

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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SENATE BILL 668  
Pensions and Retirement and Aging Committee Substitute Adopted 5/6/21

Short Title: Anti-Pension Spiking Amds & Litig. Moratorium. (Public)

Sponsors:

Referred to:

April 8, 2021

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COLLECTION OF ADDITIONAL CONTRIBUTIONS FROM EMPLOYING UNITS; TO ADDRESS RESPONSIBILITIES FOR CONTRIBUTION-BASED BENEFIT CAP LIABILITIES WHEN THE FINAL EMPLOYER OF A MEMBER IS NOT THE MEMBER'S EMPLOYER FOR AVERAGE FINAL COMPENSATION CALCULATIONS AND TO ADJUST THE FORMULA FOR REDUCED RETIREMENTS WITH CONTRIBUTION-BASED BENEFIT CAP LIABILITIES UNDER THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM; TO PUT A LITIGATION PAUSE IN PLACE AND ESTABLISH A WORKGROUP THAT MAY REPORT TO THE GENERAL ASSEMBLY; AND TO PROVIDE EARLY NOTIFICATION TO THE LOCAL GOVERNMENT COMMISSION OF PROPOSED FINANCING ARRANGEMENTS.

The General Assembly of North Carolina enacts:

**PART I. AUTHORIZATION TO COLLECT ADDITIONAL CONTRIBUTIONS FROM EMPLOYING UNITS UNDER THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM FOR PENSION SPIKING LIABILITIES**

**SECTION 1.1.(a)** G.S. 128-30(d) is amended by adding a new subdivision to read:

"(4a) Notwithstanding Chapter 150B of the General Statutes, as of the beginning of the fiscal year following 90 days after the assessment of a contribution-based benefit cap liability that is not paid as a lump sum payment, the required employer contribution rate for an employer shall be adjusted to include an additional contribution amount equal to a rate per centum that is estimated to extinguish the contribution-based benefit cap liability on an amortization schedule selected by the Board that has been applied to unfunded liabilities in the most recent actuarial valuation."

**SECTION 1.1.(b)** G.S. 135-8(f) is amended by adding a new subdivision to read:

"(5) Notwithstanding Chapter 150B of the General Statutes, as of the beginning of the fiscal year following 90 days after the assessment of a contribution-based benefit cap liability that is not paid as a lump sum payment, the required employer contribution rate for an employer shall be adjusted to include an additional contribution amount equal to a rate per centum that is estimated to extinguish the contribution-based benefit cap liability on an amortization



1 schedule selected by the Board that has been applied to unfunded liabilities in  
2 the most recent actuarial valuation."

3 **SECTION 1.1.(c)** G.S. 128-26(y) reads as rewritten:

4 "(y) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement  
5 allowance is subject to an adjustment pursuant to the contribution-based benefit cap established  
6 in G.S. 128-27(a3), the retirement system shall notify the member and the member's employer  
7 that the member's retirement allowance has been capped. The retirement system shall compute  
8 and notify the member and the member's employer of the total additional amount the member  
9 would need to contribute in order to make the member not subject to the contribution-based  
10 benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity  
11 adjusted for the age of the member at the time of retirement, or when appropriate, the age at the  
12 time of the member's death that would have had to have been purchased to increase the member's  
13 benefit to the pre-cap level. Except as otherwise provided in this subsection, the member shall  
14 have until 90 days after notification regarding this additional amount or until 90 days after the  
15 effective date of retirement, whichever is later, to submit a lump sum payment to the annuity  
16 savings fund in order for the retirement system to restore the retirement allowance to the  
17 uncapped amount. Nothing contained in this subsection shall prevent an employer from paying  
18 all or part of the cost of the amount necessary to restore the member's retirement allowance to  
19 the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum,  
20 and notwithstanding Chapter 150B of the General Statutes, the retirement system may allow an  
21 employer of a member who became a member before January 1, 2015, or who has not earned at  
22 least five years of membership service in the retirement system after January 1, 2015, to pay the  
23 ~~lump sum additional~~ amount required in this subsection ~~on an installment payment plan under~~  
24 over an extended period using one of the following ~~two~~ three options:

- 25 (1) Option one. – An installment payment plan ending no more than 15 months  
26 after the retirement of the member.
- 27 (2) Option two. – An installment payment plan beginning no less than 90 days  
28 after the retirement of the member and ending no more than 27 months after  
29 the retirement of the member. Interest shall be assessed on the principal  
30 amount of the contribution-based benefit cap liability owed and applied to any  
31 installment payment plan term exceeding 12 months at a rate corresponding  
32 with the interest rate assumption based on the most recent actuarial valuation  
33 approved by the Board of Trustees.
- 34 (3) Option three. – An adjustment to the required employer contribution rate for  
35 the employer as provided in G.S. 128-30(d)(4a).

36 Payment under ~~both installment plans~~ the selected option must be completed regardless of  
37 whether the member continues to receive a recurring monthly retirement benefit through the end  
38 of the ~~installment extended payment period~~. An employer's continuing compliance with a  
39 payment option selected from the three options above will be deemed payment of the employer's  
40 additional contribution required by this subsection for purposes of G.S. 128-30(b)(3)."

