 ~~not subject to rule making requirements.]~~

9 ~~(b) The director [Director] of the retirement systems shall maintain a file of copies of all resolutions adopting tables,~~
10 ~~rates or assumptions and the current version of all tables as amended by the board [Board] of trustees [Trustees.] The~~
11 ~~file shall be open and readily available to the public during regular office hours.~~

12 ~~(c) This Rule includes but is not limited to the following actuarial tables and assumptions:~~

- 13 (1) — interest rate assumptions;
- 14 (2) — salary increase assumptions;
- 15 (3) — required contribution rates;
- 16 (4) — mortality assumptions;
- 17 (5) — separation and retirement assumptions;
- 18 (6) — joint and survivor tables;
- 19 (7) — reserve transfer tables.

20 ~~(c)d) Tables, rates and assumptions shall become effective on the first day of the month following adoption, unless~~
21 ~~a specific effective date is included in the adopting resolution. If the specific date is included, the tables, rates or~~
22 ~~assumptions shall be effective as provided in the adopting resolution.~~

23
24 *History Note: Authority G.S. 135-6(m); 135-6(f);*
25 *Eff. February 1, 1976;*
26 *Readopted Eff. September 21, 1977;*
27 *Amended Eff. August 1, 1981-1981;*
28 *~~Repealed [Readopted] Eff.~~*

1 20 NCAC 02B .0210 is readopted as published in 36:23 NCR, page 1844, with changes, as follows:

2

3 **20 NCAC 02B .0210 MEDICAL BOARD**

4 In accordance with the authority contained in G.S. 135-6(k) G.S. 135-6(k), membership of the ~~medical~~Medical
5 ~~board~~Board is increased from three to consists of five physicians physicians, with a quorum of three being required at
6 meetings approving applications for disability retirement.

7

8 *History Note: Authority G.S. 135-6(k); 135-6(f);*

9

Eff. February 1, 1976;

10

Readopted Eff. September 21, 1977. 1977;

11

Readopted Eff.

12

1 20 NCAC 02B .0211 is readopted with changes as published in 36:23 NCR, page 1844, with changes as follows:

2

3 **20 NCAC 02B .0211 OPTIONAL RETIREMENT PROGRAM**

4 An individual who is employed by a state university at a rank or in a position ~~ineligible which does not qualify him~~
5 for participation in the Optional Retirement Program, ~~optional retirement program~~, as provided by G.S. 135-5.1, and
6 who later is reclassified to an eligible rank or position ~~the rank of instructor or above~~ shall be permitted to ~~elect~~ exercise
7 ~~the option of electing~~ to withdraw from the Teachers' and State Employees' Retirement System and to begin
8 participation in the Optional Retirement Program ~~optional retirement program~~ as though ~~he~~ the individual were a new
9 employee.

10

11 *History Note: Authority G.S. 135-5.1; 135-6(f);*

12 *Eff. February 1, 1976;*

13 *Readopted Eff. September 21, ~~1977~~.1977;*

14 *Readopted Eff.*

15

1 20 NCAC 02B .0213 is repealed as published in 36:23 NCR, page 1844, as follows:

2

3 **20 NCAC 02B .0213 DISABILITY RETIREMENT ALLOWANCE DEFINED**

4

5 *History Note:* *Authority G.S. 135-5(1)(3);*

6 *Eff. October 29, ~~1979~~ 1979;*

7

 Repealed ~~Eff.~~ Eff.

8

1 20 NCAC 02B .0301 is readopted as published in 36:23 NCR, page 1844, as follows:

2

3

SECTION .0300 - BENEFICIARIES

4

5

6 **20 NCAC 02B .0301 DESIGNATION**

7 Any beneficiaries designated, other than the estate of a member or a trustee named by and acting for the member, must
8 be living persons at the time the designation is made. If it is desired that the estate be beneficiary, this should be
9 indicated on the form.

10

11 *History Note: Authority G.S. 135-5(g); 135-5(l); 135-6(f);*

12

Eff. February 1, 1976;

13

Readopted Eff. September 21, ~~1977~~-1977;

14

Readopted Eff.

15

1 20 NCAC 02B .0302 is readopted as published in 36:23 NCR, page 1844, with changes, as follows:

2
3 **20 NCAC 02B .0302 PRINCIPAL BENEFICIARY**

- 4 (a) More than one principal beneficiary may be ~~named~~ designated for the return of accumulated contributions under
5 the provisions of G.S. 135-5(f) to share equally. In the event of the death of any so designated principal
6 beneficiary for the return of accumulated contributions, ~~named~~, those surviving principal beneficiaries shall share
7 equally in the total benefits. However, if there is only one living designated principal beneficiary for the return of
8 accumulated contributions at the member's death and the member has met all other requirements under the
9 provisions of G.S. 135-5(m), the designated principal beneficiary may elect to receive the alternative benefit under
10 the provisions of G.S. 135-5(m).
- 11 (b) More than one principal beneficiary may be designated for the death benefit of an active member or a retired
12 member under the provisions of G.S. 135-5(l) to share equally. In the event of the death of any so designated
13 principal ~~beneficiary(ies)~~ beneficiary for the death benefit of an active member or retired member, those
14 surviving principal beneficiaries ~~beneficiary(ies)~~ shall share equally in the total benefits.
- 15 (c) More than one principal beneficiary may be designated for the guaranteed refund under the provisions of G.S.
16 135-5(g1) to share equally. In the event of the death of any so designated principal beneficiary ~~beneficiary(ies)~~
17 for the guaranteed refund, those surviving principal beneficiaries ~~beneficiary(ies)~~ shall share equally in the total
18 benefits.

