



December 13, 2023
DRS Appeal Deadlines

FINAL PROPOSAL

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ISSUE STATEMENT

Some LEOFF 2 members have missed their deadline to file an administrative appeal with DRS and expressed concerns regarding a lack of clarity on the deadline.

OVERVIEW

Recently there have been two instances of LEOFF 2 members missing the deadline to appeal a DRS administrative decision. During the 2023 legislative session there was a bill which in part sought to remedy this issue by extending the deadline to file an appeal and requiring tolling of the deadline when DRS requests the member provide additional records in support of their appeal.

BACKGROUND AND POLICY ISSUES

Background

The Administrative Procedures Act (APA) sets the minimum agency requirements for adjudicative proceedings. Regarding the deadline to file an appeal of an agency decision, the APA reads: "The agency shall allow at least twenty days to apply for an adjudicative proceeding from the time notice is given of the opportunity to file such an application."

The process of requesting an administrative appeal with DRS is typically a multi-step process. The first step of that process is requesting an administrative decision. There is no deadline for a member to request an administrative decision. An administrative decision is usually signed by a Plan Administrator at DRS. Administrative decisions for members typically are made within the Retirement Services Division and administrative decisions impacting employers are made by the Employer Support Division. Earlier this month DRS began a reorganization splitting what has traditionally been the Retirement Services Division into two separate divisions: Member Experience Division and Member Operations Division.

Once a member receives an administrative decision, they must “Petition” that decision before they can request an administrative appeal. The administrative decision issued by the Plan Administrator includes language identifying the deadline to file what is called a Petition:

If you believe this decision was reached in error or you have new information that was not available when the Administrative Decision was made, you have a right to file a petition asking for further review. Your petition must be filed within 120 days from the date you receive this decision. For information about the petition process, including a description of the information you must include in your petition, you should review Ch. 415-04 WAC. Send your petition to: Petitions Coordinator, Department of Retirement Systems, PO Box 48380, Olympia, WA 98504-8380 or email your petition to: drs.petitions@drs.wa.gov.

The Petition process is not required by the APA and has been put into rule by DRS.¹ Members have 120 days to file a Petition. A Petition is similar to an alternative dispute resolution process, designed to help resolve issues in a format that is intended to be less formal and easier for members without legal representation to navigate. Instead of filing legal motions and briefs, the member can simply provide a letter to the Petition’s Officer explaining their situation and why they believe DRS has erred in their administrative decision. The member can also provide additional records that support their case. DRS has given a 120-day deadline to help facilitate a more collaborative process of assisting members with gathering records and providing information to the Petitions Officer. This process helps DRS ensure they are making the legally correct decision, while also helping the member better understand why DRS has reached their conclusion.

The DRS Petition decision includes the following language identifying that the member has 60 days to file an administrative decision:

YOU HAVE THE RIGHT TO APPEAL THIS DECISION

If you disagree with this petition decision, you may file an appeal with the DRS Presiding Officer within 60 days of the date of this decision. DRS must receive your notice of appeal within that 60-day timeframe. The DRS appeal rules are in chapter 415-08 WAC. For questions about the appeal process, contact the DRS Presiding Officer at (360) 664-7294.

Send your notice of appeal ATTN: DRS PRESIDING OFFICER using one of the following methods:
Mail: **Department of Retirement Systems / PO Box 48380 / Olympia, WA 98504-8380**

¹ Chapter 415-04 WAC

In addition to this notice regarding the right to appeal an administrative decision, the information is available on the DRS website at <https://www.drs.wa.gov/sitemap/appeals>.

Policy Issues

During the 2023 legislative session SB 5625 was proposed. This bill sought to address multiple concerns, including instances where LEOFF 2 members missed their deadline to file an appeal with DRS. If passed, SB 5625 would have:

- Increased the deadline to file an appeal from 60 days to 90 days;
- Allowed for tolling no less than 90 additional days when DRS requests additional records from members; and,
- Allowed retirees to refile a claim that previously dismissed for failing to file a timely notice after additional information was requested.

SB 5625 received a public hearing in the Senate Ways and Means Committee but did not move forward to executive action in the committee.

In the last 5 years DRS has received 75 petition requests, 25 of those were from LEOFF 2 members. None of those petitions were denied for not being filed timely.

In the last 5 years DRS has received 37 appeal of petition decisions, 14 of those were from LEOFF 2 members. There is only one instance of a member being denied an appeal based on missing the deadline to file the appeal; that member was in LEOFF 2. This denial for timeliness was appealed by the member to the Court of Appeals, where the department's dismissal for untimeliness was upheld. There is an additional case that is currently with the DRS Appeals Officer with the issue of whether it was filed timely; that member is also in LEOFF 2.

During the November Board meeting, the Board requested a final briefing on the policy option to require DRS to toll the time to file an appeal when DRS requests the member provide additional information and to extend the time members have to file an appeal, which is a minimum of 20 days under the APA (currently 60 days in DRS WAC), to match the time members must file a petition of administrative decision (currently 120 days in DRS WAC).

Normally, the Board would request an actuarial analysis from the Office of the State Actuary before a final presentation. However, due to the large number of policy briefings the Board will be receiving in December, Board staff worked with OSA to prioritize the proposals to have OSA provide analysis on.

If the Board does choose to endorse legislation regarding this policy proposal OSA will complete an actuarial fiscal note during the legislative session if the bill receives a hearing in a legislative fiscal committee.

However, OSA did complete a Fiscal Note for SB 5625 (see appendix A) and stated: “We expect this change to result in an indeterminate cost to the retirement system, as refiled claims have the potential to result in pension benefit increases.”

