

## Regulatory and Fiscal Impact Analysis: Proposal of Administrative Rules 20 NCAC 02B .0216 and 20 NCAC 02C .0213

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Agency: Teachers' and State Employees' Retirement System Board of Trustees;  
Local Governmental Employees' Retirement System Board of Trustees

Rule Citation(s): 20 NCAC 02B .0216; 20 NCAC 02C .0213  
(See Appendix A for proposed Rule text)

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Rulemaking Authority: G.S. 128-23.1(d); G.S. 128-28(g); G.S. 135-5.5(d); G.S. 135-6(f)

Impact Summary: State Government: Uncertain (probably yes)  
Local Government: Uncertain (probably yes)  
Private Entities: No  
Substantial Impact: No

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### I. Introduction

The Local Governmental Employees' Retirement System ("LGERS") is administered by a Board of Trustees ("LGERS Board") pursuant to G.S. 128-22. The Teachers' and State Employees' Retirement System ("TSERS") is administered by a Board of Trustees ("TSERS Board") pursuant to G.S. 135-2. Staffing for the Boards is provided by the Department of State Treasurer (Chapter 143A of the General Statutes), through its Retirement Systems Division ("RSD"). The North Carolina Administrative Code contains Rules related to the administration of TSERS and LGERS under Title 20 (State Treasurer), Chapter 02 (Retirement Systems), Subchapters 02A (Divisional Rules), 02B (TSERS), and 02C (LGERS).

TSERS and LGERS are governmental pension plans under Section 414(d) of the Internal Revenue Code. G.S. 128-21(11) defines the employing units who are potentially eligible to participate in LGERS. They include counties and municipalities. They also include employers who may not be "taxing units," such as "any separate, juristic political subdivision of the State as may be approved by the Board of Trustees upon the advice of the Attorney General." G.S. 135-1(11) defines the employing units participating in TSERS as "the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid." ("Teacher" and "Employee" are defined for TSERS purposes in G.S. 135-1(25) and G.S. 135-1(10), respectively.)

Effective December 31, 2022:

- If an employing unit under LGERS or TSERS makes no report to the Retirement System of any eligible employees for six consecutive months, the employing unit is considered an "inactive employer". G.S. 128-23.1(c); G.S. 135-5.5(c).
- On or before April 30 of each year, RSD reports to the TSERS and LGERS Boards a list of all employers who were determined to be inactive employers in the preceding calendar year. G.S. 128-23.1(b); G.S. 135-5.5(b).
- On or before May 15, RSD notifies all employers who were included in such a report. G.S. 128-23.1(d); G.S. 135-5.5(d).
- On or before June 30, after being notified of their inactive status, an inactive employer "may apply to extend its inactive period for up to one year by submitting to the Retirement System... clear and convincing evidence satisfactory to the Retirement System of the employer's intention to hire an employee in a position qualifying for membership service in the Retirement System." G.S. 128-23.1(d); G.S. 135-5.5(d). (Emphasis added.)
- On or before July 31, the TSERS and LGERS Boards decide whether to grant any applications to extend inactive status. G.S. 128-23.1(e); G.S. 135-5.5(e). On October 1 of each calendar year, if an employer remains inactive and has not had an application to extend its inactive status granted by the Board, the employer ceases participation in the Retirement System according to the procedure and payment requirements of G.S. 128-30(i) (LGERS) or G.S. 135-8(i) (TSERS).

This proposal contains recommended administrative rules addressing what information submitted by an employing unit will constitute "clear and convincing evidence" of the employer's intention to hire an employee in a membership-eligible position, to be submitted on or before June 30 in the timeline above.