19
20 *History Note: Authority G.S. 135-5(f); 135-5(g); 135-5(g1); 135-5(l); 135-5(m); 135-6(f);*
21 *Eff. February 1, 1976;*
22 *Readopted Eff. September 21, 1977-1977;*
23 Readopted Eff.
24

1 20 NCAC 02B .0303 is readopted as published in 36:23 NCR, page 1844, with changes, as follows:

2
3 **20 NCAC 02B .0303 CONTINGENT BENEFICIARY**

4 ~~A principal beneficiary may be named with the stipulation that should he predecease the member, payment of the~~
5 ~~amount due, if any, will be made to a designated contingent beneficiary. It is permissible to name more than one~~
6 ~~contingent beneficiary. In the event of the death of any so named, those surviving shall share equally in the total~~
7 ~~benefits. If more than one principal beneficiary is named, the naming of a contingent beneficiary or beneficiaries will~~
8 ~~not be permitted.~~

9 (a) The following shall apply to designating [Designating] a contingent beneficiary for the return of accumulated
10 contributions under the provisions of G.S. 135-5(f):

11 (1) A principal beneficiary may be designated for the return of accumulated contributions with the
12 stipulation that should the principal [beneficiary(ies)] beneficiary predecease the member, payment
13 of the amount due, if any, shall be made to the designated contingent [beneficiary or beneficiaries
14 [beneficiary(ies)] for the return of accumulated contributions.

15 (2) If more than one principal beneficiary is designated for the return of accumulated contributions,
16 payment of the amount due, if any, shall be paid to any surviving principal [beneficiaries
17 [beneficiary(ies)] designated for the return of accumulated contributions, sharing equally in the total
18 benefits payable, and shall not be paid to any contingent beneficiary.

19 (3) It is permissible to designate more than one contingent beneficiary for the return of accumulated
20 contributions. Payment of the amount due, if any, shall be paid to the surviving contingent
21 [beneficiaries [beneficiary(ies)] designated for the return of accumulated contributions, sharing
22 equally in the total benefits, only in the event that there is no surviving principal beneficiary
23 designated for the return of accumulated contributions.

24 (b) The following shall apply to designating [Designating] a contingent beneficiary for the death benefit under the
25 provisions of G.S. 135-5(l):

26 (1) A principal beneficiary may be designated for the death benefit of an active member or retired
27 member with the stipulation that should the principal [beneficiary [beneficiary(ies)] predecease the
28 member, payment of the amount due, if any, shall be made to the designated contingent [beneficiary
29 or beneficiaries [beneficiary(ies)] for the death benefit.

30 (2) If more than one principal beneficiary is designated for the death benefit, payment of the amount
31 due, if any, shall be paid to any surviving principal [beneficiaries [beneficiary(ies)] designated for
32 the death benefit, sharing equally in the total benefits payable, and shall not be paid to any contingent
33 beneficiary.

34 (3) It is permissible to designate more than one contingent beneficiary for the death benefit. Payment
35 of the amount due, if any, shall be paid to the surviving contingent [beneficiaries [beneficiary(ies)]
36 designated for the death benefit, sharing equally in the total benefits, only in the event that there is
37 no surviving principal beneficiary designated for the death benefit.

1 (c) The following shall apply to designating ~~Designating~~ a contingent beneficiary for the guaranteed refund under
2 the provisions of G.S. 135-5(g1):

3 (1) A principal beneficiary may be designated for the guaranteed refund with the stipulation that should
4 the principal beneficiary ~~beneficiary(ies)~~ predecease the member, payment of the amount due, if
5 any, shall be made to the designated contingent beneficiary or beneficiaries ~~beneficiary(ies)~~ for
6 the guaranteed refund.

7 (2) If more than one principal beneficiary is designated for the guaranteed refund, payment of the
8 amount due, if any, shall be paid to any surviving principal beneficiaries ~~beneficiary(ies)~~
9 designated for the guaranteed refund, sharing equally in the total benefits payable, and shall not be
10 paid to any contingent beneficiary.

11 (3) It is permissible to designate more than one contingent beneficiary for the guaranteed refund.
12 Payment of the amount due, if any, shall be paid to the surviving contingent beneficiaries
13 ~~beneficiary(ies)~~ designated for the guaranteed refund, sharing equally in the total benefits, only in
14 the event that there is no surviving principal beneficiary designated for the guaranteed refund.

15
16 *History Note: Authority G.S. 135-5(f); 135-5(g); 135-5(g1); 135-5(l); 135-6(f);*

17 *Eff. February 1, 1976;*

18 *Readopted Eff. September 21, ~~1977~~.1977;*

19 *Readopted Eff.*

20

1 20 NCAC 02B .0304 is readopted as published in 36:23 NCR, page 1845, with changes, as follows:

2

3

4 **20 NCAC 02B .0304 NO LIVING BENEFICIARY**

5 If no ~~designated named~~ beneficiary, whether principal or contingent, is living at the time of the member's death,
6 payment of the amount due, if any, will be made to the estate ~~[legal representative]~~ administrator or executor of the
7 estate or the collector of funds for the estate of the member.

8

9 *History Note: Authority G.S. 135-5(g); 135-6(f);*

10 *Eff. February 1, 1976;*

11 *Readopted Eff. September 21, ~~1977~~.1977;*

12 *Readopted Eff.*

13

1 20 NCAC 02B .0305 is readopted as published in 36:23 NCR, page 1845, with changes, as follows:

2
3 **20 NCAC 02B .0305 BENEFICIARY WHO IS A MINOR**

4 (a) Payments to beneficiaries who are minors will be made to a duly an appointed guardian or to the clerk of superior
5 court in the county in which the beneficiary resides they reside to the extent that such payment may be is
6 authorized by law.

7 (b) In the event that the [duly] appointed guardian or the clerk of superior court in the county in which the beneficiary
8 resides [they reside] is unwilling or unable to accept payment [payment(s)] on behalf of the minor beneficiary
9 [beneficiary(ies)]. payment may be made to a custodian in accordance with Chapter 33A of the North Carolina
10 General Statutes, entitled North Carolina Uniform Transfers to Minors Act.