POLICY OPTIONS

Option 1: Require tolling and extend timeframe

LEOFF 2 members have 120 days to appeal administrative decisions from DRS. DRS must provide written notice of the right to appeal and the deadline for filing the appeal. If DRS requests additional records from the member they must toll the deadline for filing an appeal and provide in writing the updated deadline for filing the appeal.

Option 2: No action

SUPPORTING INFORMATION

Appendix A: Fiscal Note for SB 5625 (2023)

Appendix B: Bill Draft

Multiple Agency Fiscal Note Summary

Bill Number: 5625 SB	Title: Public employee retirees
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Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Office of Attorney General	0	0	133,000	0	0	94,000	0	0	94,000
Total \$	0	0	133,000	0	0	94,000	0	0	94,000

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Office of the State Actuary	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Attorney General	.4	0	0	133,000	.3	0	0	94,000	.3	0	0	94,000
Washington State Health Care Authority	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Department of Retirement Systems	4.1	0	0	1,063,160	4.0	0	0	966,960	4.0	0	0	966,960
Department of Retirement Systems	In addition to the estimate above,there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board	.0	0	0	0	.0	0	0	0	.0	0	0	0
Actuarial Fiscal Note - State Actuary	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Total \$	4.5	0	0	1,196,160	4.3	0	0	1,060,960	4.3	0	0	1,060,960

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Office of the State Actuary	.0	0	0	.0	0	0	.0	0	0
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
Washington State Health Care Authority	.0	0	0	.0	0	0	.0	0	0
Department of Retirement Systems	.0	0	0	.0	0	0	.0	0	0
Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board	.0	0	0	.0	0	0	.0	0	0
Actuarial Fiscal Note - State Actuary	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

Prepared by: Marcus Ehrlander, OFM	Phone: (360) 489-4327	Date Published: Final 2/ 6/2023
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Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 035-Office of the State Actuary
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Part I: Estimates

☒ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Cristina Diaz	Phone: 3607866100	Date: 01/31/2023
Agency Approval: Lisa Won	Phone: 360-786-6150	Date: 01/31/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 01/31/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

While this bill impacts some service credit purchase factors, they are not the factors that OSA calculates for DRS. Thus, as written it does not impact our actuarial services, and the bill has no impact on OSA resources or expenditures.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 100-Office of Attorney General
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Part I: Estimates

☐

No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT	FY 2024	FY 2025	2023-25	2025-27	2027-29
Legal Services Revolving Account-State 405-1	86,000	47,000	133,000	94,000	94,000
Total \$	86,000	47,000	133,000	94,000	94,000

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5	0.3	0.4	0.3	0.3
Account					
Legal Services Revolving Account-State 405-1	86,000	47,000	133,000	94,000	94,000
Total \$	86,000	47,000	133,000	94,000	94,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒

If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐

If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐

Capital budget impact, complete Part IV.

☐

Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Cam Comfort	Phone: (360) 664-9429	Date: 02/01/2023
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 02/01/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 02/01/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Section 1: Creates an Office of Ombuds for Retiree Benefits (OORB) for retiree benefits for individuals covered by a system administered by the Department of Retirement Systems (DRS). The Ombuds is appointed by the Governor and reports directly to the Director of DRS. The OORB may be contracted by the Governor in accordance with RCW 39.26.

Section 2: Provides a term of office for the Ombuds of six years, addresses removal and vacancy for the Ombuds.

Section 3: Provides training and experience requirements for the Ombuds.

Section 4: Provides staffing level for the OORB.

Section 5: Provides powers and duties for the Ombuds.

Section 6: Requires procedures for the Ombuds to refer complaints by members and retirees of the retirement systems and retiree health care.

Section 7: Provides miscellaneous provisions relating to the liability of the Ombuds.

Section 8: Provides that records and files of the Ombuds relating to complaints are confidential unless disclosure is authorized pursuant to this section.

Section 9: Requires a link to the Ombuds program on the DRS website.

Section 10: Provides funding for OORB.

Section 11: Requires an annual report by the Ombuds.

Section 12: Requires the Ombuds to have an Assistant Attorney General separate from DRS.

Section 13: Tolls the appeal time period under RCW 34.05 during the time a complaint is under review by the Ombuds.

Section 14: Technical amendment to RCW 41.50.110.

Section 15: Provides for a deadline of no less than 90 days for appeals filed by members or retirees under RCW 34.05.

Section 16: Technical amendment to RCW 41.40.660.

Section 17: Amends RCW 41.26.030, makes amendments to certain definitions.

This bill is assumed effective 90 days after the end of the 2023 legislative session.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

Cash receipts are assumed to equal the Legal Services Revolving Account (LSRA) cost estimates. These will be billed through the revolving account to the client agency.

The client agency is the Department of Retirement Systems (DRS). The Attorney General’s Office (AGO) will bill all clients for legal services rendered.

These cash receipts represent the AGO’s authority to bill and are not a direct appropriation to the AGO. The direct appropriation is reflected in the client agency’s fiscal note. Appropriation authority is necessary in the AGO budget.

AGO AGENCY ASSUMPTIONS:

DRS will be billed for non-Seattle rates:

FY 2024: \$86,000 for 0.3 Assistant Attorney General (AAG) and 0.15 Legal Assistant 3 (LA), this includes direct litigation costs of \$10,000.

FY 2025: \$47,000 for 0.15 AAG and 0.08 LA, this includes direct litigation costs of \$10,000 and in each FY thereafter.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Attorney General’s Office (AGO) Agency Assumptions:

This bill is assumed effective 90 days after the end of the 2023 legislative session.

