

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
Third Edition Engrossed 5/12/21

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



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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. This section applies retroactively to retirements occurring on or after January 1,
41 2019; provided that for any retirements occurring on or after January 1, 2019, through the
42 effective date of this section, for which the Retirement System has notified an employer of its
43 liability under G.S. 135-8(f)(2)f., no additional employer shall be liable for an additional
44 contribution.

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

47 "(y) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement
48 allowance is subject to an adjustment pursuant to the contribution-based benefit cap established
49 in G.S. 128-27(a3), except as otherwise provided under this subsection, the retirement system
50 shall notify the member and the member's employer that the member's retirement allowance has
51 been capped. The retirement system shall compute and notify the member and the member's

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

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

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

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

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

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

- 1 (1) Determine an amount equal to the member's accumulated contributions as
2 required under G.S. 128-30(b)(1) for all years during which the member
3 earned membership service, other than service earned through armed service
4 credit under G.S. 128-26(a1) or G.S. 128-26(j1), used in the calculation of the
5 retirement allowance that the member would receive under this section.
- 6 (2) Determine the amount of a single life annuity that is the actuarial equivalent
7 of the amount determined under subdivision (1) of this subsection, adjusted
8 for the age of the member at the time of retirement or, when appropriate, the
9 age at the time of the member's death.
- 10 (3) Multiply the annuity amount determined under subdivision (2) of this
11 subsection by the contribution-based benefit cap factor.
- 12 (4) Determine the amount of the retirement allowance that results from the
13 member's membership ~~service-service, to which the member would be entitled~~
14 but for the adjustment under this subsection. This amount shall be calculated
15 in the same manner as the member's service retirement allowance, with the
16 following exceptions: The applicable percentage of the member's average
17 final compensation shall be multiplied by the number of years of membership
18 service, rather than the number of years of creditable service; the amount shall
19 include the effect of any percentage reduction that applies to the member's
20 service retirement allowance by virtue of the member's age or amount of
21 creditable service as of the service retirement date; and the amount shall not
22 be adjusted for an optional allowance elected under subsection (g) of this
23 section.

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

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

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

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

46 "(g) Collection of Contributions. –

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

- 48 a. Each employer shall cause to be deducted on each and every payroll
49 of a member for each and every payroll subsequent to the date of
50 participation in the Retirement System the contributions payable by
51 such member as provided in this Article. Each employer shall certify

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

1 that employer's share of the average final compensation exceeds one
2 hundred thousand dollars (\$100,000), as provided and indexed under
3 G.S. 128-27(a3).

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

14"

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

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

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

1 installment payment plan term exceeding 12 months at a rate corresponding
2 with the interest rate assumption based on the most recent actuarial valuation
3 approved by the Board of Trustees.

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

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

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

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

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

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

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

1 necessary for a retirement allowance to be subject to the contribution-based benefit cap shall be
2 increased on January 1 each year by the percent change between the June Consumer Price Index
3 in the year prior to retirement and the June Consumer Price Index in the fiscal year most recently
4 ended, calculated to the nearest tenth of a percent (0.1%), provided that this percent change is
5 positive.

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

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

15 "(f) Collection of Contributions. –

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

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

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

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

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

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

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

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

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

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

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

39 **SECTION 3.1.(g)** This section becomes effective July 1, 2022.
40

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

42 **SECTION 3.2.** Notwithstanding any provision of law to the contrary, from the
43 period beginning on the effective date of this act and ending on June 30, 2022, local boards of
44 education are prohibited from filing any legal actions against the State, including contested case
45 actions filed under Article 3 of Chapter 150B of the General Statutes, regarding the
46 anti-pension-spiking contribution-based benefit cap established in G.S. 135-5(a3). Any
47 applicable statute of limitations is hereby tolled from the period beginning on the effective date
48 of this act and ending on June 30, 2022. During the one-year litigation pause, the Retirement
49 System shall not request an interception of State appropriations pursuant to G.S. 135-8(f)(3) or
50 for unpaid contributions attributable to an assessment for a CBBC liability that occurs more than
51 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.