

Regulatory and Fiscal Impact Analysis: Proposal of Administrative Rule 20 NCAC 02C .0210 and .0211

Agency: Local Governmental Employees' Retirement System Board of Trustees

Rule Citation(s): 20 NCAC 02C .0210 and .0211
(See Appendix A for proposed Rule text)

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Rulemaking Authority: G.S. 128-23(i); G.S. 128-28(g)

Impact Summary: State Government: Uncertain (likely yes)
Local Government: Yes
Private Entities: Uncertain (likely yes)
Substantial Impact: Uncertain (likely yes)

I. Introduction

The Local Governmental Employees' Retirement System ("LGERS") is administered by a Board of Trustees ("Board") pursuant to G.S. 128-22. Staffing for the Board 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 LGERS under Title 20 (State Treasurer), Chapter 02 (Retirement Systems), Subchapters 02A (Divisional Rules) and 02C (LGERS).

LGERS is a governmental pension plan 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, who are also "taxing units" as defined by G.S. 105-273. 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. 128-30(i) provides a process for an employing unit to cease participation in, or "withdraw" from, LGERS. This may occur if the General Assembly allows the unit to cease participation, or if the unit undergoes sale, dissolution, or a change to a business or legal form making it ineligible for participation in LGERS under federal law. Employer withdrawal requires payment of a withdrawal liability specific to each employer and determined by a mathematical formula under G.S. 128-30(i)(5).

In 2022, the General Assembly enacted Session Law 2022-70, adding subsection G.S. 128-23(i) to the General Statutes. That subsection provides: "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.” Session Law 2022-70 provided that the Board “shall adopt rules necessary to enforce this [provision] by August 1, 2023.”

Accordingly, this proposal includes a recommended administrative rule 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 establishing that any withdrawal liability that the employer may incur will be paid. For purposes of this analysis, we refer to such units as non-taxing authorities (“NTAs”).

The term “surety,” used in G.S. 128-23(i), means “a formal engagement (such as a pledge) given for the fulfillment of an undertaking; guarantee.” This is the second listed definition in the Merriam-Webster dictionary, which seems clearly more applicable to the context of G.S. 128-23(i) than the first definition, “the state of being sure.” (“Surety.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/surety>. Accessed 18 Nov. 2022.)

II. Description and Impact Analysis

Purpose	Establish administrative rule as required by G.S. 128-23(i) to define the process for NTAs seeking participation in LGERS to provide surety that any withdrawal liability the employer may incur will be paid.
Rule Section	Rule 20 NCAC 02C .0210 and .0211
Addition/Modification	Addition.
Baseline Condition	<p>Currently, for each potential employer applying to join LGERS, whether a taxing unit or NTA, the Board reviews the financial condition of the employer to evaluate the employer’s preparedness to meet contribution requirements. There is currently no statutory or administrative requirement for NTAs to provide surety regarding potential withdrawal liabilities. If the employer joins LGERS and then later withdraws from LGERS, the employer must pay the withdrawal liability upon withdrawal.</p> <p>G.S. 128-23(i) requires that there be a surety process in place for NTAs applying to join after September 1, 2023. The current baseline condition is that statute requires such a process in the future, but there is no process until the Board adopts a Rule pursuant to G.S. 128-23(i).</p> <p><u>Data Regarding Units Not Participating in LGERS</u></p> <p>NTAs seeking to join LGERS are typically one of four types of entities: airport authorities (“AAs”), economic development commissions (“EDCs”), housing authorities (“HAs”), and tourism development authorities (“TDAs”). Other NTAs may apply to join LGERS – for example, transportation authorities, utility authorities, regional libraries, or entities (or types of entities) not yet created. However, RSD’s experience in recent years is that applying and inquiring NTA entities have tended to be AAs, EDCs, HAs, or TDAs. Therefore, the analysis is based on these four types of entities with an assumption for “miscellaneous applicants” added on.</p> <p>Following is approximate information for each of these types of entities, regarding the number of units currently participating and not participating in LGERS. Also, for each type of entity, the table shows the average number of employees and the</p>

average total annual payroll per employer (i.e., retirement-eligible compensation paid to employees in calendar year 2021) for the units who participate in LGERS.

