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

1. Determine an amount equal to the member's accumulated contributions as
required under G.S. 135-8(b)(1) for all years during which the member earned
membership service, other than service earned through armed service credit
under G.S. 135-4(f) or G.S. 135-4(g), used in the calculation of the retirement
allowance that the member would receive under this section.

2. Determine the amount of a single life annuity that is the actuarial equivalent
of the amount determined under subdivision (1) of this subsection, adjusted
for the age of the member at the time of retirement or, when appropriate, the
age at the time of the member's death.

3. Multiply the annuity amount determined under subdivision (2) of this
subsection by the contribution-based benefit cap factor.

4. Determine the amount of the retirement allowance that results from the
member's membership service.

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

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

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

SECTION 2.(b) G.S. 135-8(f)(2)f. reads as rewritten:
"f. 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. Employers are not required to make contributions on account of any retiree who became a member on or after January 1, 2015, and who earned at least five years of membership service in the Retirement System after January 1, 2015. The retirement allowance of a member with a final average compensation of more than one hundred thousand dollars ($100,000), as hereinafter indexed, shall not be subject to the contribution-based benefit cap if the compensation was earned from multiple simultaneous employers, unless an employer’s share of the average final compensation exceeds one hundred thousand dollars ($100,000). An employer is not required to make contributions on account of any retiree whose final average compensation exceeds one hundred thousand dollars ($100,000), as hereinafter indexed, based upon compensation earned from multiple simultaneous employers, unless that employer’s share of the average final compensation exceeds one hundred thousand dollars ($100,000), as provided and indexed under G.S. 135-5(a3).

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

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

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

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

(1) A summary and status report of each legal action filed.
(2) A statement of all legal fees and costs associated with the legal actions identified in subdivision (1) of this subsection that have been incurred by (i) the Teachers’ and State Employees’ Retirement System and (ii) local boards
of education. The statement for costs incurred by the Retirement System shall be separate from the statement of costs incurred by the local boards of education.

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

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

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

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