**II. Description and Impact Analysis**

<b>Purpose</b>	Establish administrative rule addressing what information submitted by an employing unit will constitute "clear and convincing evidence" of the employer's intention to hire an employee in a membership-eligible position.
<b>Rule Section</b>	Rule 20 NCAC 02B .0216 (TSERS); Rule 20 NCAC 02C .0213 (LGERS).
<b>Addition/Modification</b>	Addition.
<b>Background/Baseline</b>	Effective December 31, 2022, as enacted by S.L. 2022-14, G.S. 128-23.1(d) and G.S. 135-5.5(d) require that an employing unit seeking to extend its inactive period for up to one year must submit "clear and convincing evidence satisfactory to the Retirement System" of the employer's intention to hire an employee in a membership-eligible position.  <u>Baseline condition:</u> The statutory provision requires but does not define "clear and convincing evidence" in this situation. Since S.L. 2022-14 was enacted, TSERS and LGERS have been administered using a meaning of "clear and convincing evidence" consistent with the proposal described below. RSD is not aware of a dispute or contested case that has arisen in this administration.
<b>Proposed Change</b>	The proposal would identify four required elements that together constitute "clear and convincing evidence" of the employer's intention to hire such an employee:  <ol style="list-style-type: none"> <li>(1) Job description(s) of the vacant position(s) for which the employer is hiring, which would require membership in the Retirement System.</li> <li>(2) The date the position is expected to be filled or the status of recruitment.</li> <li>(3) Confirmation that the vacant position(s) are funded in the employer's most recent budget.</li> </ol>

	<p>(4) Statement that the employer will continue to issue financial statements recognizing its share of Retirement System costs, if any, under governmental accounting standards.</p>
<p><b>Alternatives</b></p>	<p>Any viable alternatives to the proposal would need to meet the statutory requirement that the information be "clear and convincing evidence" of the employer's "intention" to hire an employee in a membership-earning position.</p> <p>The following definitions are pertinent to this consideration. "Clear," "convincing," "evidence," and "intention" are all words used in the relevant statutory provisions. "Proof" is used in the definitions of "convincing" and "evidence."</p> <ul style="list-style-type: none"> <li>• <u>Clear</u>: "Free from obscurity or ambiguity; easily understood." "Clear" (definition 3c). Merriam-Webster.com Dictionary, Merriam-Webster, <a href="https://www.merriam-webster.com/dictionary/clear">https://www.merriam-webster.com/dictionary/clear</a>. Accessed 1 April 2024.</li> <li>• <u>Convincing</u>: "Satisfying or assuring by argument or proof." "Convincing" (definition 1). Merriam-Webster.com Dictionary, Merriam-Webster, <a href="https://www.merriam-webster.com/dictionary/convincing">https://www.merriam-webster.com/dictionary/convincing</a>. Accessed 1 April 2024.</li> <li>• <u>Evidence</u>: "Something that furnishes proof." "Evidence" (definition 1b). Merriam-Webster.com Dictionary, Merriam-Webster, <a href="https://www.merriam-webster.com/dictionary/evidence">https://www.merriam-webster.com/dictionary/evidence</a>. Accessed 1 April 2024.</li> <li>• <u>Intention</u>: "What one intends to do or bring about." "A determination to act in a certain way." "Intention" (definitions 1 and 2). Merriam-Webster.com Dictionary, Merriam-Webster, <a href="https://www.merriam-webster.com/dictionary/intention">https://www.merriam-webster.com/dictionary/intention</a>. Accessed 1 April 2024.</li> <li>• <u>Proof</u>: "The cogency of evidence that compels acceptance by the mind of a truth or a fact." "Something that induces certainty or establishes validity." "Proof" (definitions 1a and 3). Merriam-Webster.com Dictionary, Merriam-Webster, <a href="https://www.merriam-webster.com/dictionary/proof">https://www.merriam-webster.com/dictionary/proof</a>. Accessed 1 April 2024.</li> </ul> <p>The use of the word "evidence" in the statutory provision, with its meaning of furnishing "proof," indicates a high standard that must be met by any viable proposal. In RSD's opinion, mere informal statements by an employing unit – for example, an unsigned email from an employing unit stating that they intend to hire a membership-earning employee – would not meet this standard. In that situation, more documentation would be required for "clear and convincing evidence."</p> <p>One viable alternative to the proposal would have been to require a duly authorized representative of the employer to submit an affidavit or other formal attestation that the employer intends to hire an employee in a membership-earning position. The proposal is preferable to this alternative because it avoids putting an individual representative of the employer in the position of making such a formal statement. Instead, the proposal requires the employer seeking an extension of their inactive period to submit information that the employer should have readily available (for proposed items 1-3) or should be able to provide with minimal effort (for item 4).</p> <p>A second viable alternative would have been to require additional documentary evidence in addition to items 1-4 of the proposal. For example, the employing unit could be required to provide information on the history of their staffing the vacant position(s), or a summary of changes made to job description(s) of occupied positions since the vacancy occurred. This might have helped to establish that the responsibilities of the vacant position have not been permanently reassigned to an</p>

