

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
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.

02B	TSERS	Final		
Rule	Status	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

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,
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
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

E-mail correspondence to and from this address is subject to North Carolina's Public Records Act, N.C. Gen. Stat. Sec. 132, and may be disclosed to third parties. However Federal and State law protects personal health and other information that may be contained in this e-mail from unauthorized disclosure. If you are not the intended recipient, please delete this e-mail and any accompanying documents and contact the sender immediately. Unauthorized disclosure, copying or distribution of any confidential or privileged content of this e-mail is prohibited.

d parties by an authorized state official.

1 20 NCAC 02C .0501 is readopted with changes as published in 36:23 NCR, page 1854, with changes, as follows:

2
3 **SECTION .0500 - DISABILITY RETIREMENT**

4
5
6 **20 NCAC 02C .0501 DISABILITY EXAMINATION**

7 The ~~director~~Director Medical Board is authorized to conduct an ~~examination~~examination in doubtful cases of
8 disability to determine ~~the condition of the disability,~~ whether the member continues to be eligible for a disability
9 retirement pursuant to G.S. 128-27(c), paying the expense of the same from the Pension Accumulation Fund. ~~pension~~
10 ~~accumulation fund.~~

11
12 *History Note:* Authority G.S. 128-22; 128-27(c); 128-28(g);

13 *Eff. February 1, 1976;*

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

15 *Readopted Eff.*

Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02C Additional Response to Additional Requests for Changes; Rule Text Revisions

Attachments: 2. 02C Additional Responses to Additional Request for Changes (2.9.2023).docx; 20 NCAC 02C .0501 (2.9.2023).docx; 20 NCAC 02C .0901 (2.9.2023).docx; 20 NCAC 02C .0907 (2.9.2023).docx; 20 NCAC 02C .1006 (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 02C Additional Response to Additional Requests for Changes; Rule Text Revisions

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Good Morning Brian,
Attached are additional written responses to additional questions and requests for changes to 02C. 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

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

E-mail correspondence to and from this address is subject to North Carolina's Public Records Act, N.C. Gen. Stat. Sec. 132, and may be disclosed to third parties. However Federal and State law protects personal health and other information that may be contained in this e-mail from unauthorized disclosure. If you are not the intended recipient, please delete this e-mail and any accompanying documents and contact the sender immediately. Unauthorized disclosure, copying or distribution of any confidential or privileged content of this e-mail is prohibited.

1 20 NCAC 02C .0501 is readopted with changes as published in 36:23 NCR, page 1854, with changes, as follows:

2
3
4
5
6
7
8
9
10
11
12
13
14
15

SECTION .0500 - DISABILITY RETIREMENT

20 NCAC 02C .0501 DISABILITY EXAMINATION

The ~~director~~Director is authorized to conduct an ~~examination~~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. 128-27(c), paying the expense of the same from the Pension Accumulation Fund, pension accumulation fund.

*History Note: Authority G.S. 128-22; 128-27(c); 128-28(g);
Eff. February 1, 1976;
Readopted Eff. September 21, 1977-1977;
Readopted Eff.*

1 20 NCAC 02C .0901 is readopted with changes as published in 36:23 NCR, page 1854, with changes, as follows:

2

3

SECTION .0900 - MILITARY SERVICE (INCHOATE RIGHTS ONLY)

4

5

20 NCAC 02C .0901 LEAVE

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

10

11 *History Note:* Authority G.S. 128-26(i1); 128-27(f); 128-28(g); S.L. 1987, C. 617;

12

Eff. February 1, 1976;

13

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

14

Readopted Eff.

15

1 20 NCAC 02C .0907 is readopted as published in 36:23 NCR page 1855, with changes, as follows:

2
3 **20 NCAC 02C .0907 EXCLUSION**

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

14
15 *History Note: Authority G.S. 128-26(a); 128-28(g); S.L. 1987, C. 617;*

16 *Eff. February 1, 1976;*

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

18 *Readopted Eff.*

1 20 NCAC 02C .1006 is readopted as published in 36:23 NCR, page 1855, with changes, as follows:

2
3

4 **20 NCAC 02C .1006 RECALCULATION OF BENEFITS**

5 For members already retired who ~~avail themselves of the provisions for obtaining credit for out of state~~
6 ~~service,~~ purchase service under G.S. 128-26(j), as repealed by Session Law 1987-617, Section 3, where the text of the
7 repealed statutory provision may be found in the Editor's Note to G.S. 128-26 in the 2021 Edition of the General
8 Statutes of North Carolina, any recalculation of benefits shall be based on the law in effect at the time of the individual's
9 retirement. The calculation of both the benefit and the cost of the credit shall include the effects of retirement including
10 the additional service credit resulting from the purchase and effect shall be given for all benefit increases subsequent
11 to the date of retirement. retirement which shall be a part of the total cost of providing the additional service credit.

12
13
14
15
16
17

History Note: Authority G.S. 128-26(j); 128-28(g); S.L. 1987, C. 617;
Eff. February 1, 1976;
Readopted Eff. September 21, ~~1977~~ 1977;
Readopted Eff.

Burgos, Alexander N

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

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

Sent: Monday, January 30, 2023 2:37 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 02C Response to Request for Changes; Rule Text Revisions

Hi Laura and Tim,

Hope you had a great weekend. As with 02A and 02B, the majority of your rules are good to go. I will be recommending approval of 02C .0101, .0201, .0204, .0302, .0303, .0304, .0307, .0402, .0403, .0404, .0405, .0502, .0503, .0504, .0902, .0906, .0908, .0909, .1001, .1002, .1003, .1007, and then .1201-.1506 which are all repeals. Also, after reading 02B .0806 and 02C .0908, I'll be recommending approval of both of those rules.

Below, please see my notes on the remaining rules. I think they're all similar if not identical to their equivalent 02B counterparts. There are a few places where I may have asked you to revisit the equivalent 02B rule in response to something that came up here, as well,

.0205 (Note, this is identical to 02B .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 (Identical to 02B .0301)

In line 9, what is the “form”? Are the contents or substantive requirements of the form prescribed by rule or statute? 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 LGERS, members use Form 2C to designate beneficiaries for the active death benefit (G.S. 128-27(l)) and the return of contributions (G.S. 128-27(f)). They use Form 336 to designate beneficiaries for the guaranteed refund (G.S. 128-27(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. 128-27(m1) or (m2)). They use Form 6E to designate a monthly survivorship beneficiary (G.S. 128-27(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. 128-27(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 statutes actually state 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.

