SENATE BILL 729: CBBC Working Group Changes.

2023-2024 General Assembly

Committee:	Senate Rules and Operations of the Senate	**Date:**	April 26, 2023
Introduced by:	Sens. Burgin, Krawiec, Ford	**Prepared by:**	Anna Parsons*
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: Senate Bill 729 amends the Teachers' and State Employees' Retirement System (TSERS) contribution-based benefit cap law in an effort to resolve disputes related to the application of the anti-pension spiking law.

BACKGROUND:

Pension-Spiking Litigation Pause

S.L. 2021-72, Section 3.2 placed a pause on pension-spiking litigation by prohibiting 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 July 1, 2021, and June 30, 2022. **S.L. 2022-70, Section 1(a)**, extended the pause from June 30, 2022, until June 30, 2023.

Prohibition on State Appropriation Interception

S.L. 2021-72, Section 3.2 provided that during the pension-spiking litigation pause, the Retirement System is prohibited from requesting an interception of State appropriations for unpaid contributions attributable to an assessment for a contribution-based benefit cap liability that occurs more than 14 months after the effective retirement date of the member. **S.L. 2022-70, Section 1(a)**, amended this language further by providing that prior to September 1, 2023, the Retirement System is prohibited from requesting an interception of State appropriations for unpaid contributions attributable to retirements that occurred between July 1, 2021, and June 30, 2022.

Department of State Treasurer and NC School Boards Association Working Group

S.L. 2021-72, Section 4, required the NC Department of State Treasurer and the NC School Boards Association to convene a working group to review the anti-pension-spiking contribution-based benefit cap and provided that the group may produce findings and recommendations to the Joint Legislative Committee on General Government not later than April 1, 2022. **S.L. 2022-70, Section 1(b),** extended the working group deadline to December 15, 2022.

BILL ANALYSIS: Section 1 of Senate Bill 729 would become effective July 1, 2023, and amend the TSERS law (G.S. 135-8(f)) on the collection of employer's contributions by adding the provisions outlined below.

- A public school unit is not required to pay an additional contribution calculated under the contribution-based benefit cap purchase provision (G.S. 135 4(jj)) for the retirement of a public school employee if, within 12 months of the assessment, the public school unit certifies all of the following on a form:

1. The retiree's service, during the period used to compute the retiree's average final compensation (AFC), was in a position(s) where State law or regulation mandates the specific dollar amount that must be paid from State funds to an employee or the retiree served a minimum of 12 years in a position for which State law or regulation mandates a specific dollar amount that must be paid from State funds to an employee in that position(s).
2. The greatest local supplement amount paid to the retiree for a school year during the period used to calculate the employee's AFC did not exceed 20% of the salary paid to the retiree from State funds for the same school year.

- If a public school unit certifies to item 1 above but not to item 2 above, the additional contribution calculated under the contribution-based benefit cap purchase provision (G.S. 135 4(jj)) will be adjusted proportionately based on the extent to which the greatest local supplement amount paid to the retiree for a school year during the period used to calculate the retiree's AFC exceeded 20% of the salary paid to the retiree from State funds for the same school year, as follows:
  1. If the greatest local supplement amount paid to the retiree for a school year during the period used to calculate the AFC exceeded the salary paid from State funds for the same school year by more than 20%, but less than 50%, then the employer pays 50% of additional contribution.
  2. If the greatest local supplement amount paid to the retiree for a school year during the period used to calculate the AFC exceeded the salary paid from State funds for the same school year by at least 50%, then the employer pays 100% of additional contribution.

Section 2 of the bill would become effective when the bill becomes law. The section authorizes the Department of State Treasurer to resolve pending legal actions involving the anti-pension spiking contribution-based benefit cap and sets out the manner in which additional contributions owed may be calculated and paid. The section also prohibits the Retirement System from requesting an interception of State appropriations for unpaid contributions attributable to retirements that occurred between July 1, 2021, and June 30, 2023.

Section 3 would become effective July 1, 2023. This section would allow the Treasurer to designate legal counsel, including private counsel, to represent the interests of the administration of benefit programs under Chapter 135. The language notwithstands current law that limits the use of private counsel (G.S. 114-2.3) and current law that prohibits employment of private counsel except with the approval of the Governor, allows the Governor to direct that the compensation may be fixed for private counsel, and provides that no State funds be used to pay for litigation services for private counsel except expressly authorized by an appropriation of the General Assembly (G.S. 147-17).

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

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