Briefing on Session Law 2023-48 for Public School Units in Teachers' and State Employees' Retirement System (TSERS)

This presentation is not to be relied upon as legal or accounting advice. This is a general presentation about new legislative provisions and is not to be relied upon as an agency decision on any specific administrative matter.

CBBC and TSERS – Basic Information*

- Contribution-Based Benefit Cap (CBBC) is sometimes called NC's "anti-pension spiking" provision, first enacted by S.L. 2014-88
- Applies to retirements eff. 2015 or later, where four-year avg. final comp. (AFC) >= $126,956.05 (as of 2023, increasing with inflation)
- CBBC is 4.5x the lifetime benefit that the retiree's 6% of pay contributions would have funded, determined by actuarial factors
- If TSERS benefit exceeds CBBC and retiree joined TSERS before 2015, last employer pays TSERS actuarial value of benefit exceeding CBBC
- If retiree joined TSERS 2015 or later, TSERS benefit limited to CBBC unless retiree and/or employer pays actuarial value of add'l benefit
- RSD sends monthly report to employers identifying employees whose retirements are most likely to involve CBBC provisions

* Some details omitted for brevity. Governing provisions are G.S. 135-4(jj), 135-5(a3), and 135-8(f)(2).

CBBC and TSERS – Simplified Example*

- Retiree's 6% contributions would have funded lifetime benefit of $30,000 / year; 4.5 x $30,000 = $135,000; TSERS benefit is $150,000
- Retiree is age 55 (corresponding actuarial factor currently 13.2091)
- If retiree joined TSERS before 2015:
  - Retiree's TSERS benefit $150,000 / year
  - Last employer pays TSERS ($150,000 - $135,000) x 13.2091, or ~ $198,000
  - Can be paid as lump sum, installment plan, or increase to regular employer contribution rate estimated to satisfy liability over 12 years
- If retiree joined TSERS in 2015 or later:
  - Retiree's TSERS benefit $150,000 / year <u>if</u> ~$198,000 lump sum paid to TSERS by retiree and/or employer(s)
  - Otherwise, retiree's TSERS benefit will be $135,000 / year
  - Employers cannot discriminate against some employees by paying for others

* Some details omitted for brevity. Governing provisions are G.S. 135-4(jj), 135-5(a3), and 135-8(f)(2).

S.L. 2023-48 Background

- In 2015-2022, the General Assembly adjusted some CBBC provisions, and some school boards initiated litigation to challenge invoices
- S.L. 2021-72 directed DST and N.C. School Boards Association to convene a CBBC Working Group to recommend proposals reducing incidence of litigation, reducing incidence of unfunded liabilities associated with compensation decisions, assessing feasibility of alternative methods to settle disputes, and any other joint proposals
- S.L. 2023-48 enacts proposals from the Working Group
  - Senate Bill 729, enacted 6/19/2023 (“CBBC Working Group Changes”)
- Section 1 is primary focus of this presentation; Sections 2-3 pertain mostly to litigation/legal issues not covered by this presentation

S.L. 2023-48 Section 1 – Overview

- Pertains to Public School Units (PSUs) participating in TSERS
- Change in statute formally effective 7/1/2023, but Section 2 effectively applies it to invoices issued owed by PSUs as of 7/1/2023 that TSERS issued on or after 1/1/2021
- Initial administrative process same as before: TSERS will calculate additional required contribution and issue an invoice to the PSU
- PSU has 12 months from date of assessment to certify that the PSU is excused from paying 50% or 100% of the contribution
- If PSU does not complete certification within 12 months, PSU must pay full contribution as provided under current law

S.L. 2023-48 Section 1 – Scope

- Affects contributions owed in relation to retirees who joined TSERS before 2015, where the employer is otherwise required to pay; does not affect payment for retirees who joined TSERS since 2015
- Applies only to CBBC contributions owed by PSUs to TSERS
- Does not apply to CBBC contributions owed by other TSERS employers (State agencies, univ. institutions, comm. colleges)
- Does not apply to CBBC contributions owed to the Local Governmental Employees' Retirement System (LGERS) by employers

S.L. 2023-48 Section 1 – Certification Criteria

- If PSU certifies to both of the following, PSU is not required to pay the contribution at all (100% exemption):

(1) Retiree worked in "a position for which State law or regulation mandates the specific dollar amount that must be paid from State funds to an employee in that position or positions" for their entire four-year AFC period – **OR** for at least 12 years.

AND

(2) During AFC period, retiree did not receive a local supplement for a school year that exceeded 20% of their State-funded salary.

- If PSU certifies to (1), and to a version of (2) where 20% is replaced by 50%, PSU is required to pay 50% of the contribution

S.L. 2023-48 Section 1 – How to Certify

- RSD Form 641 ("PSU Certification") created for this purpose
- Form 641 must be returned **by email** to OER@nctreasurer.com
- Form 641 enclosed with letter informing PSU of the obligation; sent to those owing invoices issued since 1/1/2021; and is on RSD's website
  - https://www.myncretirement.com/contribution-based-benefit-cap -> "Forms"
- Form requires retiree's name and TSERS ID number; PSU's name and agency number; whether certifying to a 100% or 50% exemption; certifier's name, job title, and phone number; and a signature under the following statement:

  I, the undersigned employer representative of the Public School Unit submitting this certification, certify that the information provided above is true and correct to the best of my knowledge and that I have the authority to submit this certification on my employer's behalf. I also certify that I understand that G.S. 135-10 describes penalties for "knowingly mak[ing] any false statement" or "falsify[ing] or permit[ting] to be falsified any record or records of TSERS in an attempt to defraud TSERS."

S.L. 2023-48 Section 1 – PSU Responsibility

- If the criteria for an exemption are met, it is the PSU's responsibility to complete and return Form 641 within 12 months, without guidance or reminders from RSD
- If Form 641 is not returned by email within 12 months, the PSU will owe the full additional contribution, even if the criteria for the 50% or 100% exemptions were otherwise met
- RSD will not provide guidance on which retirements meet the criteria for exemption
- For example, RSD will not provide guidance on how to calculate whether the local supplement exceeded 20% or 50%, or how long an employee worked in a position where the State-funded salary was mandated by law
- RSD will not provide reminders as the 12-month deadline approaches
- If criteria for an exemption are <u>not</u> met, do not return Form 641

S.L. 2023-48 Section 1 – After Certification

- After submitting Form 641 by email, you will receive an automatic reply confirming receipt of the request
- For 100% exemptions, invoice will be cancelled, which you will be able to see in ORBIT
- For 50% exemptions, invoice along with any subsequently issued adjustment invoices for the same retirement will be cancelled, and a new invoice will be issued equal to 50% of the total amount

S.L. 2023-48 Sections 2-3

- Provide that the terms of Section 1 apply to invoices owed by PSUs as of 7/1/2023 that TSERS issued on or after 1/1/2021
- Provide that the employer contribution rate of a PSU will not be adjusted to recover unpaid CBBC contributions ("12-year expected payment") until 7/1/2024 at the earliest
- Provide that RSD will not request an interception of State appropriations for unpaid CBBC contributions owed by PSUs until 9/1/2023 at the earliest
  - (RSD believes that as a practical matter, under the other terms of S.L. 2023-48, this would not occur until 7/1/2024 at earliest in any event)
- Otherwise pertain to legal/litigation matters