	<p>occupied position. However, in RSD's opinion, this alternative would have gone beyond what is necessary to establish "clear and convincing evidence" of the employer's intention to hire a membership-earning employee. The proposal is preferable to this alternative because it reduces the burden on the employer submitting the information.</p>
<b>Benefit</b>	<p>Administrative clarification and transparency which could help prevent possible future disputes involving termination of participation in TSERS and LGERS. See further discussion in "Impact" section of this analysis.</p>
<b>Impact</b>	<p>This proposal would be the same as current administrative practice, and therefore represents no change compared to current administrative practice. However, when compared to the Baseline condition, it has a possible impact on State government or local governments.</p> <p>This hypothetical impact is because, depending on the definition of "clear and convincing evidence" used by the Retirement System, some employers may decide to apply or not apply for continued inactive status. This decision could increase the likelihood of financial impacts (in the form of either costs or avoided costs) to employers in two specific situations that RSD could imagine, further described below as Situations #1 and #2, with Situation #2 subdivided into outcomes under #2a and #2b. It should be noted that the magnitude of costs and cost savings described here are not directly attributable to the proposed rules, which simply define a term used in statute. Rather, these costs and cost savings are more appropriately attributed to the statutes themselves. In other words, the costs and cost savings described in this analysis would occur whether or not the proposed rules go into effect. The proposed rules could, however, result in changes to the <i>likelihood</i> of these impacts being realized by employers as well as to the <i>timing</i> of these impacts.</p> <p><u>Foundational Assumptions for Estimates of Impact</u></p> <p>It is very difficult to estimate the hypothetical impacts of inactive employer situations in the future, primarily because there is no meaningful historical data to analyze. No employers have officially become inactive due to having extended periods of non-reporting during 2022 to the present.</p> <p>Effective December 31, 2022, there were 12 local government employers (and zero State employers) classified as "inactive" due to lengthy periods of non-reporting that had lasted for years prior to S.L. 2022-14 taking effect. Of the 12 local governments, one resumed reporting eligible employees after receiving notification of the inactive status, and the remaining 11 did not apply to extend their inactive period. Of the 11 who eventually withdrew from LGERS in 2023, the years when they had stopped employing eligible employees spanned from 1990 to 2019, a period encompassing 30 calendar years. This indicates that an average of 0.37 of these employers became inactive each year during that 30-year period. In the interest of selecting an assumption more likely to overstate than to understate the potential impact of this proposal, it seems reasonable to assume that as a long-term average, up to one State employer and one local government employer per year will be classified as "inactive" and will need to consider whether to apply for an extension of inactive status.</p> <p>To proceed with this analysis, it is necessary to make an assumption about not only the number of employers who may become inactive in the future, but what those employers' average annual payrolls (i.e., compensation that would have been reported to the Retirement System) would be. By their nature, inactive employers</p>

would tend to have few employees (e.g., one or two employees) prior to an inactive status caused by vacant positions. For example, of the 11 local government employers who eventually withdrew from LGERS in 2023 due to inactivity, their average last full calendar year of reported salaries was \$37,954 (minimum \$16,838; maximum \$100,822). Adjusting the salary data for each of the 11 employers with inflation (CPI-U) from July of the salary data year to July 2023, the average adjusted salary in 2023 dollars was \$58,352 (minimum \$25,294; maximum \$173,637). In the interest of selecting an assumption more likely to overstate than to understate the potential impact of this proposal, it seems reasonable to assume that the average salary of an employer assumed to become inactive in the future could be as much as \$100,000 per year.

