

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 668
PROPOSED COMMITTEE SUBSTITUTE S668-CSSHp-26 [v.4]
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Short Title: Anti-Pension Spiking Amds & Litig. Moratorium.

(Public)

Sponsors:

Referred to:

April 8, 2021

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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



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

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

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

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

36 Payment under ~~both installment plans~~ the selected option must be completed regardless of
37 whether the member continues to receive a recurring monthly retirement benefit through the end
38 of the ~~installment~~ extended payment period."

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

40 "(jj) Contribution-Based Benefit Cap Purchase Provision. – If a member's retirement
41 allowance is subject to an adjustment pursuant to the contribution-based benefit cap established
42 in G.S. 135-5(a3), the retirement system shall notify the member and the member's employer that
43 the member's retirement allowance has been capped. The retirement system shall compute and
44 notify the member and the member's employer of the total additional amount the member would
45 need to contribute in order to make the member not subject to the contribution-based benefit cap.
46 This total additional amount shall be the actuarial equivalent of a single life annuity adjusted for
47 the age of the member at the time of retirement, or when appropriate, the age at the time of the
48 member's death that would have had to have been purchased to increase the member's benefit to
49 the pre-cap level. Except as otherwise provided in this subsection, the member shall have until
50 90 days after notification regarding this additional amount or until 90 days after the effective date
51 of retirement, whichever is later, to submit a lump sum payment to the annuity savings fund in

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

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

20 Payment under both installment plans must be completed regardless of whether the member
 21 continues to receive a recurring monthly retirement benefit through the end of the installment
 22 period."

23 **SECTION 1.1.(e)** This section is effective when it becomes law and applies to
 24 assessments imposed on or after that date.

25
 26 **PART II. ADDRESSING RESPONSIBILITIES FOR CONTRIBUTION-BASED**
 27 **BENEFIT CAP (CBCB) LIABILITIES WHEN THE FINAL EMPLOYER OF A**
 28 **MEMBER IS NOT THE MEMBER'S EMPLOYER FOR AVERAGE FINAL**
 29 **COMPENSATION CALCULATIONS AND ADJUSTING THE FORMULA FOR**
 30 **REDUCED RETIREMENTS WITH CONTRIBUTION-BASED BENEFIT CAP (CBCB)**
 31 **LIABILITIES**

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

33 **"§ 135-1. Definitions.**

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

- 36 ...
 37 (4a) "Annualized final compensation" means the compensation received during the
 38 final year of service that is included in the member's average final
 39 compensation.
 40 (4b) "Authorized representatives who are assisting the Retirement Systems
 41 Division staff" means only other staff of the Department of State Treasurer,
 42 staff of the Department of Justice, or persons providing internal auditing
 43 assistance required under G.S. 143-746(b).

44"

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

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

1 three-quarters of one percent (0.75%) of retirement allowances are expected to be capped. The
2 Board of Trustees shall modify such factors every five years, as shall be deemed necessary, based
3 upon the five-year experience study as required by G.S. 135-6(n). Prior to establishing a service
4 retirement allowance under this section, the Board ~~shall~~ shall do all of the following:

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

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

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

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

1 unreduced benefit at the time of hire by that last employer, then the additional contribution shall
2 be required from the most recent employer from which the member earned an annualized final
3 compensation of one hundred thousand dollars (\$100,000) or more as indexed under this section."

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

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

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

34 **SECTION 2.1(d)** This section is effective when it becomes law and expires July 1,
35 2022.

36 **SECTION 3.1.(a)**. G.S. 128-26(y) as amended by Section 1.2(a) of this act reads as
37 rewritten:

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

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

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

28 Payment under the selected option must be completed regardless of whether the member
29 continues to receive a recurring monthly retirement benefit through the end of the extended
30 payment period."

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

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

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

- 41 (1) Determine an amount equal to the member's accumulated contributions as
42 required under G.S. 128-30(b)(1) for all years during which the member
43 earned membership service, other than service earned through armed service
44 credit under G.S. 128-26(a1) or G.S. 128-26(j1), used in the calculation of the
45 retirement allowance that the member would receive under this section.
- 46 (2) Determine the amount of a single life annuity that is the actuarial equivalent
47 of the amount determined under subdivision (1) of this subsection, adjusted
48 for the age of the member at the time of retirement or, when appropriate, the
49 age at the time of the member's death.
- 50 (3) Multiply the annuity amount determined under subdivision (2) of this
51 subsection by the contribution-based benefit cap factor.

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

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

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

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

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

35 "(g) Collection of Contributions. –

- 36 (1) The collection of members' contributions shall be as follows:
37 a. Each employer shall cause to be deducted on each and every payroll
38 of a member for each and every payroll subsequent to the date of
39 participation in the Retirement System the contributions payable by
40 such member as provided in this Article. Each employer shall certify
41 to the treasurer of said employer on each and every payroll a statement
42 as vouchers for the amount so deducted.
43 b. The treasurer of each employer on the authority from the employer
44 shall make deductions from salaries of members as provided in this
45 Article and shall transmit monthly, or at such time as the Board of
46 Trustees shall designate, the amount specified to be deducted, to the
47 secretary-treasurer of the Board of Trustees. The secretary-treasurer of
48 the Board of Trustees after making a record of all such receipts shall
49 deposit them in a bank or banks selected by said Board of Trustees for
50 use according to the provisions of this Article.
51 (2) The collections of employers' contributions shall be made as follows:

- 1 a. Upon the basis of each actuarial valuation provided herein the Board
2 of Trustees shall annually prepare and certify to each employer a
3 statement of the total amount necessary for the ensuing fiscal year to
4 the pension accumulation fund as provided under subsection (d) of this
5 section. Such employer contributions shall be transmitted to the
6 secretary-treasurer of the Board of Trustees together with the
7 employee deductions as provided under sub-subdivision b. of
8 subdivision (1) of this subsection.
- 9 b. Except as otherwise provided under this subdivision, each~~Each~~
10 employer shall transmit to the Retirement System on account of each
11 member who retires on or after January 1, 2015, having earned his or
12 her last month of membership service as an employee of that employer
13 the lump sum payment, as calculated under G.S. 128-26(y) for
14 inclusion in the Pension Accumulation Fund, that would have been
15 necessary in order for the retirement system to restore the member's
16 retirement allowance to the pre-cap amount. If the employer associated
17 with the member's last month of membership service did not report to
18 the retirement system any compensation paid to the member during
19 the period used to compute the member's average final compensation,
20 that employer shall not transmit the lump sum payment described in
21 this subdivision, but instead the employer or employers who reported
22 compensation during the member's average final compensation period
23 shall each transmit a lump sum payment equal to the employer's share
24 of the total required lump sum payment, allocated proportionally to
25 each employer based on the total amount of compensation to the
26 member that each employer reported during the period used to
27 compute the member's average final compensation. Employers are not
28 required to make contributions on account of any retiree who became
29 a member on or after January 1, 2015, and who earned at least five
30 years of membership service in the Retirement System after January
31 1, 2015. The retirement allowance of a member with a final average
32 compensation of more than one hundred thousand dollars (\$100,000),
33 as hereinafter indexed, shall not be subject to the contribution-based
34 benefit cap if the compensation was earned from multiple
35 simultaneous employers, unless an employer's share of the average
36 final compensation exceeds one hundred thousand dollars (\$100,000).
37 An employer is not required to make contributions on account of any
38 retiree whose final average compensation exceeds one hundred
39 thousand dollars (\$100,000), as hereinafter indexed, based upon
40 compensation earned from multiple simultaneous employers, unless
41 that employer's share of the average final compensation exceeds one
42 hundred thousand dollars (\$100,000), as provided and indexed under
43 G.S. 128-27(a3).

44 Under such rules as the Board of Trustees shall adopt, the
45 Retirement System shall report monthly to each employer a list of
46 those members for whom the employer made a contribution to the
47 Retirement System in the preceding month that are most likely to
48 require an additional employer contribution should they elect to retire
49 in the following 12 months, if applicable. Reports received under this
50 section shall not be public records. Employers or former employers in
51 receipt of a report under this section shall treat the report, and the

1 information contained within that report, as confidential and as though
2 it were still held by the Retirement System under G.S. 128-33.1.

3"

4 **SECTION 3.1.(d).** G.S. 135-4(jj) as amended by Section 1.2(c) of this act reads as
5 rewritten:

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

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

46 Payment under both installment plans must be completed regardless of whether the member
47 continues to receive a recurring monthly retirement benefit through the end of the installment
48 period."

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

50 "(a3) Anti-Pension-Spiking Contribution-Based Benefit Cap. – Notwithstanding any other
51 provision of this section, every service retirement allowance provided under this section for

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

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

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

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

44 Notwithstanding the foregoing, the retirement allowance of a member who became a member
45 before January 1, 2015, or who has not earned at least five years of membership service in the
46 Retirement System after January 1, 2015, shall not be reduced; however, the member's last
47 ~~employer-employer~~, or if the member's last employer did not report to the retirement system any
48 compensation paid to the member during the period used to compute the member's average final
49 compensation, the member's employer or employers who reported compensation to the member
50 during such period, shall be required to make an additional contribution as specified in
51 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. Except as otherwise provided under this subdivision, each ~~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

1 a member on or after January 1, 2015, and who earned at least five
 2 years of membership service in the Retirement System after January
 3 1, 2015. The retirement allowance of a member with a final average
 4 compensation of more than one hundred thousand dollars (\$100,000),
 5 as hereinafter indexed, shall not be subject to the contribution based
 6 benefit cap if the compensation was earned from multiple
 7 simultaneous employers, unless an employer's share of the average
 8 final compensation exceeds one hundred thousand dollars (\$100,000).
 9 An employer is not required to make contributions on account of any
 10 retiree whose final average compensation exceeds one hundred
 11 thousand dollars (\$100,000), as hereinafter indexed, based upon
 12 compensation earned from multiple simultaneous employers, unless
 13 that employer's share of the average final compensation exceeds one
 14 hundred thousand dollars (\$100,000), as provided and indexed under
 15 G.S. 135-5(a3).

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

26"

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

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

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

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

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

46 **SECTION 4.(b).** No later than April 1, 2022, the working group may report its
 47 findings and recommended changes to the Anti-Pension-Spiking Contribution-Based Benefit
 48 Cap, to the Joint Legislative Oversight Committee on General Government.

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

51 **SECTION 5.1.** G.S. 143-64.14A is amended by adding a new subsection to read:

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

5
6 **PART VI. SEVERABILITY**

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

11
12 **PART VII. EFFECTIVE DATE**

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