



MEMORANDUM

TO: Local Governmental Employees' Retirement System Boards of Trustees

FROM: Timothy M. Melton, Assistant General Counsel

DATE: July 27, 2023

RE: Summary of LGERS Surety Administrative Rules Proposal

In 2022, the General Assembly enacted Session Law 2022-70, which, in pertinent part, amended G.S. 128-23 by adding subsection (i) to provide:

Notwithstanding any provision of this section or G.S. 128-21(11), or any other provision of law to the contrary, any eligible employer that is not a taxing authority and is not a participating employer in the Retirement System on September 1, 2023, is not eligible to commence participation in the Retirement System without obtaining a surety as defined in rules adopted by the Board of Trustees. The rules adopted by the Board of Trustees shall address how an eligible employer that is not a taxing authority will cover a withdrawal liability that could be incurred by the employer if the employer ceases participation in the Retirement System.”

Additionally, Section 2.(b) of Session Law 2022-70 provided that the Board “shall adopt rules necessary to enforce this [provision] by August 1, 2023.”

Non-taxing authorities seeking to join the Local Governmental Employees' Retirement System (“LGERS”) are typically one of four types of entities: airport authorities, economic development commissions, housing authorities, and tourism development authorities. The term “surety,” as used in G.S. 128-23(i), is generally understood to mean a guarantee or formal engagement (such as a pledge) given for the fulfillment of an undertaking.

Department of State Treasurer (DST) staff prepared proposed rule text (1) defining the terms “surety,” “estimated withdrawal liability,” and “non-taxing authority;” and (2) addressing how an otherwise eligible employer that is not a taxing unit, as defined by G.S. 105-273, may provide surety to the Board to establish that any withdrawal liability the employer may incur will be paid. DST staff also prepared a Regulatory and Fiscal Impact Analysis regarding such proposal.

On January 11, 2023, the North Carolina Office of State Budget and Management approved the Regulatory and Fiscal Impact Analysis for publication. Since the impact analysis identified rule changes affecting local government funds, notice and a copy of the Regulatory and Fiscal Impact Analysis were provided to the North Carolina League of Municipalities, the Association of County Commissioners and Fiscal Research Division on January 19, 2023, as required under N.C. Gen. Stat. § 150B-21.4(b) of the Administrative Procedure Act.



During the regular quarterly meeting on January 26, 2023, the Board unanimously voted to approve the proposed rule text and impact analysis. The Board further authorized DST staff to take all additional necessary steps required to complete the permanent rulemaking process in accordance with N.C. Gen. Stat. § 150B-21.2.

The proposed rule text and impact analysis were published in the North Carolina Register (Volume 37, Issue 17) on March 1, 2023, and on DST's N.C. Administrative Code webpage. Notice of rulemaking was also provided to interested persons as required under N.C. Gen. Stat. § 150B-21.2(d). The NC Register started the 60-day public comment period as well as the 15-day period in which a member of the public can request a public hearing. The 15-day public hearing request period expired on March 16, 2023, without any hearing requests having been received. The 60-day public comment period closed on May 1, 2023, without any written or verbal comments on the proposed rule text or impact analysis having been received.

The next step of the permanent rulemaking process calls for the LGERS Board to approve and officially adopt the final rule text and the Regulatory and Fiscal Impact Analysis, copies of which are included in the Board materials for this agenda item. If the Board approves the final rule text and the impact analysis, DST staff will then submit the final rule text to the Rules Review Commission for review at their meeting on September 21, 2023.

Staff recommends the following Board actions:

LGERS Board

As the rulemaking body, the LGERS Board hereby approves and adopts the final rule text and the Regulatory and Fiscal Impact Analysis related to 20 NCAC 02C .0210 and .0211, and authorizes DST staff to take all additional necessary steps required to complete the permanent rulemaking process in accordance with N.C. Gen. Stat. § 150B-21.2.