



MEMORANDUM

TO: Teachers' and State Employees' Retirement System and Local Governmental Employees' Retirement System Boards of Trustees

FROM: Timothy M. Melton, Assistant General Counsel

DATE: April 28, 2022

RE: Decennial Rules Readoption Summary of Rules Proposal

In 2013, the General Assembly enacted N.C.G.S. § 150B-21.3A, which established a process and schedule for agencies to decennially review their active rules codified in the North Carolina Administrative Code (NCAC) with oversight by the Rules Review Commission (RRC). In accordance with Chapter 150B, the Administrative Procedure Act, agencies are required to review their rules at least once every 10 years to determine whether each rule was necessary or unnecessary without substantive public interest. The North Carolina Administrative Code contains Rules related to the administration of the Teachers' and State Employees' Retirement System (TSERS) and Local Governmental Employees' Retirement System (LGERS) programs under Title 20 (State Treasurer), Chapter 02 (Retirement Systems).

During the regular quarterly meeting on October 16, 2017, the TSERS and LGERS Boards of Trustees (Boards) unanimously voted to make the determinations classifying each rule in the Decennial Rules Review Initial Report and to authorize the Department of State Treasurer staff to take all additional necessary steps required to complete the Decennial Rules Review process. The Boards also unanimously voted to make the determination that the rules in the Retirement Inchoate Rules Report protect inchoate or accrued rights of the retirement members. The Decennial Rules Review Initial Report was subsequently published in the North Carolina Register and the public comment period began. The public comment period concluded on January 2, 2018 without any public comments having been received. The Boards unanimously voted at the regular quarterly meeting on January 25, 2018 to make the determinations classifying each rule in the Decennial Rules Review Final Report and to authorize the Department of State Treasurer staff to take all additional necessary steps required to complete the Decennial Rules Review process in accordance with N.C.G.S. § 150B-21.3A. Following the "report and review" phase, Rules that the Boards had deemed unnecessary automatically expired.

On August 16, 2018, the RRC approved the Decennial Rules Review report, which was then submitted to the Joint Legislative Administrative Procedure Oversight Committee. The report became final and effective on October 21, 2018. After consulting with RRC counsel, Department of State Treasurer staff proposed December 31, 2022 as the date by which certain rules must be readopted. It was staff's intention to complete the full update of rules and the required readoption of the TSERS and LGERS rules by the proposed date. During the regular quarterly meeting on January 31, 2019, the Boards unanimously voted to approve the proposed readoption date for such rules to be presented for formal approval by the RRC. Pursuant to N.C.G.S. § 150B-



21.3A(d)(2), the RRC established on February 21, 2019 that the rules shall be readopted no later than December 31, 2022.

Department of State Treasurer staff has since reviewed the rules under 20 NCAC 02 and prepared a proposal of recommendations for maintaining, amending or repealing the respective TSERS and LGERS rules. Department of State Treasurer staff has also prepared a Regulatory and Fiscal Impact Analysis regarding such proposal. The North Carolina Office of State Budget and Management (OSBM) reviewed the Department of State Treasurer's proposed changes in accordance with N.C.G.S. § 150B-21.4 and with Executive Order 70 as amended by Executive Order 48. On April 7, 2022, OSBM approved the regulatory impact analysis for publication. The rules proposal and impact analysis are part of the April 28, 2022 quarterly meeting materials.

If the Boards approve the proposal, the rules will be published in the North Carolina Register starting the 60-day public comment period. Any comments received will be provided for the Boards' review. The final text of the rules will be voted for approval and adoption by the Boards at the October 27, 2022 quarterly meeting. The final text will be considered for approval by the Rules Review Commission at their December 15, 2022 meeting.

Staff recommends the following Board actions:

TSERS Board

As the rulemaking body, the TSERS Board hereby approves the proposal and the Regulatory and Fiscal Impact Analysis regarding the rules related to the programs administered by the TSERS Board and authorizes the Department of State Treasurer staff to take all additional necessary steps required to complete the Decennial Rules Review process in accordance with N.C.G.S. § 150B-21.3A.

LGERS Board

As the rulemaking body, the LGERS Board hereby approves the proposal and the Regulatory and Fiscal Impact Analysis regarding the rules related to the programs administered by the LGERS Board and authorizes the Department of State Treasurer staff to take all additional necessary steps required to complete the Decennial Rules Review process in accordance with N.C.G.S. § 150B-21.3A.