.0306 (See also 02B .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?

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 02C .0301.

I should have asked this for 02B .0307 as well, but as with 02C .0301, please describe what the member must include on the form for it to be considered complete.

.0501 (almost identical to 02B .0501)

Where is your statutory authority for this Rule? G.S. 128-27(c) and (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. 128-27(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.

What is the standard for whether a case is “doubtful”? To whom? 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.

I read 128-27(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. 128-27(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 7-8, what does “condition of the disability” mean? Whether the disability meets the condition of G.S. 128-27(c).

I think **“whether the member continues to be eligible for a disability retirement pursuant to G.S. 128-27(c)”** or something equivalent is much clearer.

On line 7, 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.

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

.0704 (identical to 02B .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 .1500 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 .1500 have been preserved.

.0901 (similar to 02B .0810)

This rule seems to be in contradiction to G.S. 128-26 which state that the employer “may” allow credit and places conditions on the purchase of credit. It is not clear to us where there is a contradiction. More fundamentally, as indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

I think the contradiction lies in that the statute is permissive – “may” under certain circumstances—while the rule is not—“shall”. More importantly, looking at the language that was repealed by SL 1987-617, I don’t see that it authorized the purchase of credit for all of the member’s contributions prior to withdrawal. I won’t quote the language here, but it is on p. 195 of the PDF of the “North Carolina Retirement Systems Laws” book you sent me. 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?

Are there statutes or rules covering the procedures for paying back the amount withdrawn, restoring membership, and receipt of credit? Yes; the provision applicable to transactions on or after January 1, 2022 is G.S. 128-26(i1).

G.S. 128-26(i1) limits the purchase of such service to “a total of five years.”

.0904 (similar to 02B .0803)

In (1), line 5 and (2) line 7, 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.

Please note: As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

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 “in his or her first complete or partial month of membership” or something equivalent, I don’t think it would not change what the rule does, but would describe what the rule does more intelligibly for your regulated public.

.0907 (identical to 02B .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.

.1004 (similar to 02B .0803 and 02C .0904).

In (1), line 6, 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.

Please note: As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

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

See Rule .0904 comments. These terms can be revised for clarity without making material changes to the Rule.

.1006 (see also 02B .0905)

Please correct the reference to the repealed statute on line 6. We do not believe it should be corrected because the Rule is describing rights that were preserved in the repeal.

Consider acknowledging the repeal and pointing your regulated public to where the text of the repealed statute can be found. I think the equivalent rule in 02B was 02B .0905, and I would add this comment there too.

Thanks again for all your hard work.

Best,
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.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] 20 NCAC 02C Response to Request for Changes; Rule Text Revisions
Attachments: 20 NCAC 02C .0101.docx; 20 NCAC 02C .0201.docx; 20 NCAC 02C .0204.docx; 20 NCAC 02C .0205.docx; 20 NCAC 02C .0301.docx; 20 NCAC 02C .0302.docx; 20 NCAC 02C .0303.docx; 20 NCAC 02C .0304.docx; 20 NCAC 02C .0306.docx; 20 NCAC 02C .0307.docx; 20 NCAC 02C .0402.docx; 20 NCAC 02C .0403.docx; 20 NCAC 02C .0404.docx; 20 NCAC 02C .0405.docx; 20 NCAC 02C .0501.docx; 20 NCAC 02C .0502.docx; 20 NCAC 02C .0503.docx; 20 NCAC 02C .0504.docx; 20 NCAC 02C .0704.docx; 20 NCAC 02C .0901.docx; 20 NCAC 02C .0902.docx; 20 NCAC 02C .0904.docx; 20 NCAC 02C .0906.docx; 20 NCAC 02C .0907.docx; 20 NCAC 02C .0908.docx; 20 NCAC 02C .0909.docx; 20 NCAC 02C .1001.docx; 20 NCAC 02C .1002.docx; 20 NCAC 02C .1003.docx; 20 NCAC 02C .1004.docx; 20 NCAC 02C .1006.docx; 20 NCAC 02C .1007.docx; 20 NCAC 02C .1201.docx; 20 NCAC 02C .1301.docx; 20 NCAC 02C .1302.docx; 20 NCAC 02C .1501.docx; 20 NCAC 02C .1503.docx; 20 NCAC 02C .1504.docx; 20 NCAC 02C .1505.docx; 20 NCAC 02C .1506.docx; 1. 02C Response to Request for Changes (FINAL).docx

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

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

Thank you,

Laura

Laura Rowe
Compliance Officer
Office of the State Treasurer
Office: (919) 814-3851

3200 Atlantic Avenue, Raleigh, NC 27604

www.NCTreasurer.com



Sign up for e-Updates

NORTH CAROLINA
DEPARTMENT OF STATE TREASURER



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

E-mail correspondence to and from this address is subject to North Carolina's Public Records Act, N.C. Gen. Stat. Sec. 132, and may be disclosed to third parties. However Federal and State law protects personal health and other information that may be contained in this e-mail from unauthorized disclosure. If you are not the intended recipient, please delete this e-mail and any accompanying documents and contact the sender immediately. Unauthorized disclosure, copying or distribution of any confidential or privileged content of this e-mail is prohibited.

**Request for Changes Pursuant to
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;;and”
 - Right: “~~day,~~ day,and”
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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.***

*If you decide to keep them separate, I would note that in the equivalent rule in 02B, you omitted "the Longleaf Building" in (3). **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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0201

We noted that Rules Review Commission Staff had a comment on Rule 02F .0104 that we believe should equally apply to Rule 02C .0201. 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 02C .0201 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 7, please change "will" to "shall". See bolded red comment above regarding all comments on this Rule.

In (b) and both instances in (c), include an Oxford comma after "rates".

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

In (b), what are "regular office hours"?

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 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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0204

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 the "local system" in line 4? **The Local Governmental Employees' Retirement System. However, the Rule is being removed (see below).***

Can you explain how LGERS is "authorized by G.S. 128-28(g)" to adopt law that isn't applicable to it? Moreover, if you are indeed authorized to do this, I don't think you need to say it here. Just citing to G.S. 128-28(g) in the History Note would be sufficient.