	NTA Units in LGERS	NTA Units Not in LGERS (Note 1)	Avg. # Employees for NTA Units in LGERS (Note 2)	Avg. Annual Payroll for NTA Units in LGERS (Note 3)
AA	11	98	44	\$2,926,679
EDC	8	55	13	\$773,151
HA	52	71	23	\$1,147,341
TDA	15	68	19	\$1,284,503
Total	86	292	24	\$1,364,046

Note 1: The number of “Units Not in LGERS” is an approximation because additional units could be created in the future. Some of the “Units Not in LGERS” might not be eligible for participation in LGERS if they applied – for example they may be non-governmental entities or departments of municipalities that already participate in LGERS. The number of “Units Not in LGERS” is subject to the following assumptions and simplifications when making the estimate:

- For AAs, this analysis uses the “Quick Find Airport Index” of the 2019-20 Airport Guide published by the N.C. Department of Transportation, Division of Aviation. For purposes of this analysis, each airport on the list is assumed to have an AA, which will tend to overstate the number of AAs. One airport who participates in LGERS only with respect to its Law Enforcement Officers, as described in G.S. 128-23(g), was counted as a “Unit Not in LGERS” because it has not elected to participate with respect to its other employees.
- For EDCs, the “Units Not in LGERS” are based on the public membership roster of the N.C. Economic Development Association, removing entities that are clearly county government departments, chambers of commerce, or EDCs that participate in LGERS.
- For HAs, the total list in N.C. is taken from the website of the U.S. Department of Housing and Urban Development.
- For TDAs, the Economic Development Partnership of N.C. (EDPNC) provided RSD with a list of EDPNC’s local tourism organizational contacts. EDCs, chambers of commerce, and departments of county or municipality government were excluded from the TDA group in the analysis.

Note 2: The number in each row for AA, EDC, HA, and TDA is the average number of LGERS-eligible employees for employers in that category who currently participate in LGERS. The “Total” number of 24 is a weighted average of the number of employees. That is, it is equal to $(11 \times 44) + (8 \times 13) + (52 \times 23) + (15 \times 19)$, then divided by 86 and rounded to the nearest whole number.

Note 3: The number in each row for AA, EDC, HA, and TDA is the average annual payroll eligible for LGERS recognition as “compensation” in the calendar year 2021, for employers in that category who currently participate in LGERS. The “Total” number of \$1,364,046 is a weighted average, calculated similarly to the description in Note 2.

Data Regarding Typical Amount of Withdrawal Liabilities

During the years 2016-2022, RSD’s independent consulting actuary has 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

	<p>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, to avoid double-counting.</p> <p>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.</p> <p><u>Data and Assumptions Regarding NTAs Joining and Withdrawing from LGERS</u> This analysis assumes that one NTA per year would apply to join LGERS after the surety provision becomes effective. In the seven calendar years 2016 through 2022, seven NTAs enrolled in LGERS as participating employers. This was an average of one per year. ABC Boards are not included in this figure as they are no longer prospectively eligible to join LGERS as participating employers (G.S. 128-23(h)).</p> <p>In the past, it has been relatively rare for employers (including NTAs) to withdraw from LGERS. No NTAs or other employers have withdrawn from LGERS in the seven calendar years 2016 through 2022. For purposes of this analysis, it is assumed that no NTAs will withdraw from LGERS in the foreseeable future. In reality, there will likely be one or more NTAs that withdraw in the distant future, but there is not data that allows us to reasonably predict the likelihood or timing of such future withdrawals.</p>
<p><i>Proposed Change</i></p>	<p>Consistent with G.S. 128-23(i), the proposal describes a process for NTAs to provide surety establishing how a withdrawal liability would be paid if incurred.</p> <p>The proposal would require that, prior to accepting the NTA’s surety, RSD must provide the NTA with a calculation of the Estimated Withdrawal Liability (“EWL”). The EWL is the amount estimated by RSD’s independent consulting actuary to be required as a withdrawal liability payment if the NTA were to participate in LGERS for ten years and then withdraw from LGERS.</p> <p>The proposal would further require that, prior to providing surety, the NTA must submit to RSD an “acknowledgement and acceptance letter” signed by every member of the NTA’s governing board. The letter must acknowledge the specific amount of the EWL; acknowledge that the actual amount of the withdrawal liability if incurred will differ from the EWL; accept the NTA’s obligation to pay the withdrawal liability if incurred; and attest that the NTA has reviewed the withdrawal-related requirements of G.S. 128-30(i). The letter must also state that the NTA is maintaining, and will continue to maintain, an amount at least equal to the EWL in one of the following five options (or any of them in combination): an escrow account, a letter of credit, a bond, a deed of trust, or a deposit in the Ancillary Governmental Participant Investment Program (AGPIP) under G.S. 147-69.3 to the extent such an investment by the NTA is permitted by the Internal Revenue Code and State law.</p>