Location of staffing is assumed to be in a non-Seattle office building.

Total workload impact in this request includes standard assumption costs for goods & services, travel, and capital outlays for all FTE identified.

Agency administration support FTE are included in the tables, for every 1.0 Assistant Attorney General FTE (AAG), the AGO includes 0.5 FTE for a Legal Assistant 3 (LA) and 0.25 FTE of a Management Analyst 5 (MA). The MA is used as a representative classification.

Assumptions for the AGO Revenue and Finance Division’s (REV) legal services for the Department of Retirement Systems (DRS):

The AGO will bill DRS for legal services based on the enactment of this bill.

REV assumes Office of Ombuds for Retiree Benefits (OORB) and DRS do not require legal services until FY 2024 with the Governor’s appointment of the Ombuds.

Section 12 requires that the AAG advising OORB is separate from the AAG advising DRS.

In FY 2024, REV anticipates that it will need to provide initial legal advice and guidance to OORB on the rights, duties, powers, liabilities, privileges, and immunities outlined in sections 5-8, 12, 13, and 16 of the bill as well as other aspects of administrative law such as the public records act and administrative procedures act.

In FY 2025 and subsequent years, REV anticipates it will be need to provide ongoing legal advice and guidance to OORB on the rights, duties, powers, liabilities, privileges, and immunities outlined in sections 5-8, 12, 13, and 16 of the bill as well as other aspects of administrative law such as the public records act and administrative procedure act.

OORB’s work likely results in an increase in the overall number of administrative appeals at DRS on an ongoing basis.

REV assumes the increase in total administrative appeals will not be fully offset by OORB efforts at dispute resolution.

Accordingly, beginning in FY 2024 and subsequent years, OORB referrals are expected to increase net number of administrative appeals that reach DRS's presiding officer with AAG representation by one to two per FY, resulting in an average of 160 additional AAG hours per FY for litigation.

Beginning in FY 2024 and subsequent years, the AGO anticipates 20 hours of advice and guidance annually to DRS on OORB's referrals and actions, and the new requirements provided in sections 6, 13, 14, 16, and 17.

FY 2024: 0.2 AAG to advise the Ombuds on initial startup type questions; and 0.1 AAG to advise DRS on Ombuds actions and providing representation in one to two new Law Enforcement Officers' and Fire Fighters' (LOEFF) Plan 2 appeals per FY.

FY 2025: 0.05 AAG to advise the Ombuds; and 0.1 AAG to advise DRS on Ombuds actions and providing representation in one to two new LOEFF 2 appeals per FY and in each FY thereafter.

REV anticipates \$10,000 per FY in direct costs per FY to retain medical experts for additional administrative appeals on disability denial cases.

REV: Total non-Seattle workload impact:

FY 2024: \$86,000 for 0.30 AAG and 0.15 LA, (this includes direct litigation costs of \$10,000).

FY 2025: \$47,000 for 0.15 AAG and 0.08 LA (this includes direct litigation costs of \$10,000) and in each FY thereafter.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
405-1	Legal Services Revolving Account	State	86,000	47,000	133,000	94,000	94,000
Total \$			86,000	47,000	133,000	94,000	94,000

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.5	0.3	0.4	0.3	0.3
A-Salaries and Wages	50,000	25,000	75,000	50,000	50,000
B-Employee Benefits	16,000	8,000	24,000	16,000	16,000
C-Professional Service Contracts	10,000	10,000	20,000	20,000	20,000
E-Goods and Other Services	9,000	4,000	13,000	8,000	8,000
G-Travel	1,000		1,000		
Total \$	86,000	47,000	133,000	94,000	94,000

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Assistant Attorney General	118,700	0.3	0.2	0.2	0.2	0.2
Legal Assistant 3	55,872	0.2	0.1	0.1	0.1	0.1
Management Analyst 5	91,524	0.1	0.0	0.1	0.0	0.0
Total FTEs		0.5	0.3	0.4	0.3	0.3

III. D - Expenditures By Program (optional)

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Revenue & Finance Division (REV)	86,000	47,000	133,000	94,000	94,000
Total \$	86,000	47,000	133,000	94,000	94,000

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 107-Washington State Health Care Authority
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Sara Whitley	Phone: 360-725-0944	Date: 02/03/2023
Agency Approval: Tanya Deuel	Phone: 360-725-0908	Date: 02/03/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 02/06/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

See attached narrative.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

See attached narrative.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

See attached narrative.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.
NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.
NONE

IV. D - Capital FTE Detail: FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.

NONE

See attached narrative.

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

HCA Fiscal Note

Bill Number: SB 5625

HCA Request #: 23-084

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

This legislation adds fifteen sections to RCW 41.50 (Department of Retirement Systems) and creates the Office of the Ombuds, that shall act as an advocate for retirees and members covered by a system administered by Department of Retirement Systems (DRS). The following sections directly impact the Health Care Authority (HCA):

Section 5 establishes the Ombuds powers and duties to include:

- Acting as an advocate for retirees and members of DRS administered retirement systems;
- Offer and provide information on DRS administered retirement systems;
- Identify, investigate, and facilitate resolution of complaints from members and retirees;
- Maintain a statewide toll-free telephone number for the receipt of complaints and inquiries;
- Refer complaints to the relevant department when appropriate.

Section 6(1) requires a relevant agency, referred to by the ombuds, to respond to any complaint as quickly as possible and forward the office a summary of the results of the investigation and any actions taken.

Section 10 designates funding for the Office of the Ombuds shall be paid through the DRS expense fund (600) under RCW 41.50.110 (Expenses of administration paid from department of retirement systems expense fund) and through the state Health Care Authority administrative account (418) under RCW 41.05.130 (State health care authority administrative account).

