

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SESSION LAW 2021-72
SENATE BILL 668**

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

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

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



and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, and notwithstanding Chapter 150B of the General Statutes, the retirement system may allow an employer of a member who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the ~~lump sum additional~~ amount required in this subsection ~~on an installment payment plan under over an extended period using one of the following two-three options:~~

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

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

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

"(jj) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement allowance is subject to an adjustment pursuant to the contribution-based benefit cap established in G.S. 135-5(a3), the retirement system shall notify the member and the member's employer that the member's retirement allowance has been capped. The retirement system shall compute and notify the member and the member's employer of the total additional amount the member would need to contribute in order to make the member not subject to the contribution-based benefit cap. This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for the age of the member at the time of retirement, or when appropriate, the age at the time of the member's death that would have had to have been purchased to increase the member's benefit to the pre-cap level. Except as otherwise provided in this subsection, the member shall have until 90 days after notification regarding this additional amount or until 90 days after the effective date of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in order for the retirement system to restore the retirement allowance to the uncapped amount. Nothing contained in this subsection shall prevent an employer from paying all or part of the cost of the amount necessary to restore the member's retirement allowance to the pre-cap amount. Notwithstanding the requirement that the payment be made as a lump sum, and notwithstanding Chapter 150B of the General Statutes, the retirement system may allow an employer of a member

who became a member before January 1, 2015, or who has not earned at least five years of membership service in the retirement system after January 1, 2015, to pay the ~~lump sum~~ additional amount required in this subsection on an installment payment plan under over an extended period using one of the following ~~two~~ three options:

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

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

SECTION 1.1.(e) This section becomes effective July 1, 2022, and applies to assessments imposed on or after that date.

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

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

"§ 135-1. Definitions.

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

- ...
- (4a) "Annualized final compensation" means the compensation received during the final year of service that is included in the member's average final compensation.
 - (4b) "Authorized representatives who are assisting the Retirement Systems Division staff" means only other staff of the Department of State Treasurer, staff of the Department of Justice, or persons providing internal auditing assistance required under G.S. 143-746(b).

...."

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

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

upon the five-year experience study as required by G.S. 135-6(n). Prior to establishing a service retirement allowance under this section, the Board ~~shall~~shall do all of the following:

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

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

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

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

compensation of one hundred thousand dollars (\$100,000) or more, as indexed under this section."

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

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

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

SECTION 2.1.(d) This section is effective when this act becomes law and expires July 1, 2022. This section applies retroactively to retirements occurring on or after January 1, 2019; provided that for any retirements occurring on or after January 1, 2019, through the effective date of this section, for which the Retirement System has notified an employer of its liability under G.S. 135-8(f)(2)f., no additional employer shall be liable for an additional contribution.

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

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

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

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

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

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

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

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

- (1) Determine an amount equal to the member's accumulated contributions as required under G.S. 128-30(b)(1) for all years during which the member earned membership service, other than service earned through armed service credit under G.S. 128-26(a1) or G.S. 128-26(j1), used in the calculation of the retirement allowance that the member would receive under this section.

- (2) Determine the amount of a single life annuity that is the actuarial equivalent of the amount determined under subdivision (1) of this subsection, adjusted for the age of the member at the time of retirement or, when appropriate, the age at the time of the member's death.
- (3) Multiply the annuity amount determined under subdivision (2) of this subsection by the contribution-based benefit cap factor.
- (4) Determine the amount of the retirement allowance that results from the member's membership ~~service~~.service, to which the member would be entitled but for the adjustment under this subsection. This amount shall be calculated in the same manner as the member's service retirement allowance, with the following exceptions: The applicable percentage of the member's average final compensation shall be multiplied by the number of years of membership service, rather than the number of years of creditable service; the amount shall include the effect of any percentage reduction that applies to the member's service retirement allowance by virtue of the member's age or amount of creditable service as of the service retirement date; and the amount shall not be adjusted for an optional allowance elected under subsection (g) of this section.

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

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

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

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

"(g) Collection of Contributions. –

- (1) The collection of members' contributions shall be as follows:
 - a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of participation in the Retirement System the contributions payable by such member as provided in this Article. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as vouchers for the amount so deducted.
 - b. The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this Article and shall transmit monthly, or at such time as the Board of

Trustees shall designate, the amount specified to be deducted, to the secretary-treasurer of the Board of Trustees. The secretary-treasurer of the Board of Trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said Board of Trustees for use according to the provisions of this Article.