	<p>Providing surety is a voluntary decision of the NTA and is part of the voluntary process of joining LGERS. RSD staff believes that the proposal provides NTAs with means to satisfy the definition of “surety.”</p>
<p>Alternatives</p>	<p>The amount of a withdrawal liability is calculated as of the “complete withdrawal date” under G.S. 128-30(i)(2). That date, by definition, will occur after (usually, long after) the employer has joined LGERS. The actuarial position of LGERS as of that date, and the withdrawing employer’s workforce details as of that date, cannot be known at the time the employer joins LGERS. Therefore, the amount of a withdrawal liability the employer may incur cannot be known at the time of joining LGERS. It can only be estimated. Such an estimate should be performed by a qualified actuary. At the same time, S.L. 2022-70 requires a Rule describing how the NTA will demonstrate its ability to “cover a withdrawal liability” before it “commence(s) participation” in LGERS. Therefore, viable alternatives to the proposal would need to incorporate the Session Law’s requirement of “surety” and its clear requirement that the withdrawal liability be “covered,” while recognizing that at the point of joining LGERS, the withdrawal liability can only be estimated.</p> <p>One viable alternative would be to require surety in an amount more than the EWL, recognizing that the EWL is only an estimate. For example, the surety could be required in an amount equal to 150% of the EWL to provide an even more certain guarantee that sufficient funds will be available for payment of the withdrawal liability, allowing for variance from the actuary’s estimate. The proposal is preferable to this alternative because it reduces the burden on the NTA relative to the alternative. In the view of RSD staff, an amount equal to 100% of the EWL can be said to provide “surety” without further increasing the financial burden on the NTA.</p> <p>A second viable alternative would be to define the EWL under the assumption that the employer would participate in LGERS for longer than ten years before withdrawing. For example, the assumption could be that the employer would participate in LGERS for twenty, thirty, or fifty years before withdrawing. This would almost certainly increase the amount of the EWL, and therefore, the amount of surety required, primarily because of the effects of employees earning additional service with longer participation in LGERS and further salary increases prior to withdrawal. Again, the proposal is preferable to this alternative because it reduces the burden on the NTA relative to the alternative. Because withdrawal of NTAs is extremely rare, it would be reasonable to assume a median participation period of many more than ten years prior to withdrawal. However, RSD staff believes that an assumption of ten years is a minimum period that can be said to provide “surety”; and there is support in the TSERS statutes for the reasonableness of a ten-year assumption for awareness of the withdrawal liability that could be required. See G.S. 135-5.3(b5) pertaining to charter schools.</p> <p>In developing this proposal, staff considered several alternatives that were deemed non-viable. These included the following:</p> <ul style="list-style-type: none"> • Maintaining the Baseline Condition (where surety is not required to commence participation in LGERS) is not viable because Session Law 2022-70 directs the Board to adopt a Rule providing for a surety process. • Allowing taxing units to promise to pay the withdrawal liability, if incurred, on behalf of NTAs in their jurisdiction is not viable because of significant questions about the authority of taxing units’ governing boards to provide such assurance in a binding manner.

