



SENATE BILL 668: Anti-Pension Spiking Amds & Litig. Moratorium.

2021-2022 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	May 10, 2021
Introduced by:	Sen. Burgin	Prepared by:	Kristen L. Harris*
Analysis of:	Second Edition		Committee Co-Counsel

OVERVIEW: *Senate Bill 668 would authorize an additional payment option for a contribution-based benefit cap (CBBC) liability, outline responsibilities for CBBC liabilities when the final employer of a member is not the member's employer for average final compensation calculations, provide an adjustment to the formula for reduced retirements with CBBC liabilities, provide for a litigation pause and establish a workgroup that may provide a report on the anti-pension spiking contribution-based benefit cap to the Joint Legislative Oversight Committee on General Government, and provide early notification to the Local Government Commission on proposed financing arrangements.*

BILL ANALYSIS:

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) and 1.1(c) amend the Local Governmental Employees' Retirement System (LGERS) statutes to add a payment option for a contribution-based benefit cap (CBBC) liability that allows the required employer contribution rate to be adjusted to include an additional contribution amount estimated to resolve the CBBC liability.

Sections 1.1(b) and 1.1(d) amend the Teachers' and State Employees' Retirement System in a manner similar to that outlined in Section 1.1(a) and 1.1(c) for LGERS.

Section 1.1(e) provides that this section is effective when it becomes law and applies to assessments imposed on or after that date.

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

Section 2.1(a) adds a definition to TSERS statutes for "annualized final compensation" to mean the compensation received during the final year of service that is included in the member's average final compensation.

Section 2.1(b) amends the TSERS Anti-Pension-Spiking CBBC to provide that the retirement allowance of a member with an average final compensation of more than \$100,000 (indexed) will not be subject to the CBBC if the compensation was earned from multiple simultaneous employers, unless the employer's share of the annualized average final compensation exceeds \$100,000 (indexed). If the

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retirement allowance of an individual who became a member before January 1, 2015, or has not earned at least five years of membership service after January 1, 2015, exceeds the member's CBBC, then the member's retirement allowance will not be reduced but an additional contribution under G.S. 135-4(jj) and G.S. 135-8(f)2f will be required. The additional contribution is required as follows:

- i) if the member's annualized final compensation from the member's last employer is \$100,000 or more (indexed), then the additional contribution is required from the member's last employer;
- ii) if the member's annualized final compensation from the last employer is less than \$100,000 (indexed) and if the member was not eligible to retire with an unreduced benefit at the time of hire by the last employer, then the additional contribution will be required from the member's last employer;
- iii) if the member's annualized final compensation from the member's last employer is less than \$100,000 (indexed) and if the member was eligible to retire with an unreduced benefit at the time of hire by that last employer, then the additional contribution will be required from the most recent employer from which the member earned an annualized final compensation of \$100,000 (indexed).

Section 2.1(d) provides that Section 2.1 is effective when it becomes law and expires July 1, 2022.

Section 3.1(a) amends the CBBC provision in LGERS statutes and **Section 3.1(d)** amends TSERS statutes to provide that if a member's employer did not report to the retirement system any compensation paid to the member during the period used to compute the member's average final compensation, the retirement system will not notify the member's employer, but will notify the employer or employers who reported compensation during the member's average final compensation period. The notification for each employer will specify that employer's share of the amount that would have had to have been purchased to increase the member's benefit to the pre-cap level. It will be 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.

Section 3.1(b) amends the anti-pension-spiking CBBC provision in LGERS statutes and **Section 3.1(e)** amends TSERS statutes to require the Board of Trustees to determine the amount of the retirement allowance with the following adjustments: the member's average final compensation will be multiplied by the years of membership service (rather than the years of creditable service); the amount will include the effect of any percentage reduction that applies to the member's service retirement allowance by virtue of the member's age or amount of creditable service as of the service retirement date; and the amount will not be adjusted for an optional allowance elected.

Section 3.1(c) amends the LGERS statutes and **Section 3.1(f)** amends TSERS statutes pertaining to the collection of contributions to provide that if the employer associated with the member's last month of membership service did not report to the retirement system compensation paid to the member during the period used to compute the member's average final compensation, that employer will not transmit the lump sum payment, but instead the employer or employers who reported compensation during the member's average final compensation period must 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.

Section 3.1(g) provides that Section 3.1 becomes effective July 1, 2022.

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

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Section 3 prohibits local boards of education from filing any legal actions against the State regarding the anti-pension spiking contribution-based benefit cap, including contested case actions, and tolls any applicable statute of limitations, between the effective date of the bill and June 30, 2022. During the litigation pause, the Retirement System will not file new CBBC liability assessment cases.

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

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

The working group may report its findings and recommended changes to the Joint Legislative Oversight Committee on General Government no later than April 1, 2022.

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

Section 5.1 amends statutes pertaining to energy saving measures for governmental units as they relate to the solicitation of guaranteed energy savings contracts (G.S. 143-64.17A) to provide that before issuing a request for proposals that would involve a financing agreement allowed under G.S. 160A-20, a local school administrative unit or community college must notify the Local Government Commission of its intent to do so 15 days in advance.

PART VI. SEVERABILITY

Section 6.1 provides a severability clause.

EFFECTIVE DATE: Except as otherwise provided the bill would become effective when it becomes law.

**Theresa Matula, Legislative Analysis Division, significantly contributed to this summary.*