11
12 *History Note: Authority G.S. 135-5(g); 135-6(f);*
13 *Eff. February 1, 1976;*
14 *Readopted Eff. September 21, 1977-1977;*
15 *Readopted Eff.*
16

1 20 NCAC 02B .0307 is readopted as published in 36:23 NCR, page 1845, with changes, as follows:

2
3 **20 NCAC 02B .0307 CHANGE IN BENEFICIARY**

4 Prior to retirement, the member ~~may, has the right~~ at any time, ~~and from time to time~~, to change any beneficiaries
5 designated for the return of accumulated contributions under the provisions of G.S. 135-5(f) or the death benefit for
6 active members under the provisions of G.S. 135-5(l) without the knowledge or consent of the beneficiaries. A retired
7 member may, at any time, change any beneficiaries designated for:

8 (1) The guaranteed refund under the provisions of G.S. 135-5(g1) until such time as the funds have been
9 depleted; ~~depleted; or~~

10 (2) The death benefit for active members under the provisions of G.S. 135-5(l) provided the change is
11 submitted within 180 calendar days after the member's last day of active service; ~~until such time~~
12 as the retired member's last day of active service is greater than 180 days prior to the change;] or

13 (3) The death benefit for retired members under the provisions of G.S. 135-5(l).

14
15 ~~Any such change must be submitted~~ The member shall submit any such change to the ~~board~~Board of
16 ~~trustees.~~Trustees using the form approved by the Board of Trustees for designation of the beneficiary for
17 that purpose.

18
19 *History Note: Authority G.S. 135-5(f); 135-5(g); 135-5(g1); 135-5(l); 135-6(f);*
20 *Eff. February 1, 1976;*
21 *Readopted Eff. September 21, 1977-1977;*
22 *Readopted Eff.*
23

1 20 NCAC 02B .0308 is readopted with changes as published in 36:23 NCR, page 1845, with changes, as follows:

2
3 **20 NCAC 02B .0308 SPECIAL RULE: BENEFICIARY BEFORE JULY 1, 1967**

4 In the event of the death of a person who became a member before July 1, 1967, the return of a member's contributions
5 shall be paid to such person as the member intended to receive ~~his~~the return of contributions and whom ~~he~~the member
6 designated as beneficiary for the death benefit as if the member had properly designated such person for the return of
7 contributions if all of the following conditions are met:

- 8 (1) the member had properly designated one person for the death benefit at a time when there were
9 separate forms for designation of beneficiary for return of contributions and designation of
10 beneficiary for the death benefit;
- 11 (2) the person designated as beneficiary for the death benefit is living at the time of the member's death;
- 12 (3) any previously designated beneficiary for the return of contributions who is living at the time of the
13 member's death or, if such previously designated beneficiary dies between the time of the member's
14 death and the time of determination of payment of the return of accumulated contributions, the
15 legatee or legatees, legatee(s), heirs at law, successors successors, or assigns of such beneficiary,
16 waives all claims to or interest in the return of the member's contributions;
- 17 (4) the member did not designate any other person for the return of contributions after making a
18 designation of beneficiary for the death benefit; and
- 19 (5) clear and convincing evidence is presented to the ~~retirement system~~Division showing that the
20 member thought ~~he~~the member had or intended to have designated for the return of contributions
21 the same person whom ~~he~~the member designated as beneficiary for the death benefit.

22 In such cases, the beneficiary shall be entitled to receive the survivor's alternate benefit pursuant to G.S. 135-5(m) to
23 the same extent that ~~he~~the beneficiary would have been entitled to receive the survivor's alternate benefit under G.S.
24 135-5(m) if the member had actually designated such beneficiary for the return of contributions in a duly executed
25 and filed form for the designation of beneficiary for return of contributions.

26
27 *History Note: Authority G.S. 135-5(f); 135-5(m); 135-6(f);*
28 *Eff. October 29, ~~1979~~1979;*
29 *Readopted Eff.*

1 20 NCAC 02B .0401 is readopted as published in 36:23 NCR, page 1845, with changes, as follows:

2
3 **SECTION .0400 - EMPLOYER CONTRIBUTIONS**

4
5
6 **20 NCAC 02B .0401 REFUNDS**

7 (a) The ~~retirement~~Retirement systemSystem will make no refunds of employer ~~contributions~~ contributions paid into
8 the pension accumulation fund by the employer in the amount equal to a percentage of the actual compensation of
9 each ~~member~~ member in cases of erroneous employee deductions except those which are corrected by the employing
10 unit on a subsequent payroll within the calendar year in which the errors occur. ~~The only exception to this Rule is~~
11 that an error occurring in December may be corrected (without loss of the employer contribution) by submission of a
12 revised payroll with checks for the correct amount before January 31 of the following year.

13 (b) Notwithstanding Paragraph (a) of this Rule, an error occurring in December may be ~~corrected, and~~ corrected (and
14 the associated employer contribution be refunded in the form of a credit toward future required employer ~~contributions,~~
15 ~~contributions)~~ by the employer's submission of a revised payroll report for the correct amount before January 31 of
16 the following year.

17 (c) If an employer makes an additional contribution to the pension accumulation fund as a result of the contribution-
18 based benefit ~~cap~~ cap and the Retirement System receives information which alters the calculation of the retirement
19 benefit used to determine the contribution under the provisions of ~~G.S. 135-8(f)(2)f.,~~ G.S. 135-8(f)(2)(f.), any
20 contribution not required based on the new information will be refunded to the employer in the form of a credit toward
21 future required employer contributions.

22
23 *History Note: Authority G.S. 135-2; 135-6(f);135-8(f);*
24 *Eff. February 1, 1976;*
25 *Readopted Eff. September 21, 1977;1977;*
26 *Readopted Eff.*
27

1 20 NCAC 02B .0402 is readopted with changes as published in 36:23 NCR, page 1846, with changes, as follows:

2

3 **20 NCAC 02B .0402 FORWARDING OF EMPLOYER CONTRIBUTIONS**

4 All units shall ~~should~~ forward to the ~~retirement~~ Retirement system ~~System~~ the employer's contributions monthly at the
5 same time the employee's contributions are forwarded.