*Is this Rule necessary in light of Rule .0303? **We agree that this Rule is now superfluous. We have edited to remove.***

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0205

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, add a comma after "(l)", and on line 7 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 7, delete "being" following "three". **Agreed and corrected.**

On lines 7-8, 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;" **We believe this was already correctly reflected in the draft as submitted.**

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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:

For clarity, consider making "beneficiaries" and "living persons" singular. Agreed and corrected.

In line 9, what is the "form"? Are the contents or substantive requirements of the form prescribed by rule or statute? 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 LGERS, members use Form 2C to designate beneficiaries for the active death benefit (G.S. 128-27(l)) and the return of contributions (G.S. 128-27(f)). They use Form 336 to designate beneficiaries for the guaranteed refund (G.S. 128-27(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. 128-27(m1) or (m2)). They use Form 6E to designate a monthly survivorship beneficiary (G.S. 128-27(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. 128-27(g)). Some of these forms have both paper and online formats; others are paper-only.

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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:

Is this Rule necessary in light of R. 0204? We believe it is clearest to keep this rule and remove Rule 02C .0204.

We have also made the same revision here as in Rule 02B .0304. 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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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:

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.

In (a), line 5, what is meant by "may be authorized by law"? In context of the Rule, this phrase means "is authorized by law." We have edited accordingly. We have also made a similar edit to Rule 02B .0305 because we believe the same question could have been asked about that Rule, even though it was not.

In (b), line 7, remove the parentheses around "payment" and "beneficiary". 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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0306

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 10, delete "or". **Agreed and corrected.**

In (2), please move the text on line 12 over 1 tab so it lines up with the text on line 11. **Agreed and corrected.**

In (2), lines 11-12, 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 02C .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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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:

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0402

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, what is a "unit"? "Employing unit" or "unit" means "employer." It is used in G.S. 128 interchangeably with "employer."

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

In History Note, statutes should be listed sequentially from lowest to highest. Swap G.S. 128-28(g) and 128-30(g)(1). 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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0403

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 5, I believe "pension accumulation fund" must be capitalized, as it is in the statute. Agreed and corrected.

In (a), line 6, what are "erroneous employee deductions"? For example, situations where employers erroneously report employees as earning membership service under LGERS, and therefore deduct contributions to LGERS from the member's pay. We believe this term is clear to employers affected by the Rule.

In (a), line 6, is an "employing unit" defined? Is this different than "the employer"? "Employing unit" or "unit" means "employer." It is used in G.S. 128 interchangeably with "employer."

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

In (c), line 14, remove the comma to avoid an unnecessary clause. Agreed and corrected.

In (c), line 15, delete the last set of parentheses around "(b)". Agreed and corrected.

In your History Note, please place the statutes in numerical order. 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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0404

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:

*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.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0501

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? G.S. 128-27(c) and (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. 128-27(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.

What is the standard for whether a case is "doubtful"? To whom? 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.

On lines 7-8, what does "condition of the disability" mean? Whether the disability meets the condition of G.S. 128-27(c).

On line 7, 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.

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 and the member's rights were not clear, this would be a necessary expense of administering LGERS, payable under G.S. 128-22. We have added G.S. 128-22 to the History Note with the aim of clarifying.

On line 8, 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.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0502

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:

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

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

Also, remove the semi-colon in line 7. Agreed and corrected.

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.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0504

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 the authority to disallow interest on the current year? G.S. 128-29(b) permits the Board to set interest rates annually and different interest rates from time to time, while G.S. 128-28(g) covers the administration of funds. Moreover, G.S. 128-30(b)(2) suggests that "regular interest" shall be paid on all accounts. "Accumulated contributions" become payable under G.S. 128-27(f) or G.S. 128-27(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. 128-24(1a)), and their balance in the Annuity Savings Fund is transferred to the Pension Accumulation Fund. G.S. 128-29(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.

In the History Note, citations to the General Statutes should be sequential. Swap G.S. 128-28(g) and 128-29(b). 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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0704

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. 128-26(l).

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 (a), lines 5-6, please delete the commas around the clause "who request... rules of the Board". Agreed and corrected.

In (b), line 9, I do not think you need "Section". The reference to .1500 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? This term likely was taken from the similar Rule for TSERS, but we agree that it is superfluous for LGERS, and have removed it.

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: 12/9/22

Brian Liebman
Commission Counsel
Date submitted to agency: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0901

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 seems to be in contradiction to G.S. 128-26 which state that the employer "may" allow credit and places conditions on the purchase of credit. It is not clear to us where there is a contradiction. More fundamentally, as indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

One line 7, change "will" to "shall". Agreed and corrected.

Insert an Oxford comma after "membership" in line 8. Agreed and corrected.

Are there statutes or rules covering the procedures for paying back the amount withdrawn, restoring membership, and receipt of credit? Yes; the provision applicable to transactions on or after January 1, 2022 is G.S. 128-26(i1).

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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 5 and (2) line 7, 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.

Please note: As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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:

What is the statutory authority for this rule? G.S. 128-28(g) is the general rulemaking authority, and 128-26(a) references allowing credit for military service, 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 below, the following is our understanding. From language in the Editor's Note to G.S. 128-26, 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 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.

The "inchoate rights" issue referenced in the prior paragraph is as follows. As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/9/22

On line 5, capitalize “state”. 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.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0907

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, it's not clear what the "exclusion" is. Please revise and clarify. The Rule states that the exclusion is "as it pertains to credit for any other retirement system." It is referring to the same exclusion as described in the response to the comment on Rule .0906, from the repealed language of G.S. 128-26(a). 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.

Additionally what is the statutory authority for this rule? G.S. 128-28(g) is the general rulemaking authority, and 128-26(a) references allowing credit for military service, but where is the authority for the substance of the Rule? As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

For clarity, remove the commas from lines 4 and 5. Agreed and corrected.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/9/22

“Service connected” should be hyphenated, unless it is not done so by statute. Agreed and corrected. We have made a similar edit to the text of Rule 02B .0805, because we believe the same suggestion could have been made there even though it was not.