	<ul style="list-style-type: none"> • Allowing the amount of the surety to be less than the EWL is not viable because it would not provide a sufficient guarantee for payment of any withdrawal liability that may be incurred.
Benefit	<p>The proposal would provide a benefit to NTAs seeking to join LGERS after September 1, 2023. Namely, it would provide a pathway for such NTAs to join LGERS. Without a Rule in place, G.S. 128-23(i) would provide no such pathway.</p> <p>The proposal would also provide a potential benefit to LGERS and its members in the event that an NTA withdraws from LGERS in the future. Having to provide a surety upon joining should reduce the risk that an NTA would default on its obligation to pay the required withdrawal liability.</p>
Impact	<p>For <u>private entities</u>, the proposal would have uncertain impacts.</p> <ul style="list-style-type: none"> • NTA employees who become members of LGERS under the proposal would make mandatory contributions to LGERS equal to 6% of their qualifying compensation, and would be entitled to the benefits of membership in LGERS, including potential service retirement benefits, disability retirement benefits, returns of contributions, or death benefits. Their employers may also adjust their salaries or other benefits due to budgetary needs resulting from participation in LGERS. • For NTA employees who would have become members of LGERS if not for the surety requirement, but will not become members under this proposal, the reverse impacts would apply. For example, they would not make mandatory contributions to LGERS and would not qualify for benefits of membership in LGERS. • Private entities functioning as surety, such as financial institutions holding the surety funds, might experience impacts due to their voluntary participation in the business of providing surety. For example, they may collect customer fees or premiums, make payments to customers, or experience investment gains or losses associated with holding the funds. • Because of the dependency of the above outcomes on personal and organizational behavioral patterns that cannot reasonably be predicted, these impacts on private entities are not quantified in this analysis. <p>For <u>State government</u>, the proposal would have uncertain impacts.</p> <ul style="list-style-type: none"> • The State, through the Department of State Treasurer, administers LGERS. This proposal is not assumed to increase or decrease the administrative costs of administering LGERS. Compared to the Baseline Condition where surety is not required, it seems the surety requirement and associated Rule could only decrease the number of NTAs who seek to join LGERS. However, for those who do join, there would be additional work for Department staff to review and implement the surety provision in each case. Although this review and implementation work is not part of the Baseline Condition, it is required by G.S. 128-23(i) in order to permit approval of any NTA application to join LGERS effective after September 1, 2023. • The Department of State Treasurer also administers the AGPIP, which is one possible vehicle that the proposal identifies for the provision of surety. Among those NTAs seeking to join LGERS under the proposal, a subset might choose to provide surety using the AGPIP, which would result in an uncertain and unquantifiable impact to State government. • Because of the dependency of the above outcomes on personal and organizational behavioral patterns that cannot reasonably be predicted, these impacts on State government are not quantified in this analysis.

For local governments, this proposal would have an estimable financial impact. The entities potentially impacted would be NTAs that might apply to join LGERS with an effective date after September 1, 2023. The information used in this analysis indicates that there may be as many as 350 such NTAs. This is based on the 292 “Units Not in LGERS” plus a margin for “miscellaneous applicants,” described in the “Baseline Condition” section. The units participating in LGERS as of June 30, 2022 are listed in Appendix J to the LGERS 2021 Actuarial Valuation Report, available at <https://www.myncretirement.com> under “Governance” and “Valuations.” The specific group of entities that could be impacted would include any NTA that already exists, or may exist in the future, not listed in Appendix J.

The proposal would impact only NTAs undertaking the voluntary process of applying to join LGERS.

The types of expenditures required under the proposal are as follows: NTAs would experience a cost in the year when they join LGERS, from the commitment of resources associated with providing surety. For NTAs that withdraw from LGERS in the future, the surety requirement can be thought of as shifting their withdrawal liability costs earlier (from withdrawal year to joining year). In other words, withdrawing NTAs would be able to use resources committed in an earlier year (not the year of withdrawal) to satisfy the withdrawal liability, in whole or in part. Because it is rare for an entity to withdraw from LGERS, and because it is not possible to predict the likelihood or timing of future NTA withdrawals, we assumed that no NTAs that provide surety under the proposed rules will withdraw in the foreseeable future.

Key Assumptions

As indicated in the Baseline section, the analysis assumes that one NTA per year would join LGERS after the surety provision becomes effective.