II. B - Cash Receipts Impact

None.

II. C – Expenditures

Public Employees Benefits Board (PEBB) and School Employees Benefits Board (SEBB) Program Impacts

Indeterminate fiscal impact, assumed to be greater than \$50,000. Assumed expenditures for the State Health Care Authority Administrative Account (418) are reflected in the DRS fiscal note.

This legislation adds fifteen sections to RCW 41.50 (Department of Retirement Systems) which creates the office of the ombuds; this office is directed to act as an advocate for retirees and members covered by a system administered by Department of Retirement Systems (DRS). While this office is to be housed within DRS, there are assumed impacts to HCA operations and administrative expenses.

Section 5 establishes the responsibility of the ombuds, and Section 6 requires any agency referred to by the office of the ombuds to address a retiree or member concern respond as quickly as possible. HCA's Employees and Retiree Benefits (ERB) Division, which services both PEBB and SEBB programs, has a designated customer service team that currently answers phone calls and responds to written inquiries and complaints received from PEBB retiree insurance coverage subscribers or potential subscribers. At times, this may include complaints about processes, and eligibility and procedural requirements. It is assumed that additional inquiries and complaints would be sent to ERB

HCA Fiscal Note

Bill Number: SB 5625

HCA Request #: 23-084

from the office of the ombuds following the referral procedure developed by the office, requiring a quick response from ERB along with a summary of the action proposed or taken. HCA also assumes there may be assistance required from HCA staff to provide training and support for the ombuds office during the initial phases of implementation, which could increase workload for current staff.

It is currently assumed this increase in workload can be managed with no additional HCA FTEs; however, HCA intends to reassess any additional needs after any increases to ERB staff workloads are known and can be assessed.

Section 10 of this bill designates funding for the office of the ombuds to be paid through the DRS expense fund under RCW 41.50.110 (Expenses of administration paid from department of retirement systems expense fund) and through the state Health Care Authority administrative account 418 under RCW 41.05.130 (State health care authority administrative account). As described in Section 4 of this bill, for the first two years this includes no more than four staff, which have been identified in the DRS fiscal note. It is unknown if additional staffing will be required after the initial two years, resulting in increased funding needs.

HCA and DRS assume an initial equal (50/50) share in payroll costs, to be split between the DRS Administrative Account (600) and the State Health Care Authority Administrative Account (418); HCA intends to reassess this assumption, and make adjustments in consultation with DRS and the ombud's office, following the initial year(s) of the ombud's office implementation to determine if this equal share of costs reflects the actual split of the workload being performed attributable to the two accounts.

The assumed expenditures for the State Health Care Authority Administrative Account (418) are reflected in the DRS fiscal note. PEBB fund 418 expenditures are assumed to be \$269,820 in FY 2024 and \$237,720 in FY 2025. The revenue requirements for fund 418 are supplied via cash transferred from the Public Employees' and Retirees Insurance Account (721). If additional funding for 418 should be required as a result of this legislation, increased revenue will be required in fund 721, resulting in an increase to the state funding rate.

Medicaid

No impacts to Medicaid lines of business.

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

None.

Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 124-Department of Retirement Systems
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Part I: Estimates



No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	4.1	4.0	4.1	4.0	4.0
Account					
St Health Care Authority Admin Acct-State 418-1	269,820	237,720	507,540	475,440	475,440
Department of Retirement Systems Expense Account-State 600-1	281,160	218,560	499,720	437,120	437,120
Public Employees' Retirement System Plan I Account-Non-Appropriated 631-6	1,300	1,200	2,500	2,400	2,400
School Employees Combined Plan 2 & 3-Non-Appropriated 633-6	1,300	1,200	2,500	2,400	2,400
Public Employees' Retirement System Combined Plan 2 and 3 Account-Non-Appropriated 641 -6	5,900	5,400	11,300	10,800	10,800
Teachers' Combined Retirement Plan II and III-Non-Appropriated 642-6	4,400	4,100	8,500	8,200	8,200
Washington Law Enforcement Officers & Firefighters' System Plan II Retirement Ac-Non-Appropriated 829-6	15,800	15,300	31,100	30,600	30,600
Total \$	579,680	483,480	1,063,160	966,960	966,960

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☒ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Mark Feldhausen	Phone: 360-664-7194	Date: 02/02/2023
Agency Approval: Tracy Guerin	Phone: 360-664-7312	Date: 02/02/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 02/03/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Sec. 1 of the bill creates the office of the ombuds for retiree benefits. The ombuds shall be appointed by the governor and report directly to the director of the Department of Retirement Systems (DRS).

Sec. 3 identifies that the ombuds shall have training and/or experience in the retirement systems administered by DRS, the retiree health care administered by the Health Care Authority (HCA), the Washington state legal system and dispute resolution techniques.

Sec. 4 limits the office to 4.0 FTEs for the first two years.

Sec. 5 requires the office to maintain a statewide toll-free telephone number.

Sec. 6 requires the office to develop referral procedures for complaints and requires DRS or HCA to forward a summary of their results of an investigation and action proposed or taken (which could include complaints against employers).

Sec. 9 requires DRS and HCA to clearly provide a link to the ombuds program on the front page of their website.

Sec. 10 identifies that the office shall be funded out of both DRS' and HCA's administrative accounts.

Sec. 11 identifies the requirement for an annual report to the Governor, the Select Committee on Pension Policy (SCPP) and the LEOFF Plan 2 Retirement Board.

