

IN THE SUPREME COURT OF THE STATE OF OREGON

EVERICE MORO, TERRI DOMENIGONI, CHARLES CUSTER, JOHN HAWKINS,  
MICHAEL ARKEN, EUGENE DITTER, JOHN O'KIEF, MICHAEL SMITH, LANE  
JOHNSON, GREG CLOUSER, BRANDON SILENCE, ALISON VICKERY, and  
JIN VOEK  
Petitioners,

v.

STATE OF OREGON, STATE OF OREGON by and through the Department of  
Corrections, LINN COUNTY, CITY OF PORTLAND, CITY OF SALEM, TUALATIN  
VALLEY FIRE & RESCUE, ESTACADA SCHOOL DISTRICT, OREGON CITY  
SCHOOL DISTRICT, ONTARIO SCHOOL DISTRICT, BEAVERTON SCHOOL  
DISTRICT, WEST LINN SCHOOL DISTRICT, BEND SCHOOL DISTRICT, and  
PUBLIC EMPLOYEES RETIREMENT BOARD,  
Respondents,

and

LEAGUE OF OREGON CITIES; OREGON SCHOOL BOARDS ASSOCIATION;  
CENTRAL OREGON IRRIGATION DISTRICT; and ASSOCIATION OF OREGON  
COUNTIES;  
Intervenors.

S061452 (Control)

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WAYNE STANLEY JONES,  
Petitioner,

v.

PUBLIC EMPLOYEES RETIREMENT BOARD, ELLEN ROSENBLUM, Attorney  
General and JOHN A. KITZHABER, Governor,  
Respondents.

S061431

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MICHAEL D. REYNOLDS,  
Petitioner,

v.

PUBLIC EMPLOYEES RETIREMENT BOARD, State of Oregon; and JOHN A. KITZHABER, Governor, State of Oregon,  
Respondents.

S061454

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GEORGE A. RIEMER,  
Petitioner,

v.

STATE OF OREGON; OREGON GOVERNOR JOHN KITZHABER; OREGON ATTORNEY GENERAL ELLEN ROSENBLUM; OREGON PUBLIC EMPLOYEES RETIREMENT BOARD; and OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM,  
Respondents.

S061475

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GEORGE A. RIEMER,  
Petitioner,

v.

STATE OF OREGON; OREGON GOVERNOR JOHN KITZHABER; OREGON ATTORNEY GENERAL ELLEN ROSENBLUM; OREGON PUBLIC EMPLOYEES RETIREMENT BOARD; and OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM,  
Respondents.

S061860

**PETITIONERS' JOINT AND MORO PETITIONERS'**

**REVISED AND SUPPLEMENTAL PROPOSED FINDINGS OF FACT**

## INTRODUCTION

In its Response to Petitioners' Joint and Moro Petitioners' Proposed Findings of Fact, the State rejected several proposed findings on the alleged basis that they "are not findings of fact at all, but instead are recitations or descriptions of law, of statutory or legislative history, or case law for which no finding or stipulation is necessary because the cited document speaks for itself." State's Response, p 4. The State further stated that: "[a]lso noted below are instances where, in State Respondents' opinion, the characterization of a legal principle or of the operation or effect of a particular statute is inaccurate." *Id.* Finally, the state noted that it is expressly reserving any relevancy objections. *Id.*

Petitioners offer the following two general comments to the State's objections:

**Comment A:** Petitioners assert that the first basis the state urges for rejection of proposed findings should, itself, be rejected. The purpose of the proposed findings of fact is to provide a record on which the Supreme Court may decide this case. That record is to be compiled by the Special Master, just as the Special Master did in the *Strunk* litigation and for which he earned the Court's much-deserved praise. The Special Master's report in *Strunk*, however, contained many statements to which the same objection voiced by the state here could have been made, and, apparently, were made by one or more of the parties

in that case. The Special Master made note of and dismissed these objections with the following statement in his report:

"Third, in their objections to proposed findings of fact, the parties frequently asserted that their opponents' proposals were veiled legal conclusions. Those complaints were not surprising, nor was it surprising that the parties making them had difficulty avoiding similar objections to their own proposed findings. In some respects, it is virtually impossible to address the facts in these cases without providing at least some contextual information concerning my understanding of the PERS statutes or rules. In doing so, however, I have attempted to avoid expressing an opinion when the meaning or effect of a statute or rule is uncertain."

See Ex. 15, p. 6. Even a cursory review of the Special Master's report in *Strunk* reveals that many of the statements contained in the report describe the PERS system and its operation, and those statements are taken from, summaries of or at least based on the statutes that establish the PERS system and the PERS contract.