It is estimated that an average withdrawal liability for these NTAs, if incurred, would have a present value of \$2,468,923. This is equal to the average 2021 payroll of NTAs participating in LGERS (\$1,364,046), multiplied by the average of the observed withdrawal liabilities as a percentage of annual payroll (181%). These figures are further described in the Baseline section. A concept inherent in this assumption is that the nominal annual growth in average withdrawal liabilities (due to payroll growth and changes in interest rates, employee populations, and the funded condition of LGERS) would be 7% per year, equaling the 7% discount rate specified by G.S. 150B-21.4(b1) when determining the present value (PV). It is further assumed that the EWL calculated by the consulting actuary when the NTAs join LGERS would be \$2,468,923 on average.

The \$2,468,923 figure is an average. The amount incurred by an NTA can be thought of as depending on two factors.

- The first is the extent to which the NTA’s payroll differs from the average \$1,364,046 payroll. The payrolls for the NTAs in question are not currently known to the Retirement Systems, since the NTAs in question do not participate in LGERS. The \$1,364,046 figure is based on NTAs that currently participate in LGERS.
- The second is the extent to which the withdrawal liability relative to the payroll differs from 181%. As described in the Baseline section, the relationship has been observed in 16 calculations to be from 48% to 607% of the annual payroll. Because of the particular degree of variability in this assumption, in addition to the “average” assumption of 181%, this analysis

further examines a “sensitivity range” of possible outcomes in this assumption. The low end of the sensitivity range is selected to be 92% of annual payroll, because out of the 16 observations, 12 of them (75%) were at least equal to 92% of the employer’s annual payroll. The high end of the sensitivity range is selected to be 210% of annual payroll, because out of the 16 observations, 12 of them (75%) were no greater than 210% of the employer’s annual payroll. It is therefore reasonable to assume that on average, if a significant number of NTAs withdraw from LGERS in the future, their withdrawal liabilities on average would be between 92% and 210% of their total annual payrolls.

Impact on NTAs Electing to Join LGERS

NTAs would set aside funds at least equal to the EWL. Under the assumptions of this analysis, one NTA per year would be required to set aside an amount with PV \$2,468,923. This would be a financial cost to the NTA in the year of joining LGERS.

In the event that an NTA were to withdraw from LGERS in a future year, the NTA would be able to use the funds that were set aside as surety to satisfy their actual withdrawal liability, either in part or in whole. As explained above, this should be considered a shifting (in time) of costs rather than a true benefit. Because withdrawal of entities from LGERS is rare, it would be reasonable to assume a median participation period of more than ten years prior to withdrawal.

Sensitivity Range

The following table provides a sensitivity analysis around the estimated average annual costs beginning in 2024. The table shows the estimated average withdrawal liabilities at 181% of annual payrolls (“Average” line), and also “Low” and “High” scenarios where the average withdrawal liabilities would be 92% and 210%, respectively, of annual payrolls.

Ann. Avg. Impacts beginning in Year 2024	PV Cost to NTAs Joining (2023\$)
Low (92%)	\$1,254,922
Average (181%)	\$2,468,923
High (210%)	\$2,864,497

The quantified costs are estimated to have present value of \$1,254,922 to \$2,864,497 (best estimate \$2,468,923) per year on average. These costs would be incurred by the local government NTA that opts to join LGERS.

Impacts Not Quantified

As further described above, this analysis does not attempt to quantify the effect that the existence of the surety provision has on an NTA’s decision to apply (or not apply) for participation in LGERS, or the consequences that a decision to apply (or not apply) for participation in LGERS might have on private entities, State government, or local