41 **SECTION 1.1.(d)** G.S. 135-4(jj) reads as rewritten:

42 "(jj) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement  
43 allowance is subject to an adjustment pursuant to the contribution-based benefit cap established  
44 in G.S. 135-5(a3), the retirement system shall notify the member and the member's employer that  
45 the member's retirement allowance has been capped. The retirement system shall compute and  
46 notify the member and the member's employer of the total additional amount the member would  
47 need to contribute in order to make the member not subject to the contribution-based benefit cap.  
48 This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for  
49 the age of the member at the time of retirement, or when appropriate, the age at the time of the  
50 member's death that would have had to have been purchased to increase the member's benefit to  
51 the pre-cap level. Except as otherwise provided in this subsection, the member shall have until

1 90 days after notification regarding this additional amount or until 90 days after the effective date  
 2 of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in  
 3 order for the retirement system to restore the retirement allowance to the uncapped amount.  
 4 Nothing contained in this subsection shall prevent an employer from paying all or part of the cost  
 5 of the amount necessary to restore the member's retirement allowance to the pre-cap amount.  
 6 Notwithstanding the requirement that the payment be made as a lump sum, and notwithstanding  
 7 Chapter 150B of the General Statutes, the retirement system may allow an employer of a member  
 8 who became a member before January 1, 2015, or who has not earned at least five years of  
 9 membership service in the retirement system after January 1, 2015, to pay the ~~lump sum~~  
 10 additional amount required in this subsection on an installment payment plan under over an  
 11 extended period using one of the following ~~two~~ three options:

- 12 (1) Option one. – An installment payment plan ending no more than 15 months  
 13 after the retirement of the member.  
 14 (2) Option two. – An installment payment plan ending no more than 27 months  
 15 after the retirement of the member. Interest shall be assessed on the principal  
 16 amount of the contribution-based benefit cap liability owed and applied to any  
 17 installment payment plan term exceeding 12 months at a rate corresponding  
 18 with the interest rate assumption based on the most recent actuarial valuation  
 19 approved by the Board of Trustees.  
 20 (3) Option three. – An adjustment to the required employer contribution rate for  
 21 the employer as provided in G.S. 135-8(f)(5).

22 Payment under ~~both installment plans~~ the selected option must be completed regardless of  
 23 whether the member continues to receive a recurring monthly retirement benefit through the end  
 24 of the ~~installment~~ extended payment period. An employer's continuing compliance with a  
 25 payment option selected from the three options above will be deemed payment of the employer's  
 26 additional contribution required by this subsection for purposes of G.S. 135-8(f)(3)."

27 **SECTION 1.1.(e)** This section is effective when this act becomes law and applies to  
 28 assessments imposed on or after that date.  
 29

30 **PART II. ADDRESSING RESPONSIBILITIES FOR CONTRIBUTION-BASED**  
 31 **BENEFIT CAP (CBCB) LIABILITIES WHEN THE FINAL EMPLOYER OF A**  
 32 **MEMBER IS NOT THE MEMBER'S EMPLOYER FOR AVERAGE FINAL**  
 33 **COMPENSATION CALCULATIONS AND ADJUSTING THE FORMULA FOR**  
 34 **REDUCED RETIREMENTS WITH CONTRIBUTION-BASED BENEFIT CAP (CBCB)**  
 35 **LIABILITIES**

36 **SECTION 2.1.(a)** G.S. 135-1 reads as rewritten:

37 **"§ 135-1. Definitions.**

38 The following words and phrases as used in this Chapter, unless a different meaning is plainly  
 39 required by the context, shall have the following meanings:

40 ...  
 41 (4a) "Annualized final compensation" means the compensation received during the  
 42 final year of service that is included in the member's average final  
 43 compensation.

44 (4b) "Authorized representatives who are assisting the Retirement Systems  
 45 Division staff" means only other staff of the Department of State Treasurer,  
 46 staff of the Department of Justice, or persons providing internal auditing  
 47 assistance required under G.S. 143-746(b).

48 ...."

49 **SECTION 2.1.(b)** G.S. 135-5(a3) reads as rewritten:

50 "(a3) Anti-Pension-Spiking Contribution-Based Benefit Cap. – Notwithstanding any other  
 51 provision of this section, section to the contrary and except as provided for under this subsection,

1 every service retirement allowance provided under this section for members who retire on or  
2 after January 1, 2015, is subject to adjustment pursuant to a contribution-based benefit cap under  
3 this subsection. The Board of Trustees shall adopt a contribution-based benefit cap factor  
4 recommended by the actuary, based upon actual experience, such that no more than  
5 three-quarters of one percent (0.75%) of retirement allowances are expected to be capped. The  
6 Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based  
7 upon the five-year experience study as required by G.S. 135-6(n). Prior to establishing a service  
8 retirement allowance under this section, the Board ~~shall~~ shall do all of the following:

- 9 (1) Determine an amount equal to the member's accumulated contributions as  
10 required under G.S. 135-8(b)(1) for all years during which the member earned  
11 membership service, other than service earned through armed service credit  
12 under G.S. 135-4(f) or G.S. 135-4(g), used in the calculation of the retirement  
13 allowance that the member would receive under this section.
- 14 (2) Determine the amount of a single life annuity that is the actuarial equivalent  
15 of the amount determined under subdivision (1) of this subsection, adjusted  
16 for the age of the member at the time of retirement or, when appropriate, the  
17 age at the time of the member's death.
- 18 (3) Multiply the annuity amount determined under subdivision (2) of this  
19 subsection by the contribution-based benefit cap factor.
- 20 (4) Determine the amount of the retirement allowance that results from the  
21 member's membership service.