The State does not complain in its first stated basis for objections that Petitioners' are improperly characterizing the statutes, the legislative history or the case law – only that Petitioners are reciting or describing those statutes, the legislative history and the case law. To the extent the State objects because the proposed findings contain citations to case law, those citations only are provided to show that these facts have previously been determined in prior judicial proceedings to which the State was a party. Even if the State somehow could

claim that it is not collaterally estopped from contesting these factual statements, the citations at least serve to legitimize the accuracy of the statements. At a minimum, if the State wishes to object to the accuracy of the facts taken from prior case law to which it was a party, it should state with precision why it believes the facts are inaccurate.

Given the task facing the Special Master in these proceedings, Petitioners submit that the State's first stated basis for objection is not well taken and should be rejected. It is for the Special Master to decide whether the Petitioners' proposed findings, and indeed any proposed findings, provide contextual or other information that will or may aid the Supreme Court in resolving the legal issues raised in these consolidated proceedings.

**Comment B:** As to the State's second stated basis for rejecting Petitioners' proposed findings, petitioners can only respond that it is difficult to respond to this complaint to a proposed finding when the State merely asserts that the recitation or the citation to authority is inaccurate and provides no specifics. That is the case throughout the State's objections to proposed findings where that basis is asserted. Without specificity in the objection, Petitioners are left with no response except to say that we believe the statements contained in the objected-to proposed finding are accurate.

With the foregoing as a basis for their response, Petitioners offer the following revised and supplemental findings. To the extent Petitioners were able

to discern a concrete basis for the State's rejection of a particular proposed finding as inaccurate, Petitioners made a good faith attempt to revise the proposed finding before the hearing and added the comment **[REVISED]**. To the extent Respondents accepted certain proposed findings or parts of certain proposed findings or Petitioners agree with Respondents' proposed findings, Petitioners have noted that the fact is **[STIPULATED]**. Finally, Petitioners have revised and supplemented certain proposed findings based on the evidence presented at the hearing and have added the following comment **[REVISED/SUPPLEMENTED]**.

Except where specifically designated as Moro Petitioners' Proposed Findings, Moro Petitioners and Pro Se Petitioners Michael Reynolds, George Riemer, and Wayne Stanley Jones propose the following revised and supplemental findings of fact jointly:

PETITIONERS' JOINT PROPOSED FINDINGS

General Operation of the System through 2003

1. **[STIPULATED]** Petitioners incorporate by this reference the findings regarding the General Operation of the Public Employee Retirement System (PERS) through the date of the 2003 PERS Legislation (Or Laws 2003, ch 3 (HB 2001); Or Laws 2003, ch 67 (HB 2003); Or Laws 2003, ch 68 (HB 2004); and Or Laws 2003, ch 625 (HB 3020); Or Laws 2003, ch 733 (HB 2020)) as set forth at pages 8-20 of the Special Master's Written Report and Recommended Findings of Fact dated April 8, 2004. (Ex. 1).

## 2003 Changes

2. Changes made by the 2003 PERS legislation included the following:
  - a. HB 2001: No earnings in excess of the guaranteed assumed earnings rate may be allocated to Tier One member accounts until the funding goal for the gain-loss reserve has been fulfilled for three consecutive years. This change was not challenged in the case of *Strunk v. PERB*, 338 Or 145, 108 P3d 1058 (2005) and was unaffected by the court's decision in that case. (Ex. 1, p. 59; Ex. 2). **[See Comment A]**
  - b. HB 2003, sections 1 and 13: All PERS member contributions made after January 1, 2004, are redirected to an account in the Individual Account Program (IAP). This change was challenged and upheld by the court in the *Strunk*, 338 Or at 193, case. (Ex. 1, p. 62; Ex. 2). **[See Comment A]**
  - c. HB 2003, Section 8: The crediting of Tier I member accounts at the assumed earnings rate must occur on a career-long, not an annual, basis. This change was challenged and voided by the court in the *Strunk*, 338 Or at 208, case. (Ex. 1, p. 65; Ex. 2). **[See Comment A]**
  - d. HB 2003, Sections 9 and 10: Tier One members who retire on or after April 1, 2000 and before April 1, 2004, will not receive a Cost of Living Adjustment (COLA) until their monthly allowances equal or exceed the allowances they would have received had their member accounts been credited with 11.33 percent, rather than 20 percent, interest for calendar year 1999. This change was

challenged and voided by the court in the *Strunk*, 338 Or at 225, case. (Ex. 1, p. 66; Ex. 2). **[See Comment A]**

e. HB 2003, Section 3: After December 31, 2003, members may no longer direct contributions to the variable account. This change was challenged and upheld in the *Strunk*, 338 Or at 213, case. (Ex. 1, p. 67). **[See Comment A]**

f. HB 2004, Section 4: PERS must use new actuarial equivalency factor (AEF) tables as of July 1, 2003. The PERS Board must adopt AEFs every two years that “must use the best actuarial information on mortality available at the time.” This change was challenged and upheld in the *Strunk*, 338 Or at 236, case. (Ex. 1, p. 67; Ex. 2). **[See Comment A]**

g. HB 2020 : Established a successor retirement plan, the Oregon Public Service Retirement Plan (OPSRP), for all employees hired after August 28, 2003, that consists of a defined benefit program (the Pension Program) and a defined contribution portion (the IAP). See ORS ch 238A. This change was not challenged in the *Strunk* case and was unaffected by the court’s decision in that case. (Ex. 2). **[See Comment A]**