	<p>government. For example, if an NTA that otherwise would have joined LGERS decides not to apply because of the surety requirement, it would affect the take-home salary and future pension amounts of the NTA’s employees, the pension contribution requirements and associated opportunity costs for local governments, and the State government’s cost of LGERS administration. However, those tradeoffs are not quantified in this analysis. G.S. 128-23(i) requires that surety be provided.</p> <p>This analysis also does not attempt to quantify the potential benefit to LGERS and its members in the event that an NTA withdraws from LGERS in the future. Having to provide a surety upon joining should reduce the risk that an NTA would default on its obligation to pay the required withdrawal liability.</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 as required by G.S. 128-23(i) to define the process for NTAs seeking participation in LGERS to provide surety that any withdrawal liability the employer may incur will be paid.	<p>The proposal would provide a potential benefit to NTAs seeking to join LGERS after September 1, 2023. Namely, it would provide a pathway for such NTAs to join LGERS. Without a Rule in place, G.S. 128-23(i) would provide no such pathway.</p> <p>The proposal will also result in costs to NTAs seeking to join LGERS in that they will be required to provide a surety.</p> <p>Finally, it also provides a potential benefit to LGERS and its members in the form of reduced risk of an NTA defaulting on its future obligation to pay a withdrawal liability.</p>

The fiscal benefits or costs are summarized as follows.

Benefits

- Private Entities.
 - Uncertain and not quantified. For example, individuals who participate in LGERS as a result of the Rule would be eligible for retirement benefits in exchange for required contributions. Individuals who do not participate in LGERS as a result of the Rule would retain the required contributions they otherwise would have made, but would not receive the benefits of LGERS membership. Private entities functioning as surety would experience financial transactions (both inflows and outflows) as a result of providing surety.
- Local Governments.
 - Potential reduced commitment of resources by non-taxing authorities toward withdrawal liabilities in the year of their withdrawal from LGERS, because the resources were committed in an earlier year (at the time of joining LGERS).

- State Government.
 - Uncertain and not quantified. For example, the State may experience increased or decreased costs of administering LGERS as a result of the Rule. The State may also experience financial impacts to the degree that NTAs choose to comply with the Rule by investing in the AGPIP. There would be reduced risk to LGERS from NTAs defaulting on future withdrawal liability payments.

Costs

- Private Entities.
 - Uncertain and not quantified. See above under “Benefits.”
- Local Governments.
 - \$1,254,922 to \$2,864,497 (best estimate \$2,468,923) in resources committed by non-taxing authorities providing surety when joining LGERS.
- State Government.
 - Uncertain and not quantified. See above under “Benefits.”
- Total Quantified Annual Costs: \$1,254,922 to \$2,864,497 (best estimate \$2,468,923).

Appendix A

20 NCAC 02C .0210 DEFINITIONS

- (a) “Surety” means a written agreement given for the fulfillment and guarantee of the withdrawal payment to cease participation in the Retirement System under G.S. 128-30(i).
- (b) “Estimated Withdrawal Liability” means the withdrawal liability under the terms of G.S. 128-30(i) estimated by the Division’s consulting actuary. The estimate shall be prepared under the assumption that the participating employer will cease participation ten years after initial participation.
- (c) “Non-taxing authority” (“NTA”) means as an otherwise eligible employer that is not a taxing unit, as defined by G.S. 105-273(16).

History Note: *Authority G.S.128-23(i)*
 Eff.

20 NCAC 02C .0211 SURETY FOR NON-TAXING AUTHORITY PARTICIPATION

- (a) An NTA shall provide surety to the Board establishing that any withdrawal liability that the NTA may incur will be paid by submitting a duly adopted resolution stating that the NTA is maintaining an amount equal to or greater than the Estimated Withdrawal Liability in a secure financial instrument and will maintain the funds in such instrument throughout its participation in the Retirement System. A secure financial instrument may include: an escrow account, a letter of credit, a bond, a deed of trust, or a deposit in the Ancillary Governmental Participant Investment Program (AGPIP) under G.S. 147-69.3 to the extent such an investment by the NTA is permitted by the Internal Revenue Code and State law.
- (b) Any entity submitting a resolution required under Paragraph (a) of this Rule must also submit to the Division an “acknowledgement and acceptance letter” signed by every member of the entity’s governing board. The letter must acknowledge the specific amount of the Estimated Withdrawal Liability; acknowledge that the actual amount of the withdrawal liability, if incurred, will differ from the Estimated Withdrawal Liability; accept the obligation to pay the withdrawal liability, if incurred; and attest that the entity has reviewed the withdrawal-related requirements of G.S. 128-30(i).

History Note: *Authority G.S. 128-23(i)*
 Eff.