22 The product of the multiplication in subdivision (3) of this subsection is the member's  
23 contribution-based benefit cap. ~~If Except as provided in this subsection, if~~ the amount determined  
24 under subdivision (4) of this subsection exceeds the member's contribution-based benefit cap,  
25 then the member's retirement allowance shall be reduced by an amount equal to the difference  
26 between the contribution-based benefit cap and the amount determined under subdivision (4) of  
27 this subsection.

28 ~~Notwithstanding the foregoing, the~~ The retirement allowance of a member with an average  
29 final compensation of less than one hundred thousand dollars (\$100,000), as hereinafter indexed,  
30 shall not be subject to the contribution-based benefit cap. The retirement allowance of a member  
31 with an average final compensation of more than one hundred thousand dollars (\$100,000), as  
32 hereinafter indexed, shall not be subject to the contribution-based benefit cap if the compensation  
33 was earned from multiple simultaneous employers, unless an employer's share of the annualized  
34 average final compensation exceeds one hundred thousand dollars (\$100,000), as hereinafter  
35 indexed. The minimum average final compensation necessary for a retirement allowance to be  
36 subject to the contribution-based benefit cap shall be increased on January 1 each year by the  
37 percent change between the June Consumer Price Index in the year prior to retirement and the  
38 June Consumer Price Index in the fiscal year most recently ended, calculated to the nearest tenth  
39 of a percent (0.1%), provided that this percent change is positive.

40 ~~Notwithstanding the foregoing, the~~ If the retirement allowance of a member who became a  
41 member before January 1, 2015, or who has not earned at least five years of membership service  
42 in the Retirement System after January 1, 2015, exceeds the member's contribution-based benefit  
43 cap, then that member's retirement allowance shall not be reduced; however, the member's last  
44 employer shall be required to make an additional contribution as specified in G.S. 135-8(f)(2)f.,  
45 if applicable. an additional contribution, as calculated under G.S. 135-4(jj) and in accordance with  
46 G.S. 135-8(f)(2)f., shall be required. This additional contribution shall be required from the  
47 following: (i) if the member's annualized final compensation from the member's last employer is  
48 one hundred thousand dollars (\$100,000) or more, as indexed under this section, then the  
49 additional contribution shall be required from the member's last employer; (ii) if the member's  
50 annualized final compensation from the member's last employer is less than one hundred  
51 thousand dollars (\$100,000), as indexed under this section, and if the member was not eligible to

1 retire with an unreduced benefit at the time of hire by the last employer, then the additional  
2 contribution shall be required from the member's last employer; (iii) if the member's annualized  
3 final compensation from the member's last employer is less than one hundred thousand dollars  
4 (\$100,000), as indexed under this section, and if the member was eligible to retire with an  
5 unreduced benefit at the time of hire by that last employer, then the additional contribution shall  
6 be required from the most recent employer from which the member earned an annualized final  
7 compensation of one hundred thousand dollars (\$100,000) or more, as indexed under this  
8 section."

9 **SECTION 2.1.(c)** G.S. 135-8(f)(2)f. reads as rewritten:

10 "f. Each employer shall transmit to the Retirement System on account of  
11 each member who retires on or after January 1, 2015, having earned  
12 his or her last month of membership service as an employee of that  
13 employer the lump sum payment, as calculated under G.S. 135-4(jj)  
14 for inclusion in the Pension Accumulation Fund, that would have been  
15 necessary in order for the retirement system to restore the member's  
16 retirement allowance to the pre-cap amount. Employers are not  
17 required to make contributions on account of any retiree who became  
18 a member on or after January 1, 2015, and who earned at least five  
19 years of membership service in the Retirement System after January  
20 1, 2015. ~~The retirement allowance of a member with a final average~~  
21 ~~compensation of more than one hundred thousand dollars (\$100,000),~~  
22 ~~as hereinafter indexed, shall not be subject to the contribution based~~  
23 ~~benefit cap if the compensation was earned from multiple~~  
24 ~~simultaneous employers, unless an employer's share of the average~~  
25 ~~final compensation exceeds one hundred thousand dollars (\$100,000).~~  
26 ~~An employer is not required to make contributions on account of any~~  
27 ~~retiree whose final average compensation exceeds one hundred~~  
28 ~~thousand dollars (\$100,000), as hereinafter indexed, based upon~~  
29 ~~compensation earned from multiple simultaneous employers, unless~~  
30 ~~that employer's share of the average final compensation exceeds one~~  
31 ~~hundred thousand dollars (\$100,000), as provided and indexed under~~  
32 ~~G.S. 135-5(a3).~~

33 Under such rules as the Board of Trustees shall adopt, the  
34 Retirement System shall report monthly to each employer a list of  
35 those members for whom the employer made a contribution to the  
36 Retirement System in the preceding month that are most likely to  
37 require an additional employer contribution should they elect to retire  
38 in the following 12 months, if applicable."