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .0908

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 appears to be a run-on sentence. Please consider re-writing for brevity and clarity. We have attempted to revise for clarity. We made similar edits to Rule 02B .0806, because we believe you probably intended to make the same comment there, since you made it here.

We are hesitant to revise very much for the following reason. As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

How is the regulated public to know what the "law in effect at the time" of retirement? The "regulated public" in this case is a person who has already retired. The Rule refers to how their retirement benefit was calculated based on the "law in effect at the time of the individual's retirement." For information about how their benefit was calculated, the individual would have at the very least had access to handbooks, counseling, and personal statements detailing the calculation. The individual could also look up the General Statutes if there were any confusion. As with the prior comment, this Rule describes a preserved right and we do not feel it should be edited in any material way.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/9/22

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .1002

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. 128-26(j) was "repealed by Session Laws 1987, c. 617, s. 3." What is the authority for this Rule? Is it 128-26(j)? **No. It is the language of G.S. 128-26(j) that was repealed by Section 3 of S.L. 1987-617. Section 5 of the same law preserved inchoate rights in the repeal.**

As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

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. 128-27(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. 128-26? 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.**

Brian Liebman
Commission Counsel
Date submitted to agency: 12/9/22

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .1003

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:

Why is the agency referencing "S.L. 1987, C. 617" as authority? If possible, please refer to the location where this portion of the Session Law was codified in the General Statutes. S.L. 1987-617 is cited because it is the Session Law that repealed G.S. 128-26(j) with rights preserved.

"Other governmental subdivision of the United States" should be formatted as a definition. See previous rules on the proper format. Agreed and corrected. We made a similar edit to Rule 02B .0903, because we believe you probably intended to make the same comment there, since you made it here.

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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 (1), line 6, 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.

Please note: As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

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

G.S. 128-26(j) was "repealed by Session Laws 1987, c. 617, s. 3." What is the authority for this Rule? Is it 128-26(j)? It is G.S. 128-26(j), because Section 5 of S.L. 1987-617 repealed G.S. 128-26(j) with inchoate rights preserved.

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .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:

G.S. 128-26(j) was "repealed by Session Laws 1987, c. 617, s. 3." What is the authority for this Rule? Is it 128-26(j)? It is G.S. 128-26(j), because Section 5 of S.L. 1987-617 repealed G.S. 128-26(j) with inchoate rights preserved.

Please note: As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 to the History Note.

This appears to be one long run-on sentence. Please consider rewriting for clarity and brevity. We have attempted to revise for clarity. See comment above regarding inchoate rights.

Please correct the reference to the repealed statute on line 6. We do not believe it should be corrected because the Rule is describing rights that were preserved in the repeal.

How is the regulated public to know what the "law in effect at the time" of retirement? The "regulated public" in this case is a person who has already retired. The Rule refers to how their retirement benefit was calculated based on the "law in effect at the time of the individual's retirement." For information about how their benefit was calculated, the individual would have at the very least had access to handbooks, counseling, and personal statements detailing the calculation. The individual could

Brian Liebman

Commission Counsel

Date submitted to agency: 12/9/22

also look up the General Statutes if there were any confusion. As with the prior comment, this Rule describes a preserved right and we do not feel it should be edited in any material way.

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: 12/9/22

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

AGENCY: Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02C .1007

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. 128-26(j) was "repealed by Session Laws 1987, c. 617, s. 3." What is the authority for this Rule? Is it 128-26(j2)? It is G.S. 128-26(j), because Section 5 of S.L. 1987-617 repealed G.S. 128-26(j) with inchoate rights preserved.

Please note: As indicated by their titles, Sections 02C .0900 and 02C .1000 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. 1987, C. 617 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: 12/9/22

1 20 NCAC 02C .0101 is amended as published in 36:23 NCR, page 1851, with changes, as follows:

2
3 **SECTION .0100 - GENERAL PROVISIONS**

4
5 **20 NCAC 02C .0101 GENERAL INFORMATION**

6 General information about the Local Governmental Employees' Retirement System includes the following:

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

8 (2) The mailing address and physical address is Retirement Systems Division, 3200 Atlantic Avenue,
9 Raleigh, North Carolina 27604, 27604;

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

11
12 *History Note: Authority G.S. 128-28(g);*

13 *Eff. February 1, 1976;*

14 *Readopted Eff. September 21, 1977;*

15 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21,*
16 *2018;*

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

18 *Amended Eff.*

1 20 NCAC 02C .0201 is ~~repealed through readoption~~ ~~readopted~~ as published in 36:23 NCR, page 1851, as follows:
2 follows; the Rule was originally proposed to be amended, but it is repealed:

3
4 SECTION .0200 - ADMINISTRATION

5
6
7 20 NCAC 02C .0201 ACTUARIAL TABLES: RATES AND ASSUMPTIONS

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

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

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

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

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

26
27 *History Note: Authority G.S. 128-27(m); 128-28(g);*
28 *Eff. February 1, 1976;*
29 *Readopted Eff. September 21, 1977;*
30 *Amended Eff. August 1, 1981-1981;*
31 ~~*Readopted*~~ *Repealed Eff.*
32

1 20 NCAC 02C .0204 is repealed through readoption ~~readopted~~ as published in 36:23 NCR page 1852, as follows:
2 follows; the Rule was originally proposed to be amended, but it is repealed:

3

4 **20 NCAC 02C .0204 FACILITY OF PAYMENT**

5 The provisions of G.S. 135-17, Facility of Payment, are adopted as applicable policy under the local system, as
6 authorized by G.S. 128-28(g).

7

8 *History Note: Authority G.S. 128-28(g);*

9

Eff. February 1, 1976;

10

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

11

~~Readopted~~ Repealed Eff.

12

1 20 NCAC 02C .0205 is readopted as published in 36:23 NCR, page 1852, with changes, as follows:

2
3

4 **20 NCAC 02C .0205 MEDICAL BOARD**

5 In accordance with the authority contained in G.S. 128-28(1), ~~[G.S. 128-28(1)]~~ membership of the Medical Board
6 consists of The Director of the Retirement Systems and the chairman of the board of trustees are authorized to increase
7 the membership of the medical board from three to five physicians physicians, with a quorum of three being required
8 at meetings approving applications for disability retirement.

