



## INDEPENDENT FISCAL OFFICE

August 3, 2023

The Honorable Brad Roae  
Minority Chairman  
House State Government Committee  
151 East Wing Capitol Building  
Harrisburg, PA 17120

Re: Requested Actuarial Note for House Bill 1416, Printer's Number 1584 Amendment A01750

Dear Chairman Roae:

This letter responds to your July 5, 2023 request concerning an actuarial note for Amendment A01750 to House Bill 1416, Printer's Number 1584. The bill would amend Title 24 (Education) and Title 71 (State Government) of the Pennsylvania Consolidated Statutes to provide cost-of-living adjustments (COLAs) to certain annuitants of the State Employees' Retirement System (SERS) and Public School Employees' Retirement System (PSERS) that retired prior to July 2, 2001. The COLAs range from 15% to 24.5% of current annuity values depending on year of retirement. The Independent Fiscal Office (IFO) determined that the bill would have a material cost impact and released an actuarial note on June 30, 2023. That note is available on the IFO's website, and a summary of the impacts is shown in the table below.

### House Bill 1416, PN 1584 Impact Summary

	SERS	PSERS
Individuals impacted	25,334	43,475
Lifetime increase in benefits	\$566.4	\$1,220.2
Annual amortized costs (10 years)	\$52.5	\$125.1
<u>Initial change in:</u>		
Unfunded Actuarial Liability	\$371.0	\$821.1
Funded ratio	-0.46%	-0.44%
Employer contribution rate	0.74%	0.81%

Notes: Dollars in millions. Data from SERS and PSERS, calculations by the IFO.

Amendment A01750 would prohibit any bill that contains supplemental annuities (including COLAs) from moving to second consideration until the stress test based on the actuarial valuation for the calendar year (SERS) or fiscal year (PSERS) in which the legislation was first introduced has been completed. The amendment would not alter the prescribed COLAs in the base bill, nor would it prevent the bill from moving forward. Instead, the amendment is prospective and would only apply to future proposed legislation. SERS

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and PSERS submitted comments regarding administrative, legal and other non-actuarial impacts related to this amendment, and those responses are attached to this letter.

Under section 615-B of the Administrative Code of 1929, the IFO reviews legislative changes that could affect public employee pension or retirement plans and provides actuarial notes for such legislation. The IFO determined that the actuarial cost impact associated with Amendment A01750 to House Bill 1416, Printer's Number 1584 is de minimis and no further actuarial analysis is required. The office reviewed the legislation for actuarial cost impact only, and not for potential legal, administrative or policy implications.

If you have further questions regarding this response, please contact me at (717) 230-8293.

Sincerely,



Matthew J. Knittel  
Director, Independent Fiscal Office

cc: Governor Josh Shapiro  
Members of the General Assembly

July 21, 2023

Mathieu Taylor  
Independent Fiscal Office  
Rachel Carson State Office Building, 2nd floor  
400 Market St.  
Harrisburg, PA 17105

**RE: Review of A01750 & A01751 for H.B. 1415 & H.B. 1416**

Dear Mathieu,

We are responding to your request to provide additional insights concerning A01750/A01751, which seek to amend H.B. 1415, P.N. 1583 and H.B. 1416, P.N. 1584 both of which are concerned with proposed Cost-Of-Living-Adjustments (COLAs).

As noted previously, both amendments use identical language. Their overall intent would be to delay second consideration on any bill that provides for a “supplemental annuity” until after SERS completes and submits its annual stress test report to the General Assembly during the calendar year in which the bill is introduced.

Our primary observations are as follows:

As noted earlier, from a financing perspective, delaying second consideration until after the stress test date should not have any significant actuarial cost.

One thing that is not clear is whether or not the COLA payments would be retroactive, necessarily. Typically, COLAs are drafted so that they are prospective only – this helps avoid constitutional and drafting issues involving annuitants who died during the retroactive period, for example. Of course, this is a policy issue that we would defer to the General Assembly to make.

That said, we have several additional technical and practical aspects worth noting, in no particular order:

1. **Constitutional / Statutory Considerations:** We would defer to the legislation experts in the General Assembly as to whether this type of limited substantive issue statutory amendment of the operating rules of the Senate and the House is legally binding or constitutionally valid. We also would defer at this time to the experts in the General Assembly as to whether a supplemental annuity voted on and passed in violation of the new proposed 71 Pa. C.S. §5910 would be operative. If that happens, then SERS will need to make that determination as the results may depend on the precise fact pattern. We have not undertaken in-depth research or analysis for the purpose of this general review.

2. **SERS Fiscal / Calendar Year:** It is important to note that the SERS portions of these bills are geared to our calendar actuarial year and December 31 valuation dates, as opposed to the PSERS fiscal year based actuarial year.
3. **Stress Test Timing:** The draft amendments are written on the assumption that SERS' annual stress tests are prepared and submitted according to the statutory time frame in 71 Pa. C.S. §5909 (July 1 for SERS, September 1 for the IFO). SERS actually released its first comprehensive Stress Test Report (which is more comprehensive than required by statute) in September 2019. This was prior to the passage of Act 2020-128. Each year, these Stress Tests utilize the freshest data available, drawn from our Annual Comprehensive Financial Report, which is produced in June. Each year since 2020, SERS and the IFO have requested, and received, a 90-day extension to their respective Stress Test submission deadlines – the key point being that we need the additional time to provide the most current and useful information available.

