



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2015 Biennium

<b>Bill #</b>	SB0261	<b>Title:</b>	Require legislator election each term concerning participation in PERS
<b>Primary Sponsor:</b>	Malek, Sue	<b>Status:</b>	As Introduced

- Significant Local Gov Impact     
 Needs to be included in HB 2     
 Technical Concerns  
 Included in the Executive Budget     
 Significant Long-Term Impacts     
 Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2014</u> <u>Difference</u>	<u>FY 2015</u> <u>Difference</u>	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

**Description of fiscal impact:** SB 261 would require legislators to make an election each term specifying whether or not they desire to participate in a public retirement system. There is no measurable fiscal impact of this legislation to the state or the Public Employee Retirement System (PERS).

### FISCAL ANALYSIS

#### Assumptions:

#### **Legislative Branch**

1. Statute currently allows a person who is elected or appointed to be a legislator to participate in the public employee retirement system while engaged in official duties as a legislator, as provided in 5-2-304(4)(a), MCA. A legislator elects to participate by completing a written election with the retirement board within 90 days after taking office. This election is irrevocable and the legislator remains a member until they either become a retiree or cash out of the retirement system.
2. SB 261 requires that this written election is only valid for one term of office. If the legislator is reelected, a new election must be made for the new term.
3. It is assumed that, if a legislator is elected to a subsequent term and does not file a written election with the retirement board within the required 90 days, the default election is to decline participation.
4. It is assumed that the number of legislators who are currently active members of the public retirement system by virtue of their legislative employment will not change as a result of this bill.

- 5. It is assumed that this bill will not affect a legislator’s ability to purchase (or “buy back”) service credit for their legislative service.

**Public Employee Retirement System (PERS)**

- 6. The actuarial impact statement used the actuarial methods and assumptions as were used in the June 30, 2012 Actuarial Valuation of the Systems
- 7. Currently there are less than 100 legislators who are accruing service in PERS. This is out of a total of over 28,000 active members.
- 8. There is one legislator accruing service in the Highway Patrol Officers’ Retirement System, compared to over 200 active members as of the most recent valuation date.
- 9. Since this legislation only affects future persons commencing legislative terms, there would be no effect on the June 30, 2012 actuarial valuation results.
- 10. The effects upon future valuations are not measurable, but should not be material to these systems.
- 11. The fiscal impact presented by the actuary assumes that this bill is the only amendment being considered. If other changes are also adopted, the fiscal impact associated with this bill could be different.
- 12. There have been no adjustments for actuarial gains and losses or for changes in membership or financial data since the last valuation as of June 30, 2012.
- 13. The assumptions are based on the likely future experience of the systems and represent a best estimate for future experience. The results are dependent upon future experience conforming to the assumptions used.

**Technical Notes:**

- 1. Repeated opportunity to elect to participate in a 401(a) defined benefit plan creates a qualification issue under the Internal Revenue Code.
- 2. The bill concept is addressed and confirmed in Revenue Ruling 2006-43, issued by the IRS with respect to employer “pick-ups” of employee contributions.
  - a. Essentially, an employee contribution to a qualified plan cannot be treated as a “pick-up” [and must therefore be taxed] if the employee has more than one “one-time irrevocable” election to participate in the plan. Any individual who as ever had an election (or even been eligible to participate) with respect to an employer’s plan cannot have a subsequent election without violating the pickup rules.

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*Sponsor’s Initials*

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*Date*

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*Budget Director’s Initials*

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*Date*