39 **SECTION 2.1.(d)** This section is effective when this act becomes law and expires  
40 July 1, 2022.

41 **SECTION 3.1.(a)** G.S. 128-26(y), as amended by Section 1.1(c) of this act, reads as  
42 rewritten:

43 "(y) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement  
44 allowance is subject to an adjustment pursuant to the contribution-based benefit cap established  
45 in G.S. 128-27(a3), except as otherwise provided under this subsection, the retirement system  
46 shall notify the member and the member's employer that the member's retirement allowance has  
47 been capped. The retirement system shall compute and notify the member and the member's  
48 employer of the total additional amount the member would need to contribute in order to make  
49 the member not subject to the contribution-based benefit cap. This total additional amount shall  
50 be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time  
51 of retirement, or when appropriate, the age at the time of the member's death that would have had

1 to have been purchased to increase the member's benefit to the pre-cap level. If the member's  
2 employer did not report to the retirement system any compensation paid to the member during  
3 the period used to compute the member's average final compensation, the retirement system shall  
4 not notify the member's employer, but instead shall notify the employer or employers who  
5 reported compensation during the member's average final compensation period, with the  
6 notification for each such employer specifying that employer's share of the amount that would  
7 have had to have been purchased to increase the member's benefit to the pre-cap level, allocated  
8 proportionally to each employer based on the total amount of compensation to the member that  
9 each employer reported during the period used to compute the member's average final  
10 compensation. Except as otherwise provided in this subsection, the member shall have until 90  
11 days after notification regarding this additional amount or until 90 days after the effective date  
12 of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in  
13 order for the retirement system to restore the retirement allowance to the uncapped amount.  
14 Nothing contained in this subsection shall prevent an employer or former employer from paying  
15 all or part of the cost of the amount necessary to restore the member's retirement allowance to  
16 the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum,  
17 and notwithstanding Chapter 150B of the General Statutes, the retirement system may allow an  
18 employer or former employer of a member who became a member before January 1, 2015, or  
19 who has not earned at least five years of membership service in the retirement system after  
20 January 1, 2015, to pay the additional amount required in this subsection over an extended period  
21 using one of the following three options:

- 22 (1) Option one. – An installment payment plan ending no more than 15 months  
23 after the retirement of the member.
- 24 (2) Option two. – An installment payment plan beginning no less than 90 days  
25 after the retirement of the member and ending no more than 27 months after  
26 the retirement of the member. Interest shall be assessed on the principal  
27 amount of the contribution-based benefit cap liability owed and applied to any  
28 installment payment plan term exceeding 12 months at a rate corresponding  
29 with the interest rate assumption based on the most recent actuarial valuation  
30 approved by the Board of Trustees.
- 31 (3) Option three. – An adjustment to the required employer contribution rate for  
32 the employer as provided in G.S. 128-30(d)(4b).

33 Payment under the selected option must be completed regardless of whether the member  
34 continues to receive a recurring monthly retirement benefit through the end of the extended  
35 payment period. An employer's continuing compliance with a payment option selected from the  
36 three options above will be deemed payment of the employer's additional contribution required  
37 by this subsection for purposes of G.S. 128-30(b)(3)."

38 **SECTION 3.1.(b)** G.S. 128-27(a3) reads as rewritten:

39 "(a3) Anti-Pension-Spiking Contribution-Based Benefit Cap. – Notwithstanding any other  
40 provision of this section, every service retirement allowance provided under this section for  
41 members who retire on or after January 1, 2015, is subject to adjustment pursuant to a  
42 contribution-based benefit cap under this subsection. The Board of Trustees shall adopt a  
43 contribution-based benefit cap factor recommended by the actuary, based upon actual experience,  
44 such that no more than three-quarters of one percent (0.75%) of retirement allowances are  
45 expected to be capped. The Board of Trustees shall modify such factors every five years, as shall  
46 be deemed necessary, based upon the five-year experience study as required by G.S. 128-28(o).

47 Prior to establishing a service retirement allowance under this section, the Board shall:

- 48 (1) Determine an amount equal to the member's accumulated contributions as  
49 required under G.S. 128-30(b)(1) for all years during which the member  
50 earned membership service, other than service earned through armed service

1 credit under G.S. 128-26(a1) or G.S. 128-26(j1), used in the calculation of the  
2 retirement allowance that the member would receive under this section.

3 (2) Determine the amount of a single life annuity that is the actuarial equivalent  
4 of the amount determined under subdivision (1) of this subsection, adjusted  
5 for the age of the member at the time of retirement or, when appropriate, the  
6 age at the time of the member's death.

7 (3) Multiply the annuity amount determined under subdivision (2) of this  
8 subsection by the contribution-based benefit cap factor.