Finally, for those employers who become classified as inactive under G.S. 128-23.1(c)-(d) or G.S. 135-5.5(c)-(d), and who do not respond by hiring and reporting an employee eligible for the Retirement System, the statutory provisions lead them to either (1) apply for an extension of inactive status or (2) withdraw from the Retirement System effective October 1. Withdrawal from the Retirement System involves payment of a statutorily determined withdrawal liability. Therefore, for employers who may incur a withdrawal liability, it is necessary to estimate what the withdrawal liability might be, relative to their annual salaries. During the years 2016-2022, RSD's independent consulting actuary estimated withdrawal liabilities in sixteen (16) instances for employers participating in LGERS or the Teachers' and State Employees' Retirement System ("TSERS"). These calculations included final withdrawal liability calculations, estimates for employers contemplating withdrawal, and estimates for charter schools seeking to join TSERS under G.S. 135-5.3(b5). Because such calculations are more common for TSERS than for LGERS, this analysis considers TSERS withdrawal liabilities in order to arrive at approximate ranges for potential withdrawal liabilities. The statutory provisions for calculating withdrawal liabilities are similar between TSERS (G.S. 135-8(i)) and LGERS (G.S. 128-30(i)). The precise amount of the withdrawal liability varies widely depending on factors such as the value of assets and the funding condition of the Retirement System on the date of measurement, the annual yield on 30-year Treasury securities on the same date, and the details of the employee population for the withdrawing employer. In cases where the actuary completed a calculation more than once for an employer whose population was substantively the same at both calculation dates, only the most recent calculation has been included in the 16 instances for purposes of this analysis. In the 16 instances of calculations, the amount of the withdrawal liability ranged from 48% to 607% of the relevant employer's total annual payroll. The middle eight (middle 50%) of the calculations ranged from 92% to 210% of the relevant employer's total annual payroll. The total of the 16 estimated withdrawal liabilities amounted to 181% of the relevant employers' total annual payrolls. Therefore, it is assumed that the average withdrawing inactive employer, with annual salaries no greater than \$100,000, would have a one-time withdrawal liability of approximately \$181,000.

These foundational assumptions – the number of inactive employers each year, their average annual salaries, and their average withdrawal liabilities – are simply assumptions for long-term averages of experience that could occur in the future. There is a possibility that any given employer in the future could have special circumstances causing them to become inactive even though they have greater employees and greater salaries than implied by these assumptions. This, in combination with economic conditions at the time of inactivity, could lead to such an

employer having greater withdrawal liabilities than implied by these assumptions. However, as described above, the assumptions for this analysis have been selected with the intention that on the whole, they would be somewhat more likely to overstate than to understate the impact of the statutory provisions and this proposal.

#### Situation #1

- As of May 15, when informed of their inactive status, the inactive employer actually intends to hire a membership-earning employee.
- The employer finds it impractical to submit "clear and convincing evidence" as defined in the proposal by June 30.
- Suppose there is some conceivable definition of "clear and convincing evidence" that the employer would have been willing to satisfy, had that definition been used by TSERS or LGERS.
- Despite their intention (as of May/June) to hire a membership-earning employee, the employer does not actually hire a membership-earning employee by October 1.

In this situation, the employer's inactive status will not be extended, because they will not apply for an extension. Since they will not have hired a membership-earning employee by October 1, they will be forced to withdraw from the Retirement System on that day. This will include payment of a withdrawal liability.

#### Estimate of Impact – Situation #1

Recall that in order for Situation #1 to apply:

- Despite not having had a membership-earning employee for nearly a year prior to May 15 (i.e., at least six months of the previous calendar year, up through May 15 of the current calendar year), the employer actually intends to hire a membership-earning employee. RSD believes it is reasonable to assume that of the employers who may become inactive in the future (estimated at 1 employer per year in each retirement system), 10% would meet this condition – that is, an average of no more than 0.1 State employers and 0.1 local government employers per year.
- Despite intending as of May 15 to hire a membership-earning employee, the employer does not hire a membership-earning employee by October 1. RSD believes it is reasonable to assume that of employers meeting the first condition, half would also meet this condition – that is, an average of no more than 0.05 State employers and 0.05 local government employers per year.
- The employer finds it impractical to apply for an extension of the inactive period under the definition of "clear and convincing" used by the Retirement System, but there is some other conceivable definition of "clear and convincing" (meeting statutory requirements) under which the employer would have chosen to apply for an extension. RSD believes it is reasonable to assume that of employers meeting the first and second condition, fewer than 20% would also meet this condition – that is, an average of no more than 0.01 State employers and 0.01 local government employers per year.

The financial impact of Situation #1 is that the employer would be required to pay a withdrawal liability that they would not have had to pay on the same date under some other conceivable interpretation of the statutory provision. Based on the assumptions and estimates described above, this may apply to 0.01 State

government employers and 0.01 local government employers per year. At an assumed average withdrawal liability of \$181,000, the estimated impacts of Situation #1 would be \$1,810 per year pertaining to State government employers and \$1,810 per year pertaining to local government employers ( $\$181,000 \times 0.01$  State/local employers per year). In practice, the cost associated with the withdrawal liability would be incurred entirely in the year in which the withdrawal occurs and not spread over time. As such, it would be more accurate to say that the estimated impacts of Situation #1 would be \$181,000 to one State government employer and one local government employer every 100 years.