6

7 *History Note:* Authority G.S. 135-6(f); 135-8(f); ~~135-8(f)(1)~~;

8

Eff. February 1, 1976;

9

Readopted Eff. September 21, ~~1977~~.1977;

10

Readopted Eff.

11

1 20 NCAC 02B .0404 is readopted as published in 36:23 NCR, page 1846, **with changes**, as follows:

2

3 **20 NCAC 02B .0404 DUE DATE OF CONTRIBUTIONS**

4 Both the employee and employer contributions are due in the Raleigh **office offices** of the Retirement System no later
5 than the fifth State government working day of the month succeeding the month for which the contributions are
6 required. Contributions received after the fifth State government working day of the month are delinquent.

7

8 *History Note: Authority G.S. 135-6(f); 135-8(f);*

9

Eff. March 1, ~~1992~~.1992;

10

Readopted Eff.

11

1 20 NCAC 02B .0405 is repealed as published in 36:23 NCR, page 1846, follows:

2

3 **20 NCAC 02B .0405 ANTI-PENSION SPIKING CONTRIBUTION-BASED BENEFIT CAP FACTOR**
4 **(TSERS)**

5

6 *History Note: Authority G.S. 135-4(jj); 135-5(a3); 135-6(f);*

7 *Eff. March 21, ~~2019~~2019;*

8 *Repealed Eff.*

9

1 20 NCAC 02B .0501 is readopted with changes as published in 36:23 NCR, page 1846, with changes, as follows:

2

3

4

SECTION .0500 - TYPES OF RETIREMENT

5

6

7

20 NCAC 02B .0501 DISABILITY RETIREMENT EXAMINATION

8

The ~~director~~ Director is authorized to conduct an examination in doubtful cases of disability to determine the condition

9

of the disability, paying the expense of the same from the Pension Accumulation Fund, ~~pension accumulation fund~~.

10

11

History Note: Authority G.S. 135-2; 135-5(c); 135-6(f);

12

Eff. February 1, 1976;

13

Readopted Eff. September 21, ~~1977-1977~~;

14

Readopted Eff.

15

1 20 NCAC 02B .0502 is readopted with changes as published in 36:23 NCR, page 1846, with changes, as follows:

2

3

4 **20 NCAC 02B .0502 DISABILITY RETIREMENT REPORTS**

5 When the ~~medical~~Medical board,Board, subsequent to a disability retirement, reports that the retired member is
6 engaged in it, or is able to engage in a gainful occupation, any adjustment required by G.S. 135-5(e)(1) will be made
7 prospectively only and will not relate back so as to require any refund to the State state of payments made during the
8 period before a report is made indicating changed status.

9

10 *History Note: Authority G.S. 135-5(e)(1); 135-6(f);*

11 *Eff. February 1, 1976;*

12 *Readopted Eff. September 21, ~~1977~~;*

13 *Readopted Eff.*

14

1 20 NCAC 02B .0503 is repealed through readoption as published in 36:23 NCR, page 1846, as follows:

2

3 **20 NCAC 02B .0503 FEES: INDEPENDENT MEDICAL EXAMS-DISABILITY RETIREMENTS**

4

5 *History Note: Authority G.S. 135-6(f); 135-6(k);*

6 *Eff. February 1, 1976;*

7 *Readopted Eff. September 21, 1977;*

8 *Amended Eff. August 1, ~~1981-1981~~;*

9 *Repealed Eff.*

10

1 20 NCAC 02B .0504 is readopted as published in 36:23 NCR page, 1846, as follows:

2

3

4 **20 NCAC 02B .0504 INTEREST CREDITS**

5 When members on disability retirement are reinstated to active service, no interest shall be allowed on their accounts
6 during the year of reinstatement.

7

8 *History Note: Authority G.S. 135-6(f);*

9

Eff. February 1, 1976;

10

Readopted Eff. September 21, ~~1977~~.

11

Readopted Eff.

12

1 20 NCAC 02B .0510 is readopted as published in 36:23 NCR page 1845, **with changes**, as follows:

2

3 **20 NCAC 02B .0510 PENSIONS**

4 Payment of a full month's benefit shall be made for the month in which death occurs, regardless of the date, with no
5 further benefits to be paid thereafter.

6

7 *History Note:* Authority G.S. 135-6(f); ~~135-14;~~

8

Eff. February 1, 1976;

9

Readopted Eff. September 21, ~~1977-1977;~~

10

Readopted Eff.

11

1 20 NCAC 02B .0701 is readopted as published in 36:23 NCR, page 1846, **with changes**, as follows:

2
3
4 **SECTION .0700 - LEAVES OF ABSENCE**

5
6 **20 NCAC 02B .0701 EDUCATIONAL LEAVES OF ABSENCE**

7 ~~(a) All members, who request approval to purchase creditable service and who fulfill all of the requirements of law~~
8 ~~and the rules of the board, shall be allowed to purchase the service in accordance with the law and the rules of the~~
9 ~~board.~~

10 ~~(b) Payments to be made for purchases on account of current leave of absence shall be submitted on Form 224,~~
11 ~~Payment of Contributions for a Current Leave of Absence, which shall be submitted as required by law. If the~~
12 ~~employer will make the monthly contributions equal to the normal and accrued liability contribution, the employer~~
13 ~~shall submit the total payment. If the member will make the entire payment, the member shall submit the total~~
14 ~~payment. In any case in which the employer continues to make salary payments, in whole or part, the director may~~
15 ~~make an agreement with the employer on how to make the payments which is not inconsistent with the law or the~~
16 ~~rules of the board.~~

17 ~~(c) Contributions for purchase of service shall not be accepted unless the member has applied for permission to~~
18 ~~purchase the service not later than the due date of the payment for the first month for which credit is to be purchased.~~
19 ~~Applications after the last day of the first month for which service is to be purchased and the due date thereof shall be~~
20 ~~accompanied by a check in payment of the contribution for said month.~~

21 ~~(d) Payment shall be deemed to have been made on the date received by the board, provided that a payment made by~~
22 ~~mail which is clearly postmarked on or before the due date shall be deemed paid when due.~~

23 ~~(e) Purchases of service credit for leaves of absence prior to July 1, 1981 shall be made in the same manner as~~
24 ~~prescribed in 20 NCAC 2B .1200, DELAYED PURCHASE OF SERVICE CREDITS.~~

25 (a) For the purposes of G.S. 135-8(b)(5), "stipend" shall mean a **["a"]** fixed sum of money paid periodically for services
26 and to defray the cost of travel, housing, meals, or other living expenses resulting from participation in a full-time
27 degree **program. [program.]**

28 (b) If the employer makes the monthly employer contribution equal to the normal and accrued liability contribution,
29 the employer shall submit the total employer payment to the Retirement System.