9

10 *History Note: Authority G.S. 128-28(1);*

11 *Eff. February 1, 1976;*

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

13 *Readopted Eff.*

14

1 20 NCAC 02C .0301 is readopted as published in 36:23 NCR page, 1852, with changes, as follows:

2

3

SECTION .0300 - BENEFICIARIES

4

5

20 NCAC 02C .0301 DESIGNATION

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

10

11 *History Note: Authority G.S. 128-27; 128-28(g);*

12

Eff. February 1, 1976;

13

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

14

Readopted Eff.

15

1 20 NCAC 02C .0302 is readopted as published in 36:23 NCR, page 1852, with changes, as follows:

2
3
4 **20 NCAC 02C .0302 PRINCIPAL BENEFICIARY**

5 (a) More than one principal beneficiary may be ~~named~~ designated for the return of accumulated contributions under
6 the provisions of G.S. 128-27(f) to share equally. In the event of the death of any so ~~named~~ designated principal
7 beneficiary for the return of accumulated contributions, those surviving principal beneficiaries shall share equally in
8 the total benefits. However, if there is only one living designated principal beneficiary for the return of accumulated
9 contributions at the member's death and the member has met all other requirements under the provisions of G.S. 128-
10 27(m), the designated principal beneficiary may elect to receive the alternative benefit under the provisions of G.S.
11 128-27(m).

12 (b) More than one principal beneficiary may be designated for the death benefit of an active member or a retired
13 member under the provisions of G.S. 128-27(l), 128-27(11), or 128-27(16) to share equally. In the event of the death
14 of any so designated principal ~~beneficiary(ies)~~ beneficiary for the death benefit of an active member or retired
15 member, those surviving principal ~~beneficiary(ies)~~ beneficiaries shall share equally in the total benefits.

16 (c) More than one principal beneficiary may be designated for the guaranteed refund under the provisions of G.S.
17 128-27(g1) to share equally. In the event of the death of any so designated principal beneficiary ~~beneficiary(ies)~~ for
18 the guaranteed refund, those surviving principal ~~beneficiary(ies)~~ beneficiaries shall share equally in the total
19 benefits. A principal beneficiary may be named with the stipulation that should he predecease the member, payment
20 of the amount due, if any, will be made to a designated contingent beneficiary. It is permissible to name more than
21 one contingent beneficiary. In the event of the death of any so named, those surviving shall share equally in the total
22 benefits. If more than one principal beneficiary is named, the naming of a contingent beneficiary or beneficiaries will
23 not be permitted.

24
25 *History Note: Authority G.S. ~~128-27(f); 128-27(g); 128-27(g1); 128-27(l); 128-27(11); 128-27(16); 128-28(g);~~*
26 *Eff. February 1, 1976;*
27 *Readopted Eff. September 21, ~~1977~~.1977;*
28 *Readopted Eff.*

1 20 NCAC 02C .0303 is readopted with changes, as published in 36:23 NCR, page 1852, with changes as follows:

2

3

4 **20 NCAC 02C .0303 NO LIVING BENEFICIARY**

5 If no ~~named-designated~~ 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. 128-27(g); 128-28(g);*

10 *Eff. February 1, 1976;*

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

12 *Readopted Eff.*

13

1 20 NCAC 02C .0304 is readopted as published in 36:23 NCR, page 1852, with changes, as follows:

2
3 **20 NCAC 02C .0304 PAYMENTS TO BENEFICIARIES**

4 (a) Payments to beneficiaries who are minors will be made to an a-duty appointed guardian or to the clerk of the
5 superior court in the county which the beneficiary resides they reside to the extent that such payment may be
6 is 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
8 beneficiary resides [they reside] is unwilling or unable to accept payment [payment(s)] on behalf of the minor
9 beneficiary. [beneficiary(ies).] payment may be made to a custodian in accordance with Chapter 33A of the
10 North Carolina General Statutes, entitled North Carolina Uniform Transfers to Minors Act.

11
12 *History Note: Authority G.S. 128-27(g); 128-28(g);*
13 *Eff. February 1, 1976;*
14 *Readopted Eff. September 21, ~~1977~~.1977;*
15 *Readopted Eff.*
16

1 20 NCAC 02C .0306 is readopted as published in 36:23 NCR, page 1852, **with changes**, as follows:

2
3
4 **20 NCAC 02C .0306 BENEFICIARY CHANGE**

5 Prior to retirement, the member ~~may, has the right at any time, and from time to time, to change any beneficiaries~~
6 ~~designated for the return of accumulated contributions under the provisions of G.S. 128-27(f) or the death benefit for~~
7 ~~active members under the provisions of G.S. 128-27(l) or 128-27(11) without the knowledge or consent of the~~
8 ~~beneficiaries. A retired member may, at any time, change any beneficiaries designated for:~~

9 (1) ~~The guaranteed refund under the provisions of G.S. 128-27(g1) until such time as the funds have~~
10 ~~been depleted; **or**~~

11 (2) ~~The death benefit for active members under the provisions of G.S. 128-27(l) or 128-27(11) **provided**~~
12 ~~the change is submitted within 180 calendar days after the member's last active day of service; **until**~~
13 ~~such time as the retired member's last day of active service is greater than 180 days prior to the~~
14 ~~change; **or**~~

15 (3) ~~The death benefit for retired members under the provisions of G.S. 128-27(l6).~~

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

19
20 *History Note: Authority G.S. 128-27(g); 128-27(g1); 128-27(l); 128-27(11); 128-27(16); 128-28(g);*
21 *Eff. February 1, 1976;*
22 *Readopted Eff. September 21, ~~1977.~~1977;*
23 *Readopted Eff.*
24

1 20 NCAC 02C .0307 is adopted as published in 36:23 NCR, page 1853, with changes, as follows:

2
3 **20 NCAC 02C .0307 CONTINGENT BENEFICIARY**
4

5 (a) ~~The following shall apply to designating~~ Designating a contingent beneficiary for the return of accumulated
6 contributions under the provisions of G.S. 128-27(f):

7 (1) A principal beneficiary may be designated for the return of accumulated contributions with the
8 stipulation that should the principal ~~beneficiary~~ ~~beneficiary(ies)~~ predecease the member, payment of
9 the amount due, if any, shall be made to the designated contingent beneficiary or beneficiaries
10 ~~beneficiary(ies)~~ for the return of accumulated contributions.