As a final note on Situation #1, it is possible that an employer affected by Situation #1, while being forced to pay a liability for withdrawal effective October 1, would have been required to pay a withdrawal liability in the following year. Even if their inactive period had been extended by a year in the hypothetical scenario where they might have applied for an extension, the longest that extension could have lasted (without hiring a membership-earning employee or being forced to withdraw from the Retirement System) would have been one year. For these reasons, the likelihood that impacts in Situation #1 will actually be realized as a result of the proposed rule itself is very low.

As stated above, the magnitude of these potential costs are more directly attributable to the statutes themselves. The proposed rules could change the likelihood of costs being incurred and the timing of when costs would be incurred.

#### Situation #2

- As of May 15, when informed of their inactive status, the inactive employer actually intends to hire a membership-earning employee.
- Based on the definition of "clear and convincing evidence" used by TSERS or LGERS, the inactive employer applies and is approved for a one-year extension of their inactive period.
- Suppose there is some conceivable definition of "clear and convincing evidence" that the employer would have found impractical, had that definition been used by TSERS or LGERS, and therefore the employer would not have applied for an extension under that definition.

In this situation, the one-year extension of the employer's inactive status means that they do not withdraw from the Retirement System on October 1. The nature of the impact in this situation depends on whether the employer actually hires a membership-earning employee.

- (Situation #2a:) If they follow through on their intention to hire a membership-earning employee prior to the next October 1, they will resume participation as an active employer.
- (Situation #2b:) If, despite their intention to hire a membership-earning employee, they are unable to do so prior to that next October 1, they will be forced to withdraw from the Retirement System on that next October 1. They may still owe a withdrawal liability, but it would be calculated differently in the following year.

#### Estimate of Impact – Situation #2

Recall that in order for Situation #2 to apply:

- Despite not having had a membership-earning employee for nearly a year prior to May 15 (i.e., at least six months of the previous calendar year, up through May 15 of the current calendar year), the employer actually intends to hire a membership-earning employee. RSD believes it is reasonable to assume that of the employers who may become inactive in the future, 10% would meet this condition – that is, an average of no more than 0.1 State employers and 0.1 local government employers per year.
- The employer applies and is approved for an extension of the inactive period under the definition of "clear and convincing" used by the Retirement System, but there is some other conceivable definition of "clear and convincing" (meeting statutory requirements) under which the employer would have found it impractical to apply. RSD believes it is reasonable to assume that of employers meeting the first condition, fewer than 20% would also meet this condition – that is, an average of no more than 0.02 State employers and 0.02 local government employers per year.

The nature of the financial impact depends on whether the employer does (Situation #2a) or does not (Situation #2b) hire a membership-earning employee prior to the next October 1. RSD believes it is reasonable to assume that of the employers who meet both of the two criteria above (no more than 0.02 State and 0.02 local government employers per year), half would fall under Situation #2a (0.01 State and 0.01 local government), and half under Situation #2b (0.01 State and 0.01 local government).

The financial impacts of Situation #2a are as follows:

- The employer does not pay the liability associated with withdrawal from the Retirement System in October of the year that the extension is granted (estimated to be 0.01 multiplied by \$181,000, or \$1,810 per year each for State and local governments).
- Instead, the employers are required to rejoin the Retirement System and make employee and employer contributions. Employee contributions are mandated at 6% of salaries (estimated to be 6% multiplied by 0.01 multiplied by \$100,000, or \$60 per year each for State and local governments). A reasonable long-term estimate of employer contribution rates is no greater than 20% of salaries (estimated to be 20% multiplied by 0.01 multiplied by \$100,000, or \$200 per year each for State and local governments). The total of the contributions is estimated to be \$60 plus \$200, or \$260 per year each for State and local governments.
- Because the cost associated with the rejoining the Retirement System would be incurred entirely in the year in which the employer rejoins and is not spread over time, it would be more accurate to say that the estimated impacts of Situation #2a would be \$181,000 in avoided costs (from not paying withdrawal liability) and \$26,000 in costs (from contributions due from previous inactive year) to one State government employer and one local government employer every 100 years.