30 (c) If the member makes the entire payment, the member shall submit the total employer and employee contribution
31 to the Retirement System.

32 (d) A member, who is currently making contributions to purchase service for an educational leave of absence, and
33 whose position before the leave of absence was paid on a less than 12-month basis, shall make the payment in the
34 month after the regularly scheduled due date for payment of salary and shall earn service credits for **the said**
35 contributions in the same manner ~~the member~~as he would if ~~the member~~he was currently being employed in that last
36 position.

1 *History Note: Authority G.S. 135-6(f); 135-8(b)(5);*
2 *Eff. February 1, 1976;*
3 *Readopted Eff. September 21, 1977;*
4 *Amended Eff. March 1, ~~1982-1982~~;*
5 *Readopted Eff.*
6

1 20 NCAC 02B .0706 is readopted as published in 36:23 NCR, page 1847, with changes, as follows:

2
3
4 **20 NCAC 02B .0706 WORKERS' COMPENSATION LEAVES OF ABSENCE**

5 ~~(a) All members, who request approval to purchase creditable service and who fulfill all of the requirements of law~~
6 ~~and the rules of the board, [Board,] shall be allowed to purchase the service in accordance with the law and rules of~~
7 ~~the board. [Board.]~~

8 ~~(a) (b)~~ Purchases of creditable service for leaves of absence prior to July 1, 1983 shall be made in the same manner
9 as prescribed in ~~[Section]~~20 NCAC 2B ~~.1200,1200, as then effective. DELAYED PURCHASE OF SERVICE~~
10 ~~CREDITS. A fee in the amount of twenty five dollars (\$25.00) for each payment will be assessed members at the~~
11 ~~time of purchase as provided by law.~~

12 ~~(b) (e)~~ Purchases of creditable service for leaves of absence on and after July 1, 1983 shall be paid in the manner
13 prescribed in law equal to the sum of the total employer and employee percentage rates of contribution in effect at the
14 time of purchase multiplied by the annual rate of compensation of the member immediately prior to the leave of
15 absence applied to the period of the leave commencing on the first day and ending on the last day before return to
16 service.

17 ~~(c) (d)~~ Members who had leaves of absence which otherwise met all requirements of law for purchase as creditable
18 service except that the leaves of absence interrupted membership in the Local Governmental Employees' Retirement
19 System or the Law Enforcement Officers' Retirement System and whose membership service before and after the
20 leaves of absence has become membership service in the Teachers' and State Employees' Retirement System, may
21 purchase creditable service as in Paragraph (b) of this Rule.

22 ~~(d) (e)~~ Members may purchase creditable service for leaves of absence only when they have membership service
23 credits immediately prior to and immediately after the leaves of absence and such membership service is creditable
24 service at the time of purchase.

25
26 *History Note: Authority G.S. 135-4(r); 135-6(f);*
27 *Eff. December 1, 1983;*
28 *Amended Eff. August 1, ~~1988-1988;~~*
29 *Readopted Eff.*
30

1 20 NCAC 02B .0801 is repealed through readoption as published in 36:23 NCR, page 1847, as follows:

2

3

SECTION .0800 - MILITARY SERVICE (INCHOATE RIGHTS ONLY)

4

5

6 **20 NCAC 02B .0801 FEE**

7

8 *History Note: Authority G.S. 135-4(f)(6); 135-6(f);*

9

Eff. February 1, 1976;

10

Readopted Eff. September 21, ~~1977~~1977;

11

Repealed Eff.

12

1 20 NCAC 02B .0802 is readopted with changes as published in 36:23 NCR, page 1847, with changes, as follows:

2

3 **20 NCAC 02B .0802 QUALIFYING FOR CREDIT**

4 In order to qualify, each individual must pay for the full period of military service for which the member~~he~~ is eligible.

5

6 *History Note:* Authority G.S. 135-4(f)(6); 135-6(f); S.L. 1981, C. 636;

7

Eff. February 1, 1976;

8

Readopted Eff. September 21, ~~1977~~1977;

9

Readopted Eff.

10

1 20 NCAC 02B .0803 is amended as published in 36:23 NCR, page 1847, **with changes**, as follows:

2

3 **20 NCAC 02B .0803 COMPUTATION OF COST**

4 The cost of purchasing credit for military service is calculated as follows:

- 5 (1) 1/12 of the annualized rate of compensation the member earned when the member~~he~~ first entered
- 6 membership; ~~multiplied by~~times
- 7 (2) the employee contribution rate at that time; ~~multiplied by~~times
- 8 (3) the number of months of military service for which credit is to be purchased; plus
- 9 (4) a factor equivalent to interest at the rate of six and one-half percent, compounded annually, from the
- 10 initial year of membership to the year of payment.

11

12 *History Note:* Authority G.S. 135-4(f); 135-6(f); **S.L. 1981, C. 636;**

13

Eff. February 1, 1976;

14

Readopted September 21, ~~1977-1977~~;

15

Amended Eff.