Sec. 12 identifies that the ombuds shall have an Assistant Attorney General separate from DRS' assigned to them for legal advice.

Sec. 13 provides that if an issue is raised to the office, the time to file an appeal is "tolled" (put on pause).

Sec. 14 provides that for the Law Enforcement Officers' and Fire Fighters' (LEOFF) Retirement System and Public Safety Employees' Retirement System (PSERS), "in the line of duty" has the same meaning as "in the course of employment" as with the Department of Labor and Industries (LNI). Any LEOFF Plan 2 disability retirement that has been denied by DRS prior to this bill will be re-reviewed to determine if the disability was in the line of duty. Additionally, if DRS denied a catastrophic disability in LEOFF or PSERS, because the applicant is capable of employment, DRS or LNI are required to have an occupational assessment completed.

Sec. 15 amends RCW 41.50.110(7) to exclude DRS' administrative fee and any employer charge for the unfunded liability in a plan from the charge to a member for optional service credit purchases.

Sec. 16 provides that the deadline to file an appeal to DRS under the Administrative Procedures Act (APA) cannot be less than 90 days. If DRS requests a member or retiree to provide additional information then the days in that deadline are tolled (i.e., put on pause). Any appeal that was previously dismissed for timeliness can be re-filed, if DRS had requested additional information.

Sec. 17 amends RCW 41.40.660(6) to identify that if a person in Plan 2 of the Public Employees' Retirement System (PERS) made a request after June 11, 2020, but prior to the determination from the Internal Revenue Service that a survivorship change within 90 days was acceptable (i.e., August 2, 2021), their request is considered timely, and that person can change their survivorship option prospectively.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

ADMINISTRATIVE ASSUMPTIONS:

- The ombuds and their team will work remotely but also will have access to touch down space in the DRS building in Tumwater as the ombuds reports directly to the director of DRS per Sec. 1.
- The new office will operate at 4.0 FTEs per Sec. 4. The anticipated classifications are identified in Part III.B.
- The computer hardware/software cost for hybrid work is estimated at \$6,800 per FTE, while the cost to operate the toll-free line required by Sec. 5(4) is estimated at \$1,800 per year and the cost for phone lines and equipment is estimated at \$1,300 per year.
- This fiscal note assumes an initial 50:50 split between the administrative funds identified in Sec. 10 for the operating cost of the new office. The ombuds may analyze workload after the first year or biennia of operation to determine if a different split is more accurate.
- Support from the Attorney General's Office (AGO) for general legal advice to the ombuds, per Sec. 12, is estimated in the AGO's fiscal note. The total estimated cost to the AGO for all sections of the bill was identified as \$133,000 in the 2023-25 biennium and \$94,000 per biennium ongoing. The legal costs have been allocated to the appropriate fund sources based on the nature of the service.
- The cost to administer Sec. 13 is indeterminate. DRS is not able to estimate the number of agency decisions that will be raised to the ombuds, the resulting average duration of a pause to current process timelines nor the potential cost associated with a pause.
- The cost to implement and administer Sec. 14 is indeterminate. DRS would need to review applications for disability retirement, that were denied prior to the effective date of the bill, and have occupational assessments conducted in specific cases. While the cost is estimated at \$5,000 per case, it is not possible to identify how many disability retirement applications would qualify for this re-review as some would have already been archived so they're not currently in the agency's database.
- DRS identified a cost of \$30,000 to implement Sec. 15. Specific system-generated invoices will need to be modified to remove components of the employer charge for optional service credit purchases. Additional assumptions related to this project include:
 - The bill is prospective only,
 - DRS will cancel, recreate, and reissue any open optional bills that have not been paid in full (representing approximately 140 bills),
 - DRS will not make adjustment to bills that have previously been paid in full,
 - Changes to relieve members from paying the unfunded liability and administrative fee will only apply when the member is paying the employer fee, employers will still pay these costs on all other optional bills,
 - There will be no changes to the system transfer bill calculations, and
 - No other entity will be responsible for paying the unfunded liability amount or DRS admin fee for these optional bills (e.g., it will not be billed to the employer).
- The cost to implement Sec. 16 is indeterminate as the agency cannot estimate the number of prior claims that have been dismissed that will be refiled, nor the impact of the proposed adjustment to the Administrative Procedure Act contained in 34.05 RCW.
- The cost to implement Sec. 17 is indeterminate. The language would provide retirees of Plan 2 of the Public Employees' Retirement System (PERS) the ability to change their survivorship option if they made such a request between the dates provided in Sec. 17(6). It is not possible to query the agency's automated system to identify how many the agency received during the specified timeframe.

- There is no cost to implement Sec. 18 as it adds clarity that holiday payments or used sick/vacation leave are included in the definition of salary in LEOFF Plan 2.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
418-1	St Health Care Authority Admin Acct	State	269,820	237,720	507,540	475,440	475,440
600-1	Department of Retirement Systems Expense Account	State	281,160	218,560	499,720	437,120	437,120
631-6	Public Employees' Retirement System Plan I Account	Non-Appropriated	1,300	1,200	2,500	2,400	2,400
633-6	School Employees Combined Plan 2 & 3	Non-Appropriated	1,300	1,200	2,500	2,400	2,400
641-6	Public Employees' Retirement System Combined Plan 2 and 3 Account	Non-Appropriated	5,900	5,400	11,300	10,800	10,800
642-6	Teachers' Combined Retirement Plan II and III	Non-Appropriated	4,400	4,100	8,500	8,200	8,200
829-6	Washington Law Enforcement Officers & Firefighters' System Plan II Retirement Ac	Non-Appropriated	15,800	15,300	31,100	30,600	30,600
Total \$			579,680	483,480	1,063,160	966,960	966,960