- (2) The collections of employers' contributions shall be made as follows:
- a. Upon the basis of each actuarial valuation provided herein the Board of Trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection (d) of this section. Such employer contributions shall be transmitted to the secretary-treasurer of the Board of Trustees together with the employee deductions as provided under sub-subdivision b. of subdivision (1) of this subsection.
 - b. ~~Each~~ Except as otherwise provided under this subdivision, each employer shall transmit to the Retirement System on account of each member who retires on or after January 1, 2015, having earned his or her last month of membership service as an employee of that employer the lump sum payment, as calculated under G.S. 128-26(y) for inclusion in the Pension Accumulation Fund, that would have been necessary in order for the retirement system to restore the member's retirement allowance to the pre-cap amount. If the employer associated with the member's last month of membership service did not report to the retirement system any compensation paid to the member during the period used to compute the member's average final compensation, that employer shall not transmit the lump sum payment described in this subdivision, but instead the employer or employers who reported compensation during the member's average final compensation period shall each transmit a lump sum payment equal to the employer's share of the total required lump sum payment, allocated proportionally to each employer based on the total amount of compensation to the member that each employer reported during the period used to compute the member's average final compensation. Employers are not required to make contributions on account of any retiree who became a member on or after January 1, 2015, and who earned at least five years of membership service in the Retirement System after January 1, 2015. The retirement allowance of a member with a final average compensation of more than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall not be subject to the contribution-based benefit cap if the compensation was earned from multiple simultaneous employers, unless an employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000). An employer is not required to make contributions on account of any retiree whose final average compensation exceeds one hundred thousand dollars (\$100,000), as hereinafter indexed, based upon compensation earned from multiple simultaneous employers, unless that employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000), as provided and indexed under G.S. 128-27(a3).

Under such rules as the Board of Trustees shall adopt, the Retirement System shall report monthly to each employer a list of

those members for whom the employer made a contribution to the Retirement System in the preceding month that are most likely to require an additional employer contribution should they elect to retire in the following 12 months, if applicable. Reports received under this section shall not be public records. Employers or former employers in receipt of a report under this section shall treat the report, and the information contained within that report, as confidential and as though it were still held by the Retirement System under G.S. 128-33.1.

...."

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

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

- (1) Option one. – An installment payment plan ending no more than 15 months after the retirement of the member.
- (2) Option two. – An installment payment plan ending no more than 27 months after the retirement of the member. Interest shall be assessed on the principal amount of the contribution-based benefit cap liability owed and applied to any installment payment plan term exceeding 12 months at a rate corresponding with the interest rate assumption based on the most recent actuarial valuation approved by the Board of Trustees.
- (3) Option three. – An adjustment to the required employer contribution rate for the employer as provided in G.S. 135-8(f)(6).

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

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

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

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

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

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

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

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

"(f) Collection of Contributions. –

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

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

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

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

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

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

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

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

f. ~~Each~~ Except as otherwise provided under this subdivision, each employer shall transmit to the Retirement System on account of each member who retires on or after January 1, 2015, having earned his or her last month of membership service as an employee of that employer the lump sum payment, as calculated under G.S. 135-4(jj) for inclusion in the Pension Accumulation Fund, that would have been necessary in order for the retirement system to restore the member's retirement allowance to the pre cap amount. If the employer associated with the member's last month of membership service did not report to the retirement system any compensation paid to the member during the period used to compute the member's average final compensation, that employer shall not transmit the lump sum payment described in

this subdivision, but instead the employer or employers who reported compensation during the member's average final compensation period shall each transmit a lump sum payment equal to the employer's share of the total required lump sum payment, allocated proportionally to each employer based on the total amount of compensation to the member that each employer reported during the period used to compute the member's average final compensation. Employers are not required to make contributions on account of any retiree who became a member on or after January 1, 2015, and who earned at least five years of membership service in the Retirement System after January 1, 2015. The retirement allowance of a member with a final average compensation of more than one hundred thousand dollars (\$100,000), as hereinafter indexed, shall not be subject to the contribution based benefit cap if the compensation was earned from multiple simultaneous employers, unless an employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000). An employer is not required to make contributions on account of any retiree whose final average compensation exceeds one hundred thousand dollars (\$100,000), as hereinafter indexed, based upon compensation earned from multiple simultaneous employers, unless that employer's share of the average final compensation exceeds one hundred thousand dollars (\$100,000), as provided and indexed under G.S. 135-5(a3).

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

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

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

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

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

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

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

PART IV. EARLY NOTIFICATION TO LOCAL GOVERNMENT COMMISSION OF PROPOSED FINANCING ARRANGEMENTS

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

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

PART VI. SEVERABILITY

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

PART VII. EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 23rd day of June, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:59 a.m. this 2nd day of July, 2021