16

1 20 NCAC 02B .0804 is readopted with changes as published in 36:23 NCR, page 1847, with changes, as follows:

2

3

4 **20 NCAC 02B .0804 CIVIL SERVICE PARTICIPATION**

5 A member of the Teachers' and State Employees' Retirement System whose employment in this State state requires
6 ~~him the member~~ to participate in the Federal Civil Service Program in lieu of the ~~social~~ Social security ~~Security~~ program
7 shall not be barred from receiving military service credit for which ~~he the member~~ is otherwise eligible in the
8 ~~retirement~~ Retirement system, ~~[Systems,]~~ System, despite the fact that ~~he the member~~ may also receive credit under
9 the Federal Civil Service Program ~~civil service~~ for the same period of military service, provided that ~~he the member~~
10 makes the required payment.

11

12 *History Note:* Authority G.S. 135-4(f)(6); 135-6(f); S.L. 1981, C. 636;

13

Eff. February 1, 1976;

14

Readopted Eff. September 21, ~~1977~~.1977;

15

Readopted Eff.

16

1 20 NCAC 02B .0805 is readopted as published in 36:23 NCR, page 1847, with changes, as follows:

2
3

4 **20 NCAC 02B .0805 SERVICE CONNECTED DISABILITY**

5 The exclusion exclusion, for purchase of service in the Armed Forces of the United States as it pertains to credit in
6 any other retirement system system, shall not include service connected disability "service-connected disability"
7 benefits received from the Veteran's Administration of the Federal Government except when such benefits are a
8 supplement of a "longevity retirement" benefit.

9

10 *History Note: Authority G.S. 135-4(f)(6); 135-6(f); S.L. 1981, C. 636;*

11 *Eff. February 1, 1976;*

12 *Readopted Eff. September 21, ~~1977~~1977;*

13 *Readopted Eff.*

14

1 20 NCAC 02B .0806 is readopted as published in 36:23 NCR, page 1847, with changes, as follows:

2
3

4 **20 NCAC 02B .0806 RECALCULATION OF BENEFITS**

5 For members already retired who ~~avail themselves of these provisions~~ purchase service under G.S. 135-4(f)(6), any
6 recalculation of benefits shall be based on the law in effect at the time of the individual's retirement. The calculation
7 of both the benefit and the cost of the credit shall include the effects of retirement including the additional service
8 credit resulting from the purchase and ~~effect shall be given for~~ all benefit increases subsequent to the date of retirement.
9 ~~retirement which shall be a part of the total cost of providing the additional service credit.~~

10

11 *History Note:* Authority G.S. 135-4(f)(6); 135-6(f); S.L. 1981, C. 636;

12 *Eff. February 1, 1976;*

13 *Readopted Eff. September 21, ~~1977~~ 1977;*

14 *Readopted Eff.*

15

1 20 NCAC 02B .0807 is readopted as published in 36:23 NCR page, 1847, **with changes**, as follows:

2

3

4 **20 NCAC 02B .0807 CHANGE IN BENEFITS**

5 For members already retired, any change in benefits resulting from these provisions shall become effective as of the
6 first of the month following receipt of the required payment.

7

8 *History Note: Authority G.S. 135-4(f)(6); 135-6(f); **S.L. 1981, C. 636;***

9

Eff. February 1, 1976;

10

Readopted Eff. September 21, ~~1977~~1977;

11

Readopted Eff.

12

1 20 NCAC 02B .0810 is readopted with changes as published in 36:23 NCR, page 1847, with changes, as follows:

2

3

4 **20 NCAC 02B .0810 RESTORING MEMBERSHIP**

5 When a member on military leave has withdrawn all of ~~his~~ the member's contributions, ~~he~~ the member ~~shall~~ will be
6 permitted to pay back the amount withdrawn, restore his ~~membership~~ membership, and receive credit for the period
7 of ~~his~~ military leave.

8

9 *History Note:* Authority G.S. 135-4(f); 135-6(f); S.L. 1981, C. 636;

10 *Eff. February 1, 1976;*

11 *Readopted Eff. September 21, ~~1977~~.1977;*

12 *Readopted Eff.*

13

1 20 NCAC 02B .0901 is repealed through readoption as published in 36:23 NCR, page 1847, as follows:

2

3

4

SECTION .0900 - OUT-OF-STATE SERVICE (INCHOATE RIGHTS ONLY)

5

6

7

20 NCAC 02B .0901 FEE

8

9

History Note: Authority G.S. 135-4(l); 135-6(f);

10

Eff. February 1, 1976;

11

Readopted Eff. September 21, ~~1977~~1977;

12

Repealed Eff.

13

1 20 NCAC 02B .0902 is readopted with changes as published in 36:23 NCR, page 1847, with changes, as follows:

2

3

4 **20 NCAC 02B .0902 QUALIFYING FOR CREDIT**

5 In order to qualify for out-of-state service credit, each individual must pay for all or such portion in full years as the
6 member~~he~~ desires of out-of-state service for which the member ~~he~~ is eligible.

7

8 *History Note:* Authority G.S. 135-4(l); 135-6(f); S.L. 1981, C. 636;

9

Eff. February 1, 1976;

10

Readopted Eff. September 21, ~~1977~~.1977;

11

Readopted Eff.

12

1 20 NCAC 02B .0903 is readopted as published in 36:23 NCR, page 1847, with changes, as follows:

2

3

4 **20 NCAC 02B .0903 DEFINITION**

5 "Other governmental subdivision subdivisions of the United States," as used in G.S. 135-4(l), means shall mean a state
6 or territory and its subdivisions but not the United States government, except as specifically provided by statute.

7

8 *History Note: Authority G.S. 135-4(l); 135-6(f); S.L. 1981, C. 636;*

9

Eff. February 1, 1976;

10

Readopted Eff. September 21, ~~1977~~.

11

Readopted Eff.

12

1 20 NCAC 02B .0904 is readopted with changes as published in 36:23 NCR, page 1847, with changes, as follows:

2
3

4 **20 NCAC 02B .0904 COMPUTATION OF COST**

5 The cost of purchasing credit for out-of-state service is calculated as follows:

- 6 (1) the monthly compensation the member earned when the member~~he~~ first entered membership;
7 multiplied by~~times~~
- 8 (2) the employee contribution rate at that time; ~~times~~multiplied by
- 9 (3) the number of months of out-of-state service for which credit is to be purchased; multiplied by~~times~~
- 10 (4) two; plus
- 11 (5) a factor equivalent to interest at the rate of six and one-half percent, compounded annually, from the
12 initial year of membership to the year of payment.