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	4.1	4.0	4.1	4.0	4.0
A-Salaries and Wages	329,220	320,220	649,440	640,440	640,440
B-Employee Benefits	116,160	113,160	229,320	226,320	226,320
C-Professional Service Contracts	18,000		18,000		
E-Goods and Other Services	89,100	50,100	139,200	100,200	100,200
G-Travel					
J-Capital Outlays	27,200		27,200		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	579,680	483,480	1,063,160	966,960	966,960

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Administrative Assistant 4	58,704	1.0	1.0	1.0	1.0	1.0
Benefits Ombudsman	105,000	1.0	1.0	1.0	1.0	1.0
Communications Consultant 4	72,756	0.0		0.0		
Fiscal Analyst 2	54,108	0.0		0.0		
IT Business Analyst - Journey	96,888	0.0		0.0		
Management Analyst 4	88,800	1.0	1.0	1.0	1.0	1.0
Retirement Specialist 3	67,716	1.1	1.0	1.0	1.0	1.0
Total FTEs		4.1	4.0	4.1	4.0	4.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

The ombuds may develop rules and some existing agency rules may need to be revised.

Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: 341-Law Enforcement Officer and Fire Fighters' Plan 2 Retirement Board
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Part I: Estimates

☒ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Seth Flory	Phone: (360) 407-8165	Date: 02/02/2023
Agency Approval: Seth Flory	Phone: (360) 407-8165	Date: 02/02/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 02/03/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Senate Bill 5625, regarding public employee retirees, creates the Office of the Ombuds within the Department of Retirement Services (DRS). The Office of the Ombuds will have certain obligations to the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board (LEOFF), but the relationship created by these obligations will not significantly impact LEOFF's operations. Therefore, no fiscal impact expected to result from the adoption of this legislation.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.
NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.
NONE

IV. D - Capital FTE Detail: FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Individual State Agency Fiscal Note

Bill Number: 5625 SB	Title: Public employee retirees	Agency: AFN-Actuarial Fiscal Note - State Actuary
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☒ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Amanda Cecil	Phone: 360-786-7460	Date: 01/29/2023
Agency Preparation: Aaron Gutierrez	Phone: 360-786-6152	Date: 02/06/2023
Agency Approval: Michael Harbour	Phone: 360-786-6151	Date: 02/06/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 02/06/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.
NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.
NONE

IV. D - Capital FTE Detail: FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

SUMMARY OF RESULTS

BRIEF SUMMARY OF BILL: This bill creates the Office of Ombuds within the Department of Retirement Systems (DRS) and makes other changes, some of which, according to DRS, codify current administrative practice.

COST SUMMARY

The cost/savings that could arise from this bill is **INDETERMINATE** for the reasons outlined in the following section. Please note that this does not reflect the magnitude of the costs/savings from this bill; rather, we are unable to quantify the potential impact.

HIGHLIGHTS OF ACTUARIAL ANALYSIS

- ❖ From the perspective of funding the DRS retirement systems, each of the six main changes identified in this bill is expected to have either no impact or result in an indeterminate cost/savings.
 1. Creating the DRS Office of Ombuds is expected to have **no impact** to the retirement systems, since associated expenses will be paid from the DRS and HCA administrative accounts.
 2. Establishing a retroactive effective date for PERS 2 survivor option re-elections is expected to result in an **indeterminate cost/savings**. Consistent with our AFN on [SB 6417](#) from the 2020 Legislative Session, we believe the impact of survivor option re-elections will be limited due to the 90-day post-retirement window; also, this bill's retroactive provision only applies to those who previously requested a survivor option change.
 3. Changing the PSERS 2 and LEOFF 2 qualification of a duty-related disability, and the corresponding re-assessment of past disability claims, is expected to have **no impact** since, according to DRS, this change matches the current administrative practice.
 - Any changes to the claims could result in a cost to these plans from paying larger/subsidized benefits.
 4. Including used sick and vacation leave in the LEOFF 2 definition of "basic salary" is expected to have **no impact**, since we understand this codifies current administrative practice.
 5. Allowing administrative claims to be re-filed that were denied for failing to file a timely appeal is expected to result in an **indeterminate cost**, as re-filed claims could increase benefits.
 6. Excluding the Plan 1 Unfunded Actuarial Accrued Liability (UAAL) contribution rate when calculating a member's cost to purchase past service credit is expected to result in an **indeterminate cost**, as fewer PERS/TRS Plans 1 contributions would be collected. We expect no impact to projected UAAL rates or Plan 1 payoff dates.
- ❖ We relied on DRS for information regarding the administration of this bill. Differences between this understanding and actual administration will likely change the expected impacts outlined in this AFN.

See the remainder of this fiscal note for additional details on the summary and highlights presented here.

WHAT IS THE PROPOSED CHANGE?

Summary of Bill

This bill impacts the following systems:

- ❖ Public Employees' Retirement System (PERS).
- ❖ Teachers' Retirement System (TRS).
- ❖ School Employees' Retirement System.
- ❖ Public Safety Employees' Retirement System (PSERS).
- ❖ Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF).
- ❖ Washington State Patrol Retirement System.

