

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
House Committee Substitute Favorable 6/8/21

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



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1 extinguish the contribution-based benefit cap liability on an amortization
2 schedule selected by the Board that has been applied to unfunded liabilities in
3 the most recent actuarial valuation."

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

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

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

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

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

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

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

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

28 **SECTION 1.1.(e)** This section becomes effective July 1, 2022, and applies to
 29 assessments imposed on or after that date.
 30

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

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

38 **"§ 135-1. Definitions.**

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

- 41 ...
 42 (4a) "Annualized final compensation" means the compensation received during the
 43 final year of service that is included in the member's average final
 44 compensation.
 45 (4b) "Authorized representatives who are assisting the Retirement Systems
 46 Division staff" means only other staff of the Department of State Treasurer,
 47 staff of the Department of Justice, or persons providing internal auditing
 48 assistance required under G.S. 143-746(b).

49"

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

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

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

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

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

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

1 annualized final compensation from the member's last employer is less than one hundred
2 thousand dollars (\$100,000), as indexed under this section, and if the member was not eligible to
3 retire with an unreduced benefit at the time of hire by the last employer, then the additional
4 contribution shall be required from the member's last employer; (iii) if the member's annualized
5 final compensation from the member's last employer is less than one hundred thousand dollars
6 (\$100,000), as indexed under this section, and if the member was eligible to retire with an
7 unreduced benefit at the time of hire by that last employer, then the additional contribution shall
8 be required from the most recent employer from which the member earned an annualized final
9 compensation of one hundred thousand dollars (\$100,000) or more, as indexed under this
10 section."

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

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

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

41 **SECTION 2.1.(d)** This section is effective when this act becomes law and expires
42 July 1, 2022. This section applies retroactively to retirements occurring on or after January 1,
43 2019; provided that for any retirements occurring on or after January 1, 2019, through the
44 effective date of this section, for which the Retirement System has notified an employer of its
45 liability under G.S. 135-8(f)(2)f., no additional employer shall be liable for an additional
46 contribution.

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

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

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

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

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

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

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

1 expected to be capped. The Board of Trustees shall modify such factors every five years, as shall
2 be deemed necessary, based upon the five-year experience study as required by G.S. 128-28(o).

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

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

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

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

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

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

49 "(g) Collection of Contributions. –

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

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

1 An employer is not required to make contributions on account of any
2 retiree whose final average compensation exceeds one hundred
3 thousand dollars (\$100,000), as hereinafter indexed, based upon
4 compensation earned from multiple simultaneous employers, unless
5 that employer's share of the average final compensation exceeds one
6 hundred thousand dollars (\$100,000), as provided and indexed under
7 G.S. 128-27(a3).

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

18"

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

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

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

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

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

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

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

49 The product of the multiplication in subdivision (3) of this subsection is the member's
50 contribution-based benefit cap. If the amount determined under subdivision (4) of this subsection
51 exceeds the member's contribution-based benefit cap, the member's retirement allowance shall

1 be reduced by an amount equal to the difference between the contribution-based benefit cap and
2 the amount determined under subdivision (4) of this subsection.

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

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

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

20 "(f) Collection of Contributions. –

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

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

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

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

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

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

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

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

50 f. ~~Each~~ Except as otherwise provided under this subdivision, each
51 employer shall transmit to the Retirement System on account of each

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

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

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

45
46 **PART III. LITIGATION PAUSE AND REPORT TO THE NC GENERAL ASSEMBLY**

47 **SECTION 3.2.** Notwithstanding any provision of law to the contrary, from the
48 period beginning on the effective date of this act and ending on June 30, 2022, local boards of
49 education are prohibited from filing any legal actions against the State, including contested case
50 actions filed under Article 3 of Chapter 150B of the General Statutes, regarding the
51 anti-pension-spiking contribution-based benefit cap established in G.S. 135-5(a3). Any

1 applicable statute of limitations is hereby tolled from the period beginning on the effective date
2 of this act and ending on June 30, 2022. During the one-year litigation pause, the Retirement
3 System shall not request an interception of State appropriations pursuant to G.S. 135-8(f)(3) for
4 unpaid contributions attributable to an assessment for a CBBC liability that occurs more than 14
5 months after the effective retirement date of the member.

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

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

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

21 22 **PART IV. EARLY NOTIFICATION TO LOCAL GOVERNMENT COMMISSION OF** 23 **PROPOSED FINANCING ARRANGEMENTS**

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

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

29 30 **PART VI. SEVERABILITY**

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

35 36 **PART VII. EFFECTIVE DATE**

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