

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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SENATE BILL 668

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

Sponsors: Senator Burgin (Primary Sponsor).

Referred to: Rules and Operations of the Senate

April 8, 2021

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE CONTRIBUTION-BASED BENEFIT CAP LAWS; TO INSTITUTE A FIVE-YEAR MORATORIUM ON LAWSUITS AND CONTESTED CASES BY LOCAL SCHOOL BOARDS AGAINST THE STATE REGARDING THE IMPLEMENTATION OF THE ANTI-PENSION SPIKING CONTRIBUTION-BASED BENEFIT CAP; TO REQUIRE AN ANNUAL REPORT FROM THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES DURING THE MORATORIUM ON PENSION SPIKING LITIGATION INITIATED BY SCHOOL SYSTEMS THAT INCLUDES AN ACCOUNTING OF LEGAL FEES PAID BY BOTH SIDES; AND TO REQUIRE AN ASSESSMENT OF THE FEASIBILITY OF RESOLVING DISPUTES REGARDING PENSION-SPIKING USING BINDING ARBITRATION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 135-1 reads as rewritten:

**"§ 135-1. Definitions.**

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

...

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

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

...."

**SECTION 2.(a)** G.S. 135-5(a3) reads as rewritten:

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



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

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

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

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

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

1 be required from the most recent employer from which the member earned an annualized final  
2 compensation of one hundred thousand dollars (\$100,000) or more as indexed under this section."

3 **SECTION 2.(b)** G.S. 135-8(f)(2)f. reads as rewritten:

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

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

33 **SECTION 2.(c)** This section is retroactively effective to January 1, 2019, and applies  
34 to members of the Teachers' and State Employees' Retirement System who retire on or after that  
35 date.

36 **SECTION 3.** Notwithstanding any provision of law to the contrary, from the period  
37 beginning on the effective date of this act and ending on June 30, 2026, local boards of education  
38 are prohibited from filing any legal actions against the State, including contested case actions  
39 filed under Article 3 of Chapter 150B of the General Statutes, regarding the anti-pension spiking  
40 contribution-based benefit cap established in G.S. 135-5(a3).

41 **SECTION 4.(a)** By January 31, 2022, and annually thereafter until January 31, 2027,  
42 the Board of Trustees of the Teachers' and State Employees' Retirement System (Board of  
43 Trustees) shall file a report with the General Assembly regarding all legal actions filed by local  
44 boards of education against the State, including contested cases filed under Article 3 of Chapter  
45 150B of the General Statutes, regarding the anti-pension spiking contribution-based benefit cap  
46 established in G.S. 135-5(a3). The report shall, at a minimum, contain all of the following  
47 information:

- 48 (1) A summary and status report of each legal action filed.
- 49 (2) A statement of all legal fees and costs associated with the legal actions  
50 identified in subdivision (1) of this subsection that have been incurred by (i)  
51 the Teachers' and State Employees' Retirement System and (ii) local boards

1 of education. The statement for costs incurred by the Retirement System shall  
2 be separate from the statement of costs incurred by the local boards of  
3 education.

4 (3) Recommendations by the Board of Trustees for reducing the incidence of  
5 future litigation regarding the anti-pension spiking contribution-based benefit  
6 cap.

7 (4) For the initial report due on January 31, 2022, an assessment by the Board of  
8 Trustees of the feasibility of using binding arbitration to settle disputes with  
9 local boards of education regarding the anti-pension spiking  
10 contribution-based benefit cap established in G.S. 135-5(a3).

11 **SECTION 4.(b)** In order to assist with the preparation of the report required by  
12 subsection (a) of this section, each local board of education that has engaged in any legal action  
13 against the State regarding the contribution-based benefit cap established in G.S. 135-5(a3) shall  
14 provide a statement of all legal fees and costs associated with each of these legal actions to the  
15 Board of Trustees prior to January 1 of each year, beginning with the report due January 31,  
16 2022. The statement shall include cumulative totals, as well as itemized costs incurred by the  
17 local board of education since January 1 of the prior year.

18 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes  
19 law.