11 (2) If more than one principal beneficiary is designated for the return of accumulated contributions,
12 payment of the amount due, if any, shall be paid to any surviving principal beneficiaries
13 ~~beneficiary(ies)~~ designated for the return of accumulated contributions, sharing equally in the total
14 benefits payable, and shall not be paid to any contingent beneficiary.

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

20 (b) ~~The following shall apply to designating~~ Designating a contingent beneficiary for the death benefit under the
21 provisions of G.S. 128-27(1), 128-27(11), or 128-27(16):

22 (1) A principal beneficiary may be designated for the death benefit of an active member or retired
23 member with the stipulation that should the principal ~~beneficiary~~ ~~beneficiary(ies)~~ predecease the
24 member, payment of the amount due, if any, shall be made to the designated contingent beneficiary
25 or beneficiaries ~~beneficiary(ies)~~ for the death benefit.

26 (2) If more than one principal beneficiary is designated for the death benefit, payment of the amount
27 due, if any, shall be paid to any surviving principal beneficiaries ~~beneficiary(ies)~~ designated for the
28 death benefit, sharing equally in the total benefits payable, and shall not be paid to any contingent
29 beneficiary.

30 (3) It is permissible to designate more than one contingent beneficiary for the death benefit. Payment
31 of the amount due, if any, shall be paid to the surviving contingent beneficiaries ~~beneficiary(ies)~~
32 designated for the death benefit, sharing equally in the total benefits, only in the event that there is
33 no surviving principal beneficiary designated for the death benefit.

34 (c) ~~The following shall apply to designating~~ Designating a contingent beneficiary for the guaranteed refund under the
35 provisions of G.S. 128-27(g1):

36 (1) A principal beneficiary may be designated for the guaranteed refund with the stipulation that should
37 the principal beneficiary ~~beneficiary(ies)~~ predecease the member, payment of the amount due, if

1 any, shall be made to the designated contingent ~~beneficiary or beneficiaries~~ beneficiary(ies) for the
2 guaranteed refund.

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

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

11
12 *History Note:* *Authority G.S. 128-27(f); 128-27(g1); 128-27(l); 128-27(l1); 128-27(l6); 128-28(g);*
13 *Eff.*
14

1 20 NCAC 02C .0402 is readopted with changes as published in 36:23 NCR, page 1853, with changes, as follows:

2

3

4 **20 NCAC 02C .0402 EMPLOYER'S CONTRIBUTIONS**

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

7

8 *History Note:* Authority G.S. 128-28(g); 128-30(g)(1); ~~128-28(g)~~;

9

Eff. February 1, 1976;

10

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

11

Readoption Eff.

12

1 20 NCAC 02C .0403 is readopted as published in 36:23 NCR, page 1853, **with changes**, as follows:

2
3 **20 NCAC 02C .0403 REFUNDS**

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

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

14 (c) If an employer makes an additional contribution to the pension accumulation fund as a result of the contribution-
15 based benefit cap [cap,] and the Retirement System receives information which alters the calculation of the retirement
16 benefit used to determine the contribution under the provisions of G.S. 128-30(g)(2)b., [G.S. 128-30(g)(2)(b).] any
17 contribution not required based on the new information will be refunded to the employer in the form of a credit toward
18 future required employer contributions.

19
20 *History Note: Authority G.S. 128-22; 128-28(g); 128-30(g); 128-28(g);*
21 *Eff. February 1, 1976;*
22 *Readopted Eff. September 21, 1977-1977;*
23 *Readopted Eff.*
24

1 20 NCAC 02C .0404 is readopted as published in 36:23 NCR, page 1854, with changes, as follows:

2

3

4 **20 NCAC 02C .0404 DUE DATE OF CONTRIBUTIONS**

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

8

9 *History Note: Authority G.S. 128-28(g); 128-30(g);*

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

11 *Readopted Eff.*

12

13

14

1 20 NCAC 02C .0405 is repealed as published in 36:23 NCR, page 1854, as follows:

2

3

4 **20 NCAC 02C .0405 ANTI-PENSION SPIKING CONTRIBUTION-BASED BENEFIT CAP FACTOR**
5 **(LGERS)**

6

7 *History Note: Authority G.S. 128-26(y); 128-27(a3); 128-28(g);*

8 *Eff. May 1, ~~2018~~ 2018;*

9 *Repealed Eff.*

10

1 20 NCAC 02C .0501 is readopted with changes as published in 36:23 NCR, page 1854, with changes, as follows:

2

3

SECTION .0500 - DISABILITY RETIREMENT

4

5

6 **20 NCAC 02C .0501 DISABILITY EXAMINATION**

7 The ~~director~~Director is authorized to conduct an ~~examination~~examination in doubtful cases of disability to determine
8 the condition of the disability, paying the expense of the same from the Pension Accumulation Fund. ~~pension~~
9 ~~accumulation fund.~~

10

11 *History Note: Authority G.S. 128-22; 128-27(c); 128-28(g);*

12

Eff. February 1, 1976;

13

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

14

Readopted Eff.

15

1 20 NCAC 02C .0502 is readopted with changes as published in 36:23 NCR, page 1854, with changes, as follows:

2

3

4 **20 NCAC 02C .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 in, or is able to engage in in, a gainful occupation, any adjustment required by G.S. 128-27(e)(1) will be
7 made prospectively only only; and will not relate back so as to require any refund to the State state of payments made
8 during the period before a report is made indicating changed status.

9

10 *History Note: Authority G.S. 128-27(e)(1); 128-28(g);*

11 *Eff. February 1, 1976;*

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

13 *Readopted Eff.*

14

1 20 NCAC 02C .0503 is repealed through readoption as published in 36:23 NCR, page 1854, follows:

2

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

4

5 *History Note: Authority G.S. 128-27(c); 128-28(g);*

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 02C .0504 is readopted as published in 36:23 NCR, page 1854, **with changes**, as follows:

2

3 **20 NCAC 02C .0504 REINSTATEMENT TO ACTIVE SERVICE**

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

6

7 *History Note:* Authority G.S. **128-28(g)**; 128-29(b); ~~128-28(g)~~;

8

Eff. February 1, 1976;

9

Readopted Eff. September 21, 1977-1977;

10

Readopted Eff.