13

14 *History Note:* Authority G.S. 135-4(l); 135-6(f); S.L. 1981, C. 636;

15 *Eff. February 1, 1976;*

16 *Readopted Eff. September 21, ~~1977~~1977;*

17 *Readopted Eff.*

18

1 20 NCAC 02B .0905 is readopted as published in 36:23 NCR, page 1848, with changes, as follows:

2
3

4 **20 NCAC 02B .0905 RECALCULATION OF BENEFITS**

5 For members already retired who ~~avail themselves of the provisions for out of state service purchase service under~~
6 G.S. 135-4(l), any recalculation of benefits shall be based on the law in effect at the time of the individual's retirement.
7 The calculation of both the benefit and the cost of the credit shall include the effects of retirement including the
8 additional service credit resulting from the purchase and effect shall be given for all benefit increases subsequent to
9 the date of retirement. ~~retirement which shall be a part of the total cost of providing the additional service credit.~~

10

11 *History Note:* Authority G.S. 135-4(l); 135-6(f); S.L. 1981, C. 636;

12 *Eff. February 1, 1976;*

13 *Readopted Eff. September 21, ~~1977~~1977;*

14 *Readopted Eff.*

15

1 20 NCAC 02B .0906 is readopted as published in 36:23 NCR, page 1848, **with changes**, as follows:

2

3

4 **20 NCAC 02B .0906 CHANGE IN BENEFITS**

5 For members already retired, any change in benefits resulting from the provisions for out-of-state service shall become
6 effective as of the first of the month following receipt of the required payment.

7

8 *History Note:* Authority G.S. 135-4(l); 135-6(f); **S.L. 1981, C. 636;**

9

Eff. February 1, 1976;

10

Readopted Eff. September 21, ~~1977~~1977;

11

Readopted Eff.

12

1 20 NCAC 02B .1003 is repealed through readoption as published in 36:23 NCR, page 1848, as follows:

2

3

4 **20 NCAC 02B .1003 PRIOR SERVICE WITH GENERAL ASSEMBLY**

5

6 *History Note: Authority G.S. 135-4(j1); 135-6(f);*

7 *Eff. October 29, ~~1979~~1979;*

8 *Repealed Eff.*

9

1 20 NCAC 02B .1004 is readopted as published in 36:23 NCR, page 1848, **with changes**, as follows:

2
3
4 **20 NCAC 02B .1004 TEMPORARY SERVICE PURCHASE (INCHOATE RIGHTS ONLY)**

5 (a) A member eligible under G.S. 135-4(p) to purchase service for temporary State employment shall ~~make the~~
6 ~~application on Form 222, apply for the purchase. Application to Purchase Service Credits for Full Time Temporary~~
7 ~~State Employment.~~ Employer certification of temporary State employment and the compensation received for such
8 service shall ~~be made on Form 222 A, Employer Certification of Full Time Temporary Service, and shall accompany~~
9 the application.

10 (b) Temporary State employment means employment under which the member would have been unconditionally
11 required to make contributions at the time of employment if not classified at the time of employment as a "temporary"
12 employee.

13 (c) ~~Since the actual cost to fund the liability created on account of the purchase has a direct relationship to the~~
14 ~~purchasing member's current level of compensation, the employer cost will be computed on the member's level of~~
15 ~~compensation at the time of purchase.~~ The employer **cost**, ~~therefore~~, shall be equal to the total employee and employer
16 rates of contribution at the member's level of compensation at the time of purchase and for the period of service being
17 purchased, less the required member contribution.

18 ~~(d) No purchases shall be allowed for 36 months or less.~~

19
20 *History Note: Authority G.S. 135-4(p); 135-6(f); **S.L. 2020-29**;*

21 *Eff. March 1, 1982;*

22 *Amended Eff. March 1, 1985; September 1, **1982**; ~~1982-1-1~~*

23 *Readopted Eff.*

1 20 NCAC 02B .1005 is repealed through readoption as published in 36:23 NCR, page 1848, as follows:

2

3 **20 NCAC 02B .1005 TEMPORARY SERVICE PURCHASE: FULL ACTUARIAL LIABILITY**

4

5 *History Note: Authority G.S. 135-4(s); 135-6(f);*

6 *Eff. December 1, 1983;*

7 *Amended Eff. August 1, 1988; September 1, ~~1984~~;*

8 *Repealed*

9

1 20 NCAC 02B .1006 is readopted as published in 36:23 NCR, page 1848, **with changes**, as follows:

2
3
4 **20 NCAC 02B .1006 PART-TIME SERVICE PURCHASE: FULL ACTUARIAL LIABILITY**

5 ~~(a) Members requesting approval to purchase creditable service shall make application on and acquire certification~~
6 ~~from the employer of the part time employment on the form designated for this purpose.~~

7 ~~(a) (b) The phrase "part time" "Part-time" as used in G.S. 135-4(p2) 135-4(pl) shall refer to means~~ duties performed
8 on less than a full-time basis **as classified by the employer.**

9 ~~(c) The phrase "completed 10 years or more of membership service" as used in G.S. 135-4(pl) shall mean membership~~
10 ~~service completed after the "part time" state employment.~~

11 ~~(d) The amount of part time service to be purchased shall be computed as follows:~~

12 (1) ~~Determine the ratio of the actual gross compensation earned as a part time employee (numerator) to~~
13 ~~the gross compensation that would have been earned as a full time employee (denominator);~~

14 (2) ~~Apply the ratio (quotient) determined in (1) of this Paragraph to the period of service rendered in~~
15 ~~months.~~

16 ~~(e) Purchases of creditable service for part time state employment shall be made in the same manner as prescribed in~~
17 ~~20 NCAC 2B .1200.~~

18 ~~(f) A fee in the amount of twenty five dollars (\$25.00) for each payment shall be assessed members at the time of~~
19 ~~purchase as provided by law.~~

20
21 *History Note: Authority G.S. 135-4(p2);(p1); 135-6(f);*

22 *Eff. March 1, 1985-1985;*

23 *Readopted Eff.*

24

1 20 NCAC 02B .1007 is repealed through readoption as published in 36:23 NCR, page 1849, as follows:

2

3

4 **20 NCAC 02B .1007 LOCAL GOVERNMENT SERVICE PURCHASE: FULL ACTUARIAL**
5 **LIABILITY**

6

7 *History Note: Authority G.S. 135-4(t); 135-6(f);*

8

Eff. March 1, ~~1985~~1985;

9

Repealed Eff.