This bill makes the following changes:

1. **DRS Ombuds** – Creates the Office of Ombuds within DRS; pays associated expenses from the DRS and the Health Care Authority (HCA) administrative accounts; requires the Ombuds to give regular reports to various entities including the Select Committee on Pension Policy.
2. **Survivor Option Re-Election (PERS Plan 2)** – Applies a retroactive effective date to a current law provision that allows members 90 days to change survivor options. This bill backdates effectiveness to June 11, 2020, noting that the Internal Revenue Service (IRS) made a determination regarding these survivor option re-elections on August 1, 2021.
3. **Duty Disability Benefits (PSERS Plan 2 and LEOFF Plan 2)** – Clarifies the criteria to qualify for duty disability benefits; requires DRS to review all denied claims using the new criteria; requires an occupational assessment if the claim was denied due to the member being capable of employment.
4. **“Basic Salary” Definition (LEOFF Plan 2)** – Includes used sick and vacation leave in the definition of “basic salary.”
5. **Administrative Claims (All Plans)** – Allows claims to be re-filed that were denied for failing to file a timely appeal.
6. **Service Credit Purchases (All Plans)** – Changes how service credit purchases are calculated. More specifically, it states that when calculating the fee for service credit purchase, the fee paid by the member cannot consider the DRS administrative fee or any unfunded liability in the plan.

We relied on DRS' statement that provisions 3 and 4 are codifying current administrative practice.

Effective Date: 90 days after session.

In this summary, we only include changes pertinent to our Actuarial Fiscal Note (AFN). See the legislative bill report for a complete summary of the bill.

What Is the Current Situation?

1. **DRS Ombuds** – DRS does not currently have a position of Ombuds.
2. **Survivor Option Re-Election (PERS Plan 2)** – At retirement, plan members make an irrevocable choice of their survivor option. In 2020, Senate Bill (SB) 6417 provided members of all plans the option of changing their survivor option up to 90 days after retirement, but included a requirement that the IRS must first approve of this adjustment to the plan design.
3. **Duty Disability Benefits (PSERS Plan 2 and LEOFF Plan 2)** – All DRS retirement systems offer disability benefits. For most systems, the benefits are equivalent to what the member would have earned if they had retired on the date of injury (including any reduction in benefits due to being under the normal retirement age).

PSERS 2 and LEOFF 2 are the only plans open to new hires that offer enhanced disability benefits for duty-related injuries that result in “total incapacitation” as defined in statute. Furthermore, LEOFF 2 is the only open plan that offers enhanced benefits if an injury is considered duty-related (but does not result in “total incapacitation”).

Under current law, to qualify for a duty-related disability, the injury must occur “in the line of duty,” per the Washington Administrative Code [415-104-479](#). This bill clarifies the qualification to occurring “in the course of employment,” per the Revised Code of Washington (RCW) [51.08.013](#).
4. **“Basic Salary” Definition (LEOFF Plan 2)** – “Basic salary” is defined in RCW [41.26.030\(4\)\(b\)](#) as a component of Final Average Salary (FAS). FAS is defined in RCW [41.26.030\(15\)\(b\)](#) to be the member’s highest consecutive 60 months of basic salary.
5. **Administrative Claims (All Plans)** – Members of the retirement systems who feel they’ve been adversely impacted by a DRS decision may file an administrative claim. This includes, but is not limited to, denials that an injury was duty related.
6. **Service Credit Purchases (All Plans)** – Based on conversations with DRS, we understand that there are three primary types of service credit purchases for which members may pay DRS administrative fees and Plan 1 UAAL contribution rates. These purchases are Authorized Leave of Absence, New Employer Billings, and Elected Official Billings.

This bill expressly mentions the DRS administrative fee, which is defined in RCW [41.45.110](#) and is currently set at 0.18 percent.

WHY THIS BILL HAS AN INDETERMINATE COST/SAVINGS

From the perspective of funding the DRS retirement systems, each of the six changes outlined above is expected to have either no impact or result in an indeterminate cost/savings. Below, we explain why this is the case, the actuarial impacts that could result, and some of the risks to consider. These takeaways are based on our [June 30, 2021, Actuarial Valuation Report](#).

1. **DRS Ombuds** – We expect **no impact** to the retirement systems due to the creation and ongoing funding of the Office of Ombuds within DRS, since associated expenses will be paid from the DRS and HCA administrative accounts.
2. **Survivor Option Re-Election (PERS Plan 2)** – Based on information from DRS, we understand that a small number of PERS 2 members will be impacted under this bill. This group is limited to those who submitted their request to change their survivor option within the 90-day period and during the historical timeframe noted earlier. Members who are able to do so will see an increase/decrease in their pension prospectively due to a change in the survivor option factor that is applied to their benefit.

This provision results in an **indeterminate cost/savings** to PERS 2/3. While the administrative factors used to convert a member's pension amount between different forms of payment are intended to be actuarial equivalent, a member may have changed their selection to a survivor option that is more costly based on new health information for either themselves or their designated beneficiary (often referred to as anti-selection).

However, members must have selected the new survivor option within the original 90-day window of retirement. We believe members will have gained limited information within this window and expect small costs or savings will arise from a new survivor option. We also understand that this request to change their survivor option cannot now be revoked under this bill.

3. **Duty Disability Benefits (PSERS Plan 2 and LEOFF¹ Plan 2)** – Based on information from DRS, we understand that changing the qualification of a duty-related disability from an injury that occurs “in the line of duty” to one that occurs “in the course of employment” codifies current administrative practice and that the two terms are interpreted the same administratively.

With this understanding, we expect **no impact** on PSERS 2 and LEOFF 2 due to this change and the corresponding re-assessment of past disability claims. However, if this bill were to result in more injuries being qualified as duty related or determined to be “total incapacitation,” it would result in a cost to these retirement plans from paying larger/subsidized benefits.

¹The bill does not explicitly exclude LEOFF Plan 1. However, the LEOFF 1 Disability Boards review disability claims for their members (not DRS), so we assume there is no impact.