11

1 20 NCAC 02C .0704 is readopted as published in 36:23 NCR, page 1854, with changes, as follows:

2
3
4 **20 NCAC 02C .0704 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 2C02C .1500 .1500, 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 ~~(c) 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 ~~(b) (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 Teachers' and State 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 Local Governmental Employees' Retirement System, may
21 purchase creditable service as in Paragraph (b) of this Rule.

22 ~~(c) (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. 128-26(1); 128-28(g);*
27 *Eff. December 1, 1983;*
28 *Amended Eff. August 1, 1988-1988;*
29 *Readopted Eff.*
30

1 20 NCAC 02C .0901 is readopted with changes as published in 36:23 NCR, page 1854, with changes, as follows:

2
3 **SECTION .0900 - MILITARY SERVICE (INCHOATE RIGHTS ONLY)**

4
5
6 **20 NCAC 02C .0901 LEAVE**

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

10
11 *History Note: Authority G.S. 128-27(f); 128-28(g); S.L. 1987, C. 617;*

12 *Eff. February 1, 1976;*

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

14 *Readopted Eff.*

15

1 20 NCAC 02C .0902 is repealed through readoption as published in 36:23 NCR, page 1854, as follows:

2

3 **20 NCAC 02C .0902 FEE**

4

5 *History Note: Authority G.S. 128-26(a); 128-28(g);*

6 *Eff. February 1, 1976;*

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

8 *Repealed Eff.*

9

1 20 NCAC 02C .0904 is amended as published in 36:23 NCR, page 1854, **with changes**, as follows:

2

3 **20 NCAC 02C .0904 COMPUTATION OF COST**

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

- 5 (1) the monthly compensation the member earned when the member ~~he~~ first entered membership;
6 multiplied by~~times~~
- 7 (2) the contribution rate at the time the member ~~he~~ first entered membership; 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. 128-26(a); 128-28(g); **S.L. 1987, C. 617;**

13

Eff. February 1, 1976;

14

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

15

Amended Eff.

16

1 20 NCAC 02C .0906 is readopted with changes as published in 36:23 NCR, page 1854, with changes, as follows:

2

3

4 **20 NCAC 02C .0906 CIVIL SERVICE PROGRAM**

5 A member of the Local Governmental Employees' Retirement System whose employment in this State state requires
6 the member him 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 the member he is otherwise eligible in the
8 ~~retirement~~ Retirement system ~~System~~ despite the fact that the member he may also receive credit under the Federal
9 Civil Service Program ~~civil service~~ for the same period of military service, provided that the member he makes the
10 required payment.

11

12 *History Note:* Authority G.S. 128-26(a); 128-28(g); S.L. 1987, C. 617;

13

Eff. February 1, 1976;

14

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

15

Readopted Eff.

16

1 20 NCAC 02C .0907 is readopted as published in 36:23 NCR page 1855, **with changes**, as follows:

2

3 **20 NCAC 02C .0907 EXCLUSION**

4 The **exclusion exclusion**, for purchase of service in the Armed Forces of the United States as it pertains to credit for
5 any other retirement ~~system~~ **system**, shall not include **service-connected disability** ~~"service-connected disability"~~
6 benefits received from the Veterans Administration of the Federal Government except when such benefits are a
7 supplement to a "longevity retirement" benefit.

8

9 *History Note:* Authority G.S. 128-26(a); 128-28(g); **S.L. 1987, C. 617;**

10

Eff. February 1, 1976;

11

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

12

Readopted Eff.

13

1 20 NCAC 02C .0908 is readopted with changes as published in 36:23 NCR page 1855, with changes, as follows:

2

3

4 **20 NCAC 02C .0908 RECALCULATION OF BENEFITS**

5 For members already retired who obtain ~~avail themselves of the provisions for obtaining~~ military service credit, 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. 128-26(a); 128-28(g); S.L. 1987, C. 617;

12

Eff. February 1, 1976;

13

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

14

Readopted Eff.

15

1 20 NCAC 02C .0909 is readopted as published in 36:23 NCR, page 1855, as follows:

2

3

4 **20 NCAC 02C .0909 CHANGE IN BENEFITS**

5 For members already retired, any change in benefits resulting from the provisions for obtaining military service credit
6 shall become effective as of the first of the month following receipt of the required payment.

7

8 *History Note: Authority G.S. 128-26(a); 128-28(g);*

9

Eff. February 1, 1976;

10

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

11

Readopted Eff.

12

1 20 NCAC 02C .1001 is repealed through readoption, as published in 36:23 NCR, page 1855, as follows:

2

3

4

SECTION .1000 - OUT-OF-STATE SERVICE (INCHOATE RIGHTS ONLY)

5

6

7 **20 NCAC 02C .1001 FEE**

8

9 *History Note: Authority G.S. 128-26(j); 128-28(g);*

10

Eff. February 1, 1976;

11

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

12

Repealed Eff.

13

1 20 NCAC 02C .1002 is readopted with changes as published in 36:23 NCR, page 1855, with changes, as follows:

2

3

4 **20 NCAC 02C .1002 QUALIFYING FOR CREDIT**

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

7

8 *History Note:* Authority G.S. 128-26(j); 128-28(g); S.L. 1987, C. 617;

9

Eff. February 1, 1976;

10

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

11

Readopted Eff.

12

1 20 NCAC 02C .1003 is readopted as published in 36:23 NCR, page 1855, with changes, as follows:

2

3

4 **20 NCAC 02C .1003 OTHER GOVERNMENTAL SUBDIVISION**

5 "Other governmental subdivision of the United States" means shall mean a state or territory and its subdivisions but
6 not the United States Government.

7

8 *History Note: Authority G.S. 128-28(g); S.L. 1987, C. 617;*

9

Eff. February 1, 1976;

10

Readopted Eff. September 21, 1977;

11

Amended Eff. August 1, ~~1988-1988~~;

12

Readopted Eff.