10

1 20 NCAC 02B .1101 is repealed through readoption as published in 36:23 NCR, page 1849, as follows:

2

3

4

SECTION .1100 - VOLUNTARILY WITHDRAWN CONTRIBUTIONS

5

6

7 **20 NCAC 02B .1101 FEE**

8

9 *History Note: Authority G.S. 135-4(k); 135-6(f);*

10 *Eff. February 1, 1976;*

11 *Readopted Eff. September 21, ~~1977~~1977;*

12 *Repealed Eff.*

13

1 20 NCAC 02B .1102 is repealed through readoption as published in 36:23 NCR, page 1849, as follows:

2

3

4 **20 NCAC 02B .1102 QUALIFICATION**

5

6 *History Note: Authority G.S. 135-4(k); 135-6(f);*

7

Eff. February 1, 1976;

8

Readopted Eff. September 21, ~~1977~~1977;

9

Repealed Eff.

10

1 20 NCAC 02B .1104 is repealed through readoption, as published in 36:23 NCR, page 1849, as follows:

2

3 **20 NCAC 02B .1104 RECALCULATION OF BENEFITS**

4

5 *History Note: Authority G.S. 135-4(k); 135-6(f);*

6 *Eff. February 1, 1976;*

7 *Readopted Eff. September 21, ~~1977~~.1977;*

8 *Repealed Eff.*

9

1 20 NCAC 02B .1204 is repealed through readoption as published in 36:23 NCR, page 1849, as follows:

2

3

4 **20 NCAC 02B .1204 DEFINITIONS**

5

6 *History Note: Authority G.S. 135-6(f);*

7 *Eff. October 29, 1979;*

8 *Amended Eff. March 1, 1985; June 1, ~~1982-1982~~;*

9 *Repealed Eff.*

10

1 20 NCAC 02B .1205 is repealed through readoption as published in 36:23 NCR, page 1849, as follows:

2

3

4 **20 NCAC 02B .1205 COMPUTATION OF COST**

5

6 *History Note: Authority G.S. 135-6(f);*

7 *Eff. October 29, 1979;*

8 *Amended Eff. June 1, ~~1982-1982;~~*

9 *Repealed Eff.*

10

1 20 NCAC 02B .1207 is repealed through readoption as published in 36:23 NCR, page 1850, as follows:

2

3

4 **20 NCAC 02B .1207 SPECIAL RULE FOR RETIRED APPLICANTS**

5

6 *History Note: Authority G.S. 135-4(m);135-6(f);*

7 *Eff. March 1, 1982;*

8 *Amended Eff. March 1, ~~1985~~; 1985;*

9 *Repealed Eff.*

10

Burgos, Alexander N

From: Liebman, Brian R
Sent: Thursday, December 29, 2022 4:38 PM
To: Rowe, Laura
Cc: Burgos, Alexander N
Subject: RE: [External] Call Availability?

Hi Laura,

If you'd like we can speak then, but I think ultimately it would be a more productive conversation if you submit responses to the change requests, and then we discuss those. When did you anticipate submitting the responses?

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Laura Rowe <Laura.Rowe@nctreasurer.com>
Sent: Thursday, December 29, 2022 12:23 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Subject: [External] Call Availability?

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

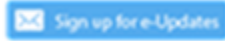
Good Afternoon Brian,
Would you be available for a call on Friday January 6, 2023 sometime between 2pm and 4pm to discuss some of the items contained in the Requests for Changes to the TSERS and LGERS 20 NCAC 02 rules?

Thanks, Laura

Laura Rowe
Compliance Officer
Office of the State Treasurer
Office: (919) 814-3851

3200 Atlantic Avenue, Raleigh, NC 27604

www.NCTreasurer.com



NORTH CAROLINA
DEPARTMENT OF STATE TREASURER



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

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Burgos, Alexander N

From: Liebman, Brian R
Sent: Thursday, December 8, 2022 5:57 PM
To: Rowe, Laura
Cc: Burgos, Alexander N
Subject: RE: 20 NCAC 02A - TSERS/LGERS - Request for Changes December 2022 RRC
Attachments: 12.2022 - TSERS 02B.docx

Hi Laura,

Here are my requests for changes for Subchapter 02B. Unfortunately, I had a meeting this afternoon that went very late, and I have not finished 02C, however, I will have it to you tomorrow morning.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

From: Liebman, Brian R
Sent: Tuesday, December 6, 2022 3:39 PM
To: Rowe, Laura
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 20 NCAC 02A - TSERS/LGERS - Request for Changes December 2022 RRC

Hi Laura,

I'm the attorney who reviewed Subchapters 02A, 02B, and 02C from the Rules submitted by TSERS and LGERS for the December 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, December 15, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Please submit the revised Rules to me via email, no later than 5 p.m. on Friday, December 9, 2022.

Also, please be aware that this batch is just for Subchapter 02A. I will be submitting change requests for Subchapters 02B and 02C to you within the next day or so. I apologize for getting these to you so close to the deadline, but with over 100 rules and a dense (I'm being charitable) set of statutes, it took me longer than usual to process these. Given the timing, I will naturally recommend approval of a request for an extension of time if you choose to file one.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
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