The financial impacts of Situation #2b are as follows:

- The employer does not pay the liability associated with withdrawal from the Retirement System in October of the year that the extension is granted (estimated to be 0.01 multiplied by \$181,000, or \$1,810 per year each for State and local governments).
- Instead, the employer pays any liability that may exist associated with withdrawal from the Retirement System in October of the next year. The



	<p>amount calculated would be different in the following year. However, it is reasonable to assume for purposes of this analysis that it would be the same average of \$1,810 per year each for State and local governments. Because the cost associated with the withdrawal liability would be incurred entirely in the year following withdrawal and is not spread over time, it would be more accurate to say that the estimated impacts of Situation #2b would be \$181,000 to one State government employer and one local government employer every 100 years.</p> <p>As stated above, the magnitude of these potential costs and cost savings are more directly attributable to the statutes themselves. The proposed rules could change the likelihood of costs and cost savings being incurred and the timing of when costs and cost savings would be incurred.</p> <p><u>Administrative Effort</u></p> <p>RSD estimates that State and local government employers will need to devote minimal staff time to compiling the information described in items 1 through 4 of the proposal. Items 1 through 3 should be readily available to an employer intending to hire a membership-earning employee. Item 4 should require minimal effort. It seems reasonable to assume that the total value of employer staff time to comply with these requirements will be minimal. The proposal does not have a foreseeable impact on the amount of time spent by RSD staff.</p> <p><u>Unquantified Benefits: Transparency and Prevention of Possible Disputes</u></p> <p>There are unquantified benefits to both local and State governments resulting from the clarification and transparency that the proposed rules would provide. It is possible that if the Boards were to attempt to administer the statutory provisions on a case-by-case basis, the Boards' interpretation of "clear and convincing evidence" might not be consistently applied in all future cases. The administrative situation contemplated here (an inactive employer seeking to extend its inactive period) is likely to occur quite infrequently, which would seem to increase the risk of interpretations changing over time due to changes in staffing or processes. The proposed rules would set a clear standard for RSD to use in the future when providing guidance to employers in this infrequent situation.</p> <p>The proposed rules may also help to prevent possible future disputes between local or State government employers (or their employees) and the State resources administering TSERS and LGERS – the Boards or RSD. Employers or their employees could conceivably challenge the Boards' interpretation of "clear and convincing evidence" in any given situation. It is not reasonably possible to quantify the likelihood or cost of these hypothetical future disputes, but a benefit would result to the State government resources administering TSERS and LGERS (in the form of avoiding costs to resolve the dispute, and ability to spend time and resources elsewhere) to the extent disputes would have arisen. Similar benefits would result to the State or local government inactive employers who might have raised the dispute.</p>
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**III. Summary**

The proposal contains recommendations with the following administrative benefits.

<u>Section of Analysis</u>	<u>Purpose</u>	<u>Administrative Benefit</u>
II	Establish administrative rule addressing what information submitted by an employing unit will constitute "clear and convincing evidence" of the employer's intention to hire an employee in a membership-eligible position.	Administrative clarification and transparency which could help prevent possible future disputes involving termination of participation in TSERS and LGERS.

The fiscal benefits or costs are estimated as follows.

### Annual Benefits

- Private Entities.
  - None.
- Local Governments (Benefits to Inactive Local Employers)
  - \$3,620 in reduced commitment of resources by an inactive employer toward withdrawal liabilities in the year an extension of inactive status is granted. Total benefits under Situations #2a and #2b above. Corresponding cost to LGERS is in "Annual Costs" below.
- Local Governments (Benefits to LGERS).
  - \$1,810 in withdrawal liabilities received by LGERS where the employer does not apply for an extension of inactive status, but might have applied under some other conceivable administrative proposal (Situation #1). Corresponding cost to the inactive employer is in "Annual Costs" below.
  - \$260 in annual salary-based contributions received by LGERS where the employer receives an extension of inactive status, but would not have applied for an extension under some other conceivable administrative proposal (Situation #2a). Corresponding cost to the inactive employer is in "Annual Costs" below.
  - \$1,810 in withdrawal liabilities received by LGERS in a year following the initial designation of inactivity, where the employer has received an extension of inactive status, would not have applied for an extension under some other conceivable administrative proposal, and does not hire an eligible employee by October 1 of the next year (Situation #2b). Corresponding cost to the inactive employer is in "Annual Costs" below.
- State Government (Benefits to Inactive State Employers).
  - \$3,620 in reduced commitment of resources by employers toward withdrawal liabilities in the year an extension of inactive status is granted. Total benefits under Situations #2a and #2b above.
- State Government (Benefits to TSERS).
  - \$1,810 under Situation #1. Same description as for Benefits to LGERS.
  - \$260 Situation #2a. Same description as for Benefits to LGERS.
  - \$1,810 under Situation #2b. Same description as for Benefits to LGERS.
- Total: \$15,000.