13

1 20 NCAC 02C .1004 is readopted with changes as published in 36:23 NCR, page 1855, with changes, as follows:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

20 NCAC 02C .1004 COMPUTATION OF COST

The cost of purchasing credit for out-of-state service is calculated as follows:

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

History Note: Authority G.S. 128-26(j); 128-28(g); S.L. 1987, C. 617;
 Eff. February 1, 1976;
 Readopted Eff. September 21, ~~1977~~.1977;
Readopted Eff.

1 20 NCAC 02C .1006 is readopted as published in 36:23 NCR, page 1855, with changes, as follows:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

20 NCAC 02C .1006 RECALCULATION OF BENEFITS

For members already retired who ~~avail themselves of the provisions for obtaining credit for out of state service,~~ purchase service under G.S. 128-26(j), any recalculation of benefits shall be based on the law in effect at the time of the individual's retirement. The calculation of both the benefit and the cost of the credit shall include the effects of retirement including the additional service credit resulting from the purchase and effect shall be given for all benefit increases subsequent to the date of retirement. retirement which shall be a part of the total cost of providing the additional service credit.

*History Note: Authority G.S. 128-26(j); 128-28(g); S.L. 1987, C. 617;
Eff. February 1, 1976;
Readopted Eff. September 21, ~~1977~~.1977;
Readopted Eff.*

1 20 NCAC 02C .1007 is readopted as published in 36:23 NCR, page 1855, **with changes**, as follows:

2

3 **20 NCAC 02C .1007 CHANGE IN BENEFITS**

4 For members already retired, any change in benefits resulting from the provisions for obtaining credit for out-of-state
5 service shall become effective as of the first of the month following receipt of the required payment.

6

7 *History Note:* Authority G.S. 128-26(j); 128-28(g); **S.L. 1987, C. 617;**

8

Eff. February 1, 1976;

9

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

10

Readopted Eff.

11

1 20 NCAC 02C .1201 is repealed through readoption as published in 36:23 NCR, page 1855, as follows:

2

3

4

SECTION .1200 - RETIREMENT ALLOWANCES

5

6

7 **20 NCAC 02C .1201 SERVICE RETIREMENT**

8

9 *History Note: Authority G.S. 128-24(4)a.; 128-28(g);*

10 *Eff. February 1, 1976;*

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

12 *Repealed Eff.*

13

1 20 NCAC 02C .1301 is repealed through readoption as published in 36:23 NCR, page 1855, follows:

2

3

SECTION .1300 - VOLUNTARILY WITHDRAWN CONTRIBUTIONS

4

5

6 **20 NCAC 02C .1301 FEE**

7

8 *History Note: Authority G.S. 128-26(i); 128-28(g);*

9

Eff. February 1, 1976;

10

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

11

Repealed Eff.

12

1 20 NCAC 02C .1302 is repealed through readoption as published in 36:23 NCR, page 1855, as follows:

2

3 **20 NCAC 02C .1302 QUALIFYING FOR CREDIT**

4

5 *History Note: Authority G.S. 128-26(i); 128-28(g);*

6 *Eff. February 1, 1976;*

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

8 *Repealed Eff.*

9

1 20 NCAC 02C .1501 is repealed through readoption as published 36:23 NCR, page as 1855, follows:

2

3

SECTION .1500 - DELAYED PURCHASE OF SERVICE CREDITS

4

5

6 **20 NCAC 02C .1501 APPLICATION OF SECTION**

7

8

9 *History Note: Authority G.S. 128-26(k); 128-28(g);*

10 *Eff. December 1, 1981;*

11 *Amended Eff. March 1, ~~1985~~-1985;*

12 *Repealed Eff.*

13

1 20 NCAC 02C .1503 is repealed through readoption as published in 36:23 NCR, page 1855, as follows:

2

3 **20 NCAC 02C .1503 DEFINITIONS**

4

5 *History Note: Authority G.S. 128-26(k); 128-28(g);*

6

Eff. December 1, 1981;

7

Amended Eff. March 1, 1985; June 1, ~~1982, 1982.~~

8

Repealed Eff.

9

1 20 NCAC 02C .1504 is repealed through readoption as published 36:23 NCR, page 1856, as follows:

2

3 **20 NCAC 02C .1504 COMPUTATION OF COST**

4

5 *History Note: Authority G.S. 128-26(k); 128-28(g);*

6

Eff. December 1, 1981;

7

Amended Eff. June 1, ~~1982~~, 1982;

8

Repealed Eff.

9

1 20 NCAC 02C .1505 is repealed through readoption as published in 36:23 NCR, page 1856, as follows:

2

3 **20 NCAC 02C .1505 EXTENT OF SERVICE TO BE PURCHASED**

4

5 *History Note: Authority G.S. 128-26(k); 128-28(g);*

6

Eff. December 1, ~~1981~~1981;

7

Repealed Eff.

8

9

1 20 NCAC 02C .1506 is repealed through readoption as published 36:23 NCR, page 1856, as follows:

2

3 **20 NCAC 02C .1506 SPECIAL RULE FOR RETIRED APPLICANTS**

4

5 *History Note: Authority G.S. 128-26(k); 128-28(g);*

6

Eff. June 1, 1982;

7

Amended Eff. March 1, ~~1985~~-1985;

8

Repealed Eff.

9

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

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: 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



Sign up for e-Updates

NORTH CAROLINA
DEPARTMENT OF STATE TREASURER



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

E-mail correspondence to and from this address is subject to North Carolina's Public Records Act, N.C. Gen. Stat. Sec. 132, and may be disclosed to third parties. However Federal and State law protects personal health and other information that may be contained in this e-mail from unauthorized disclosure. If you are not the intended recipient, please delete this e-mail and any accompanying documents and contact the sender immediately. Unauthorized disclosure, copying or distribution of any confidential or privileged content of this e-mail is prohibited.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Liebman, Brian R
Sent: Friday, December 9, 2022 12:10 PM
To: Rowe, Laura
Cc: Burgos, Alexander N
Subject: RE: 20 NCAC 02C - LGERS - Request for Changes December 2022 RRC
Attachments: 12.2022 - LGERS 02C.docx

Hi Laura,

Attached, please find my requests for changes for Subchapter 02C. Please let me know if you have any questions.

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: Thursday, December 8, 2022 5:57 PM
To: Rowe, Laura
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 20 NCAC 02A - TSERS/LGERS - Request for Changes December 2022 RRC

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
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.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.