



## MEMORANDUM

TO: Local Governmental Employees' Retirement System Boards of Trustees

FROM: Timothy M. Melton, Assistant General Counsel

DATE: January 26, 2023

RE: Summary of LGERS Surety Administrative Rules Proposal

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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,” used in G.S. 128-23(i), means a guarantee or formal engagement (such as a pledge) given for the fulfillment of an undertaking. The North Carolina Administrative Code (NCAC) contains Rules related to the administration of LGERS under Subchapter 02C of Title 20. Department of State Treasurer (DST) staff prepared proposed rule text 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. The impact analysis and proposed rule text (Appendix A of the impact analysis) are included in the Board materials for this agenda item.

On January 11, 2023, the North Carolina Office of State Budget and Management approved the impact analysis for publication. The next step of the permanent rulemaking process calls for the LGERS Board to approve the proposed rule text and the Regulatory and Fiscal Impact Analysis. If the Board approves the proposed text and impact analysis, DST staff will submit them to the Office of Administrative Hearings to be published in the North Carolina Register. The publication will start



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STATE TREASURER OF NORTH CAROLINA  
DALE R. FOLWELL, CPA

the 60-day public comment period and the 15-day period in which a member of the public can request a public hearing.

**Staff recommends the following Board actions:**

*LGERS Board*

As the rulemaking body, the LGERS Board hereby approves the proposed 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.