4. **“Basic Salary” Definition (LEOFF Plan 2)** – Based on information from DRS, we understand that including sick and vacation leave in the definition of “basic salary” codifies current administrative practice. We also understand that the salary over which a member’s pension is calculated excludes sick and vacation leave that may be cashed out at the time of a member’s retirement or termination.

With this understanding, we expect **no impact** on LEOFF 2 due to this change. However, if administration differs from our above understanding, it could lead to a cost to LEOFF 2, as members’ pensionable salaries (and thus pension benefit calculations) would increase.

5. **Administrative Claims (All Plans)** – We expect this change to result in an **indeterminate cost** to the retirement system, as re-filed claims have the potential to result in pension benefit increases.
6. **Service Credit Purchases (All Plans)** – This bill will exclude the DRS administrative fee and the “unfunded liability in a plan” when calculating a member’s cost to purchase past service credit. Based on input from DRS, we understand that this language is specifically referring to the PERS/TRS Plans 1 UAAL and not the general unfunded liability of the retirement plans.

In 2022, there were 74 such purchases for an average of 4.6 years of service credit. Excluding the Plan 1 UAAL contribution rate when calculating a member’s cost to purchase service credit is expected to result in an **indeterminate cost** to PERS/TRS Plans 1, as fewer Plan 1 contributions would be collected.

However, we do not anticipate this loss will increase Plan 1 UAAL contribution rates or materially impact the projected payoff dates; rather, PERS/TRS Plans 1 will simply have a slightly lower funded ratio in the future. The impact is further diminished since, based upon our most recent [Projections](#), the Plans 1 UAAL are expected to be fully funded within a few years at which point UAAL contribution rates cease.

ACTUARY'S CERTIFICATION

The undersigned certifies that:

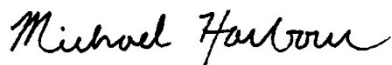
1. The actuarial assumptions, methods, and data used are reasonable for the purposes of this pricing exercise. The use of another set of assumptions, methods, and data may also be reasonable and might produce different results.
2. The risk analysis summarized in this AFN involves the interpretation of many factors and the application of professional judgment.
3. We prepared this AFN based on our current understanding of the bill as of the date shown in the footer. If the bill or our understanding of the bill changes, the results of a future AFN based on those changes may vary from this AFN. Additionally, the results of this AFN may change after our next annual update of the underlying actuarial measurements.
4. We prepared this AFN and provided opinions in accordance with Washington State law and accepted Actuarial Standards of Practice as of the date shown in the footer of this AFN.

We prepared this AFN to support legislative deliberations during the 2023 Legislative Session. This AFN may not be appropriate for other purposes.

We advise readers of this AFN to seek professional guidance as to its content and interpretation, and not to rely on this communication without such guidance. Please read the analysis shown in this AFN as a whole. Distribution of, or reliance on, only parts of this AFN could result in its misuse and may mislead others.

The undersigned, with actuarial credentials, meets the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein.

While this AFN is meant to be complete, the undersigned is available to provide extra advice and explanations as needed.



Michael T. Harbour, ASA, MAAA
Actuary

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APPENDIX B

An act related to the department for retirement systems appeals process; adding a new section to chapter 41.50 RCW.

Sec. 1 Intent: It is intent of the legislature that this legislation be liberally construed most strongly in favor of the beneficiaries consistent with established case law (see *Hanson v. Seattle*, 80 Wn. 2d 242, 80 Wash. 2d 242, 493 P.2d 775 (Wash. 1972)).

Sec 2. New Section. Appeals of Department Administrative Decisions by LEOFF 2 Members

- (1) LEOFF 2 members have 120 days to appeal administrative decisions from the department. The department must provide written notice of the right to appeal and the deadline for filing the appeal. If the department requests additional records from the member, the department must toll the deadline for filing an appeal and provide in writing the updated deadline for filing the appeal.



DRS Appeal Deadlines

Final Proposal
December 13, 2023

Issue

- **Some LEOFF 2 members have missed their deadline to file an administrative appeal with DRS and expressed concerns regarding a lack of clarity on the deadline**

Policy Topic History

- Issue was part of DRS Ombuds Bill (SB 5625)
- Board received Initial Briefing in July
- Comprehensive Briefing in November, Board requested final briefing on:
 1. Require tolling
 2. Extend time to file an appeal to 120 days

Administrative Procedures Act

- Minimum of 20 days to file an appeal
 - No tolling required
 - No petitions process required

DRS's APA Process

- Initial decision from DRS (member or employer)
- Administrative decision (no deadline to file)
- Petition decision (120 days to file)
- Appeal decision (60 days to file)

DRS Data

- In the last 5 years how many petitions has DRS received? 75 (25 LEOFF 2)
- How many of those petitions were denied for not being timely? 0
- In the last 5 years how many appeals of petition decisions has DRS received? 37 (14 LEOFF 2)
- How many of those appeals were denied for not being timely? 2

OSA Analysis

- Did not request a pricing from OSA for Final Proposal
- However, OSA did complete a Fiscal Note for similar section of SB 5625 (see appendix A)
- “We expect this change to result in an indeterminate cost to the retirement system, as refiled claims have the potential to result in pension benefit increases”

Next Steps

1. Motion to endorse legislation

- LEOFF 2 members have **120 days** to appeal administrative decisions from DRS
- DRS must provide written notice of the right to appeal and the deadline for filing the appeal
- If DRS requests additional records from the member they must toll the deadline for filing an appeal and provide in writing the updated deadline for filing the appeal

2. No action



Thank You

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