9 (4) Determine the amount of the retirement allowance that results from the  
10 member's membership ~~service~~ service, to which the member would be entitled  
11 but for the adjustment under this subsection. This amount shall be calculated  
12 in the same manner as the member's service retirement allowance, with the  
13 following exceptions: The applicable percentage of the member's average  
14 final compensation shall be multiplied by the number of years of membership  
15 service, rather than the number of years of creditable service; the amount shall  
16 include the effect of any percentage reduction that applies to the member's  
17 service retirement allowance by virtue of the member's age or amount of  
18 creditable service as of the service retirement date; and the amount shall not  
19 be adjusted for an optional allowance elected under subsection (g) of this  
20 section.

21 The product of the multiplication in subdivision (3) of this subsection is the member's  
22 contribution-based benefit cap. If the amount determined under subdivision (4) of this subsection  
23 exceeds the member's contribution-based benefit cap, the member's retirement allowance shall  
24 be reduced by an amount equal to the difference between the contribution-based benefit cap and  
25 the amount determined under subdivision (4) of this subsection.

26 Notwithstanding the foregoing, the retirement allowance of a member with an average final  
27 compensation of less than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall  
28 not be subject to the contribution-based benefit cap. The minimum average final compensation  
29 necessary for a retirement allowance to be subject to the contribution-based benefit cap shall be  
30 increased on January 1 each year by the percent change between the June Consumer Price Index  
31 in the year prior to retirement and the June Consumer Price Index in the fiscal year most recently  
32 ended, calculated to the nearest tenth of a percent (0.1%), provided that this percent change is  
33 positive.

34 Notwithstanding the foregoing, the retirement allowance of a member who became a member  
35 before January 1, 2015, or who has not earned at least five years of membership service in the  
36 Retirement System after January 1, 2015, shall not be reduced; however, the member's last  
37 ~~employer~~ employer, or if the member's last employer did not report to the retirement system any  
38 compensation paid to the member during the period used to compute the member's average final  
39 compensation, the member's employer or employers who reported compensation to the member  
40 during such period, shall be required to make an additional contribution as specified in  
41 G.S. 128-30(g)(2)b., if applicable."

42 **SECTION 3.1.(c)** G.S. 128-30(g) reads as rewritten:

43 "(g) Collection of Contributions. –

44 (1) The collection of members' contributions shall be as follows:

45 a. Each employer shall cause to be deducted on each and every payroll  
46 of a member for each and every payroll subsequent to the date of  
47 participation in the Retirement System the contributions payable by  
48 such member as provided in this Article. Each employer shall certify  
49 to the treasurer of said employer on each and every payroll a statement  
50 as vouchers for the amount so deducted.

- 1                   b.       The treasurer of each employer on the authority from the employer  
2                   shall make deductions from salaries of members as provided in this  
3                   Article and shall transmit monthly, or at such time as the Board of  
4                   Trustees shall designate, the amount specified to be deducted, to the  
5                   secretary-treasurer of the Board of Trustees. The secretary-treasurer of  
6                   the Board of Trustees after making a record of all such receipts shall  
7                   deposit them in a bank or banks selected by said Board of Trustees for  
8                   use according to the provisions of this Article.
- 9                   (2)       The collections of employers' contributions shall be made as follows:
- 10                  a.       Upon the basis of each actuarial valuation provided herein the Board  
11                  of Trustees shall annually prepare and certify to each employer a  
12                  statement of the total amount necessary for the ensuing fiscal year to  
13                  the pension accumulation fund as provided under subsection (d) of this  
14                  section. Such employer contributions shall be transmitted to the  
15                  secretary-treasurer of the Board of Trustees together with the  
16                  employee deductions as provided under sub-subdivision b. of  
17                  subdivision (1) of this subsection.
- 18                  b.       ~~Each~~ Except as otherwise provided under this subdivision, each  
19                  employer shall transmit to the Retirement System on account of each  
20                  member who retires on or after January 1, 2015, having earned his or  
21                  her last month of membership service as an employee of that employer  
22                  the lump sum payment, as calculated under G.S. 128-26(y) for  
23                  inclusion in the Pension Accumulation Fund, that would have been  
24                  necessary in order for the retirement system to restore the member's  
25                  retirement allowance to the pre-cap amount. If the employer associated  
26                  with the member's last month of membership service did not report to  
27                  the retirement system any compensation paid to the member during  
28                  the period used to compute the member's average final compensation,  
29                  that employer shall not transmit the lump sum payment described in  
30                  this subdivision, but instead the employer or employers who reported  
31                  compensation during the member's average final compensation period  
32                  shall each transmit a lump sum payment equal to the employer's share  
33                  of the total required lump sum payment, allocated proportionally to  
34                  each employer based on the total amount of compensation to the  
35                  member that each employer reported during the period used to  
36                  compute the member's average final compensation. Employers are not  
37                  required to make contributions on account of any retiree who became  
38                  a member on or after January 1, 2015, and who earned at least five  
39                  years of membership service in the Retirement System after January  
40                  1, 2015. The retirement allowance of a member with a final average  
41                  compensation of more than one hundred thousand dollars (\$100,000),  
42                  as hereinafter indexed, shall not be subject to the contribution-based  
43                  benefit cap if the compensation was earned from multiple  
44                  simultaneous employers, unless an employer's share of the average  
45                  final compensation exceeds one hundred thousand dollars (\$100,000).  
46                  An employer is not required to make contributions on account of any  
47                  retiree whose final average compensation exceeds one hundred  
48                  thousand dollars (\$100,000), as hereinafter indexed, based upon  
49                  compensation earned from multiple simultaneous employers, unless  
50                  that employer's share of the average final compensation exceeds one



1 hundred thousand dollars (\$100,000), as provided and indexed under  
2 G.S. 128-27(a3).