### Annual Costs

- Private Entities.
  - None.
- Local Governments (Costs to Inactive Local Employers).
  - \$1,810 under Situation #1 (see Benefits to LGERS above).
  - \$260 under Situation #2a (see Benefits to LGERS above).
  - \$1,810 under Situation #2b (see Benefits to LGERS above).
- Local Government (Costs to LGERS).
  - \$3,620 under Situations #2a and #2b (see Benefits to Inactive Local Employers above).
- State Government (Costs to Inactive State Employers).
  - \$1,810 under Situation #1. Same description as for local governments.
  - \$260 Situation #2a. Same description as for local governments.
  - \$1,810 under Situation #2b. Same description as for local governments.
- State Government (Costs to TSERS).
  - \$3,620 under Situations #2a and #2b (see Benefits to Inactive State Employers above).
- Total: \$15,000.

There are also unquantified ongoing benefits and costs as follows:

#### Unquantified Benefits –

- Private Entities
  - None.
- Local Governments.
  - Administrative clarification and transparency.
  - Prevention of possible future disputes.
- State Government.
  - Administrative clarification and transparency.
  - Prevention of possible future disputes.

#### Unquantified Costs –

- Private Entities
  - None.
- Local Governments.
  - Staff time necessary for an inactive employer, who wishes to apply for an extension of inactive status, to prepare a statement that the employer will continue to issue financial statements recognizing its share of Retirement System costs, if any, under governmental accounting standards.
- State Government.
  - Staff time necessary for an inactive employer, who wishes to apply for an extension of inactive status, to prepare a statement that the employer will continue to issue financial statements recognizing its share of Retirement System costs, if any, under governmental accounting standards.

The magnitude of all potential costs and cost savings in this analysis will be more directly attributable to the statutes themselves than to the proposed rules. The proposed rules could, however, change the likelihood of costs and cost savings being incurred and the timing of when costs and cost savings would be incurred. In practice, these costs and cost savings would be incurred in the year the withdrawal or rejoining event occurs.

**Appendix A: Proposed Text of Administrative Rules**

**20 NCAC 02B .0216                      INACTIVE EMPLOYER EXTENSION REQUEST**

20 NCAC 02B .0216 is proposed for adoption as follows:

- (a) “Clear and Convincing Evidence” means all of the following:
- (1) Job Description(s) of vacant position(s) requiring membership in the Teachers’ and State Employees’ Retirement System.
  - (2) The date the position is expected to be filled or status of recruitment.
  - (3) Confirmation that the position(s) are funded in the Employer’s most recent budget.
  - (4) Statement that the Employer will continue to issue financial statements recognizing its share of the Teachers’ and State Employees’ Retirement System costs, if any, under governmental accounting standards.

*History Note: Authority G.S. 135-5.5(d); 135-6(f);  
Eff. MONTH DD, YYYY*

**20 NCAC 02C .0213                      INACTIVE EMPLOYER EXTENSION REQUEST**

20 NCAC 02C .0213 is proposed for adoption as follows:

- (a) “Clear and Convincing Evidence” means all of the following:
- (1) Job Description(s) of vacant position(s) requiring membership in the Local Governmental Employees’ Retirement System.
  - (2) The date the position is expected to be filled or status of recruitment.
  - (3) Confirmation that the position(s) are funded in the Employer’s most recent budget.
  - (4) Statement that the Employer will continue to issue financial statements recognizing its share of the Local Governmental Employees’ Retirement System costs, if any, under governmental accounting standards.

*History Note: Authority G.S. 128-23.1(d); 128-28(g);  
Eff. MONTH DD, YYYY*