The fact that there may be a delay in the submission of the Stress Tests by up to 90 days to allow the data to be collected and the testing to be performed could raise operational issues in regard to the proposed amendments. It could be interpreted that if the deadline for submitting the Stress Tests is waived or extended, then the cooling off period before the second consideration also is extended. However, such a decision is not ours to make. Legislative sponsors may well want, and decide, to have second consideration during the extension period. In such a case, it could then be a point of contention between those who would grant the extension, versus those seeking an expedited vote, with SERS stuck in the middle. It also raises the concern that our extension requests are not granted because legislative leaders want to move a supplemental annuity more quickly.

4. **Clarification of Intent:** It is not entirely clear what is being addressed in the following sentence paragraph (shorter paraphrasing in brackets):

“[A COLA bill may not be given second consideration] until after the deadline to submit the results of the stress test of the system to the General Assembly under [§5909], which is conducted and completed by the board after the annual actuarial valuation required by [§5902(j)] for the calendar year in which the bill is introduced.”

Our question focuses on what is being referred to in the last prepositional phrase “for the calendar year in which the bill is introduced.” If the reference is to apply to the annual actuarial valuation, then it means that that 2<sup>nd</sup> consideration could be delayed a full year. It would seem to be more logical that the reference is to the stress test occurring during the calendar year in which the bill is introduced. But we can't be sure. We would therefore suggest the following language changes to help clarify the intent:

A bill implementing a supplemental annuity under this part may not be given second consideration by the Senate or House of Representatives until **after the completion and submission** of the stress test **report** of the system to the General Assembly **as described in** section 5909(a) (relating to stress test of system) which is conducted and completed by the board after the **most recent** annual actuarial valuation required by section 5902(j) (relating to administrative duties of the board) **during** the calendar year in which the bill is introduced.”

5. **Terminology (COLAs vs. Supplemental Annuity):** All retroactive benefit increases applicable to SERS annuitants are “COLAs” constitutionally. We have used the term “supplemental annuity” as a general term to cover retroactive benefit increases that are not traditional and generally applicable COLAs. Two examples are found in:
- a. **§5708.4** which granted retroactive benefit increases as a “special supplemental postretirement adjustment” to employees who retired after the 1974 Retirement Code was enacted and the implementation of court decisions allowing “double dipping” nonstate service credit for active military duty, which is part of the member’s eligibility for a federal reserve/national guard military pension.
  - b. **§5708.8** which granted as a “special supplemental postretirement adjustment” retroactive benefits to correction educators who retired before the enactment of 71 Pa. C.S. §5303.2.

Both provisions were funded under the “supplemental annuity” funding provisions and ledger accounts in the Retirement Code, not as part of the standard unfunded liability provisions applicable when benefit increases are given to active members.

The point of raising this issue is that if the legislation is enacted “as is” then there could be questions as to whether the term “supplemental annuity” applies generally and broadly to all post-retirement benefit increases enacted by legislation, as has been the historical practice, to use the term this way since at least since the 1974 Retirement Code? Or is “supplemental annuity” as used in proposed §5910 a more limited term that needs the “magic words” of “supplemental annuity” or at least be recognizable as a traditional COLA and not some other form of retroactive benefit increase that is only a COLA due to constitutional reasons?

We hope these observations are useful to you. Please feel free to reach out if you have any questions or concerns.

Thank you,

Thomas Derr  
Director, Communications & Policy



COMMONWEALTH OF PENNSYLVANIA  
**PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM**

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July 14, 2023

Mathieu Taylor  
Fiscal Analyst II  
Independent Fiscal Office  
Rachel Carson State Office Building, 2nd floor  
400 Market St.  
Harrisburg, PA 17105

Dear Mathieu:

As requested, the Pennsylvania Public School Employees' Retirement System (PSERS) reviewed A01751/A01750, which, respectively, amend House Bill 1415, Printer's No. 1583, and House Bill 1416, Printer's No. 1584.

The language in the amendments is identical. The identical amendments would prohibit the House or Senate from conducting a second vote on a bill implementing a "supplemental annuity" until after the deadline for PSERS to submit the results of its annual stress test to the General Assembly for the fiscal year in which the bill is introduced.

It does not appear that the amendments would have an effect on the COLAs included in the underlying bills, HB 1415 and HB 1416, but the amendments would prohibit the House or Senate from holding a second vote on **future** COLA bills until after the deadline for PSERS to submit its annual stress test results to the General Assembly for the fiscal year in which the bill is introduced.

As you know, a bill does not become law until the House and Senate each conduct three public affirmative votes and the bill is signed by the governor. Thus, the restriction on when the second consideration can be held for a COLA bill would not be effective until the passage of HB 1415 or HB 1416, at which time the COLAs included in the bill would become law.

There may also be a potential timing issue in the proposed Section 8511 that may need to be vetted and considered in conjunction with the House's and Senate's internal voting rules. PSERS respectfully defers to the four caucuses' leaders and counsel for further evaluation of the actual implementation of this proposed provision.

Should you have additional questions, please contact me at 717-720-4770 or via email at [stesack@pa.gov](mailto:stesack@pa.gov).

Thank you.

*Steve Esack*