3 Under such rules as the Board of Trustees shall adopt, the  
4 Retirement System shall report monthly to each employer a list of  
5 those members for whom the employer made a contribution to the  
6 Retirement System in the preceding month that are most likely to  
7 require an additional employer contribution should they elect to retire  
8 in the following 12 months, if applicable. Reports received under this  
9 section shall not be public records. Employers or former employers in  
10 receipt of a report under this section shall treat the report, and the  
11 information contained within that report, as confidential and as though  
12 it were still held by the Retirement System under G.S. 128-33.1.

13 ...."

14 **SECTION 3.1.(d)** G.S. 135-4(jj), as amended by Section 1.1(d) of this act, reads as  
15 rewritten:

16 "(jj) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement  
17 allowance is subject to an adjustment pursuant to the contribution-based benefit cap established  
18 in G.S. 135-5(a3), except as otherwise provided under this subsection, the retirement system shall  
19 notify the member and the member's employer that the member's retirement allowance has been  
20 capped. The retirement system shall compute and notify the member and the member's employer  
21 of the total additional amount the member would need to contribute in order to make the member  
22 not subject to the contribution-based benefit cap. This total additional amount shall be the  
23 actuarial equivalent of a single life annuity adjusted for the age of the member at the time of  
24 retirement, or when appropriate, the age at the time of the member's death that would have had  
25 to have been purchased to increase the member's benefit to the pre-cap level. If the member's  
26 employer did not report to the retirement system any compensation paid to the member during  
27 the period used to compute the member's average final compensation, the retirement system shall  
28 not notify the member's employer, but instead shall notify the employer or employers who  
29 reported compensation during the member's average final compensation period, with the  
30 notification for each such employer specifying that employer's share of the amount that would  
31 have had to have been purchased to increase the member's benefit to the pre-cap level, allocated  
32 proportionally to each employer based on the total amount of compensation to the member that  
33 each employer reported during the period used to compute the member's average final  
34 compensation. Except as otherwise provided in this subsection, the member shall have until 90  
35 days after notification regarding this additional amount or until 90 days after the effective date  
36 of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in  
37 order for the retirement system to restore the retirement allowance to the uncapped amount.  
38 Nothing contained in this subsection shall prevent an employer or former employer from paying  
39 all or part of the cost of the amount necessary to restore the member's retirement allowance to  
40 the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum,  
41 and notwithstanding Chapter 150B of the General Statutes, the retirement system may allow an  
42 employer or former employer of a member who became a member before January 1, 2015, or  
43 who has not earned at least five years of membership service in the retirement system after  
44 January 1, 2015, to pay the additional amount required in this subsection over an extended period  
45 using one of the following three options:

- 46 (1) Option one. – An installment payment plan ending no more than 15 months  
47 after the retirement of the member.
- 48 (2) Option two. – An installment payment plan ending no more than 27 months  
49 after the retirement of the member. Interest shall be assessed on the principal  
50 amount of the contribution-based benefit cap liability owed and applied to any  
51 installment payment plan term exceeding 12 months at a rate corresponding

1 with the interest rate assumption based on the most recent actuarial valuation  
2 approved by the Board of Trustees.

- 3 (3) Option three. – An adjustment to the required employer contribution rate for  
4 the employer as provided in G.S. 135-8(f)(6).

5 Payment under the selected option must be completed regardless of whether the member  
6 continues to receive a recurring monthly retirement benefit through the end of the extended  
7 payment period. An employer's continuing compliance with a payment option selected from the  
8 three options above will be deemed payment of the employer's additional contribution required  
9 by this subsection for purposes of G.S. 135-8(f)(3)."

10 **SECTION 3.1.(e)** G.S. 135-5(a3) reads as rewritten:

11 "(a3) Anti-Pension-Spiking Contribution-Based Benefit Cap. – Notwithstanding any other  
12 provision of this section, every service retirement allowance provided under this section for  
13 members who retire on or after January 1, 2015, is subject to adjustment pursuant to a  
14 contribution-based benefit cap under this subsection. The Board of Trustees shall adopt a  
15 contribution-based benefit cap factor recommended by the actuary, based upon actual experience,  
16 such that no more than three-quarters of one percent (0.75%) of retirement allowances are  
17 expected to be capped. The Board of Trustees shall modify such factors every five years, as shall  
18 be deemed necessary, based upon the five-year experience study as required by G.S. 135-6(n).  
19 Prior to establishing a service retirement allowance under this section, the Board shall:

- 20 (1) Determine an amount equal to the member's accumulated contributions as  
21 required under G.S. 135-8(b)(1) for all years during which the member earned  
22 membership service, other than service earned through armed service credit  
23 under G.S. 135-4(f) or G.S. 135-4(g), used in the calculation of the retirement  
24 allowance that the member would receive under this section.
- 25 (2) Determine the amount of a single life annuity that is the actuarial equivalent  
26 of the amount determined under subdivision (1) of this subsection, adjusted  
27 for the age of the member at the time of retirement or, when appropriate, the  
28 age at the time of the member's death.
- 29 (3) Multiply the annuity amount determined under subdivision (2) of this  
30 subsection by the contribution-based benefit cap factor.
- 31 (4) Determine the amount of the retirement allowance that results from the  
32 member's membership ~~service~~service, to which the member would be entitled  
33 but for the adjustment under this subsection. The amount shall be calculated  
34 in the same manner as the member's service retirement allowance, with the  
35 following exceptions: The applicable percentage of the member's average  
36 final compensation shall be multiplied by the number of years of membership  
37 service, rather than the number of years of creditable service; the amount shall  
38 include the effect of any percentage reduction that applies to the member's  
39 service retirement allowance by virtue of the member's age or amount of  
40 creditable service as of the service retirement date; and the amount shall not  
41 be adjusted for an optional allowance elected under subsection (g) of this  
42 section.

43 The product of the multiplication in subdivision (3) of this subsection is the member's  
44 contribution-based benefit cap. If the amount determined under subdivision (4) of this subsection  
45 exceeds the member's contribution-based benefit cap, the member's retirement allowance shall  
46 be reduced by an amount equal to the difference between the contribution-based benefit cap and  
47 the amount determined under subdivision (4) of this subsection.

48 Notwithstanding the foregoing, the retirement allowance of a member with an average final  
49 compensation of less than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall  
50 not be subject to the contribution-based benefit cap. The minimum average final compensation  
51 necessary for a retirement allowance to be subject to the contribution-based benefit cap shall be

1 increased on January 1 each year by the percent change between the June Consumer Price Index  
2 in the year prior to retirement and the June Consumer Price Index in the fiscal year most recently  
3 ended, calculated to the nearest tenth of a percent (0.1%), provided that this percent change is  
4 positive.

5 Notwithstanding the foregoing, the retirement allowance of a member who became a member  
6 before January 1, 2015, or who has not earned at least five years of membership service in the  
7 Retirement System after January 1, 2015, shall not be reduced; however, the member's last  
8 ~~employer-employer~~, or if the member's last employer did not report to the retirement system any  
9 compensation paid to the member during the period used to compute the member's average final  
10 compensation, the member's employer or employers who reported compensation to the member  
11 during such period, shall be required to make an additional contribution as specified in  
12 G.S. 135-8(f)(2)f., if applicable."

13 **SECTION 3.1.(f)** G.S. 135-8(f) reads as rewritten:

14 "(f) Collection of Contributions. –

15 (1) The collection of members' contributions shall be as follows:

16 a. Each employer shall cause to be deducted on each and every payroll  
17 of a member for each and every payroll subsequent to the date of  
18 establishment of the Retirement System the contributions payable by  
19 such member as provided in this Chapter, and the employer shall draw  
20 his warrant for the amount so deducted, payable to the Teachers' and  
21 State Employees' Retirement System of North Carolina, and shall  
22 transmit the same, together with schedule of the contributions, on such  
23 forms as prescribed.

24 (2) The collection of employers' contributions shall be made as follows:

25 a. Upon the basis of each actuarial valuation provided herein there shall  
26 be prepared biennially and certified to the Department of  
27 Administration a statement of the total amount necessary for the  
28 ensuing biennium to the pension accumulation and expense funds, as  
29 provided under subsections (d) and (f) of this section, and these funds  
30 shall be handled and disbursed in accordance with the State Budget  
31 Act, Chapter 143C of the General Statutes.

32 b. Repealed by Session Laws 2017-129, s. 2(I), effective June 30, 2017.

33 c. Repealed by Session Laws 1993, c. 257, s. 13.

34 d. Each board of education in each county and each board of education  
35 in each city in which teachers or other employees of the schools  
36 receive compensation for services in the public schools from sources  
37 other than the appropriation of the State of North Carolina shall pay  
38 the Board of Trustees of the State Retirement System such rate of their  
39 respective salaries as are paid those of other employees.

40 e. Each employer shall transmit monthly to the State Retirement System  
41 on account of each employee, who is a member of this System, an  
42 amount sufficient to cover required employer contribution of each  
43 member employed by such employer for the preceding month.

44 f. ~~Each~~ Except as otherwise provided under this subdivision, each  
45 employer shall transmit to the Retirement System on account of each  
46 member who retires on or after January 1, 2015, having earned his or  
47 her last month of membership service as an employee of that employer  
48 the lump sum payment, as calculated under G.S. 135-4(jj) for  
49 inclusion in the Pension Accumulation Fund, that would have been  
50 necessary in order for the retirement system to restore the member's  
51 retirement allowance to the pre cap amount. If the employer associated

1           with the member's last month of membership service did not report to  
2           the retirement system any compensation paid to the member during  
3           the period used to compute the member's average final compensation,  
4           that employer shall not transmit the lump sum payment described in  
5           this subdivision, but instead the employer or employers who reported  
6           compensation during the member's average final compensation period  
7           shall each transmit a lump sum payment equal to the employer's share  
8           of the total required lump sum payment, allocated proportionally to  
9           each employer based on the total amount of compensation to the  
10           member that each employer reported during the period used to  
11           compute the member's average final compensation. Employers are not  
12           required to make contributions on account of any retiree who became  
13           a member on or after January 1, 2015, and who earned at least five  
14           years of membership service in the Retirement System after January  
15           1, 2015. The retirement allowance of a member with a final average  
16           compensation of more than one hundred thousand dollars (\$100,000),  
17           as hereinafter indexed, shall not be subject to the contribution based  
18           benefit cap if the compensation was earned from multiple  
19           simultaneous employers, unless an employer's share of the average  
20           final compensation exceeds one hundred thousand dollars (\$100,000).  
21           An employer is not required to make contributions on account of any  
22           retiree whose final average compensation exceeds one hundred  
23           thousand dollars (\$100,000), as hereinafter indexed, based upon  
24           compensation earned from multiple simultaneous employers, unless  
25           that employer's share of the average final compensation exceeds one  
26           hundred thousand dollars (\$100,000), as provided and indexed under  
27           G.S. 135-5(a3).

28           Under such rules as the Board of Trustees shall adopt, the  
29           Retirement System shall report monthly to each employer a list of  
30           those members for whom the employer made a contribution to the  
31           Retirement System in the preceding month that are most likely to  
32           require an additional employer contribution should they elect to retire  
33           in the following 12 months, if applicable. Reports received under this  
34           section shall not be public records. Employers or former employers in  
35           receipt of a report under this section shall treat the report, and the  
36           information contained within that report, as confidential and as though  
37           it were still held by the Retirement System under G.S. 135-6.1."

38           **SECTION 3.1.(g)** This section becomes effective July 1, 2022.

39  
40           **PART III. LITIGATION PAUSE AND REPORT TO THE NC GENERAL ASSEMBLY**

41           **SECTION 3.2.** Notwithstanding any provision of law to the contrary, from the  
42           period beginning on the effective date of this act and ending on June 30, 2022, local boards of  
43           education are prohibited from filing any legal actions against the State, including contested case  
44           actions filed under Article 3 of Chapter 150B of the General Statutes, regarding the  
45           anti-pension-spiking contribution-based benefit cap established in G.S. 135-5(a3). Any  
46           applicable statute of limitations is hereby tolled from the period beginning on the effective date  
47           of this act and ending on June 30, 2022. During the one-year litigation pause, the Retirement  
48           System shall not request an interception of State appropriations pursuant to G.S. 135-8(f)(3) or  
49           for unpaid contributions attributable to an assessment for a CBBC liability that occurs more than  
50           14 months after the effective retirement date of the member.

1           **SECTION 4.(a)** The N.C. Department of State Treasurer and the N.C. School Boards  
2 Association shall convene a working group to review the anti-pension-spiking contribution-based  
3 benefit cap established. The working group may produce findings and recommendations on the  
4 following issues:

- 5           (1) Reducing the incidence of future litigation regarding the anti-pension-spiking  
6 contribution-based benefit cap;
- 7           (2) Reducing the incidence of unfunded pension liabilities associated with  
8 compensation decisions;
- 9           (3) Assessing the feasibility of using mediation, arbitration, or non-jury trials to  
10 settle disputes with local boards of education and other entities regarding the  
11 anti-pension-spiking contribution-based benefit cap; and
- 12           (4) Any other issues the working group wishes to address.

13           **SECTION 4.(b)** No later than April 1, 2022, the working group may report its  
14 findings and recommended changes to the anti-pension-spiking contribution-based benefit cap to  
15 the Joint Legislative Oversight Committee on General Government.  
16

#### 17 **PART IV. EARLY NOTIFICATION TO LOCAL GOVERNMENT COMMISSION OF** 18 **PROPOSED FINANCING ARRANGEMENTS**

19           **SECTION 5.1.** G.S. 143-64.17A is amended by adding a new subsection to read:

20           "(a1) Before issuing a request for proposals under this section that would involve a  
21 financing agreement as allowed under G.S. 160A-20, a local school administrative unit or a  
22 community college must notify the Local Government Commission of its intent to do so 15 days  
23 in advance."  
24

#### 25 **PART VI. SEVERABILITY**

26           **SECTION 6.1.** If any provision of this act or its application is held invalid, the  
27 invalidity does not affect other provisions or applications of this act that can be given effect  
28 without the invalid provisions or application and, to this end, the provisions of this act are  
29 severable.  
30

#### 31 **PART VII. EFFECTIVE DATE**

32           **SECTION 7.1.** Except as otherwise provided, this act is effective when it becomes  
33 law.