3. **[STIPULATED]** Petitioners incorporate by this reference the findings regarding the impact of the 2003 PERS Legislation on the individual petitioners as set forth at pages 92-120 of the Special Master’s Written Report and Recommended Findings of Fact dated April 8, 2004. (Ex. 1).

## System Changes Since 2003

### Impact of IAP

4. **[STIPULATED]** As a result of the diversion of the 6% percent employee contribution from the existing employee accounts, effective January 1, 2004, to the IAP accounts:

a. **[STIPULATED]** Tier I and Tier II participants receive a new benefit – the balance of the IAP account upon retirement. By 2012 the average balance of those accounts had grown to \$20,432. (Ex. 34, p. 8).

b. The Replacement Ratio (ratio of initial retirement benefit to the last salary before retirement) for money match retirees, on average, peaked in 2000 and has decreased since. **[Revised]**

c. Since 2003 the percentage of money match retirements has diminished so that by 2012 it was no longer the retirement formula for the majority of new retirements. (Ex. 34, p. 7, graph 2). **[Revised]**

d. Beginning January 1, 2004 employee contributions were deposited to the IAP account rather than to Tier I and Tier II employee accounts. These post 2004 employee contributions are not available to fund Tier I and Tier II defined benefits. (PERS Actuary Testimony). **[Revised]**

### OPSRP

5. **[STIPULATED]** Since its creation in 2003, the number of OPSRP participants has steadily increased so that by December 31, 2012 of the 167,103

active participants in the system 77,666 (46.47%) participated in OPSRP.

(Ex. 49, p. 2).

### Side Accounts

6. In 2001, the legislature authorized PERS participating employers to issue revenue bonds and deposit the proceeds into PERS into what have become known as “side accounts.” See ORS 238.692-238.694. Many employers have elected to create side accounts so that by December 31, 2012 the total amount in side accounts had reached approximately \$5.5 billion. (Ex. 34, p. 18). **[Revised/**

### **Supplemented]**

7. **[STIPULATED State ¶ 56]** Side Accounts are an outcome of individual financing decisions by employers to deposit lump sums into the PERS trust. (Larrabee Dec. ¶ 38). The lump sum proceeds are often generated from the issuance of a pension obligation bond. (*Id.*). The proceeds from the sale are deposited with PERS in what is known as a “Side Account.” (*Id.*). The Side Account is debited over time to pay a portion (or, at least theoretically in the case of a very large side account or a very small employer rate, all) of the employer’s “base” contribution rate. (*Id.*). The Side Account debits are typically calculated to provide a steady level of contribution as a percent of pay between the establishment of the Side Account and December 2027 if future experience follows assumptions. (*Id.*). The amount of the employer’s base contribution rate that is not covered by the side account debit is referred to as the employer’s “net” rate. (*Id.*).

8. **[STIPULATED State ¶57]** Actuarial presentations state funded status without regard to Side Accounts. (Larrabee Dec. ¶ 39). This is done for several reasons. Most importantly, the establishment of Side Accounts is typically associated with the issuance of a pension obligation bond. (*Id.*). The liability and debt repayment schedule associated with those bonds are not included in PERS system liabilities. (*Id.*). As such, including Side Account assets as part of the funded status of the system neglects employer liabilities associated with those Side Accounts and may overstate the overall health of the system and system employers. (*Id.*).

#### Collaring

9. **[STIPULATED]** In 2005, the PERS Board adopted a “rate collaring” approach to be used in setting employer contribution rates which limits the volatility of those rates. In general, an employer’s contribution rate adjustment is collared at 20% of the existing rate (minimum of 3%) in a single biennium, though the collar expands if the employer’s funding drops below certain levels. If the system experiences extraordinarily good or bad investment returns then collaring spreads the increase or decrease in employer rates over more than one biennium. For a more detailed discussion of collaring see Ex. 32, pp. 11-14.

10. **[STIPULATED State ¶55]** A “Rate Collar” is an actuarial methodology whereby needed large changes to contribution rates are spread across several biennia. (Larrabee Dec. ¶ 32). There are several steps to the Rate

Collar methodology. First, an “uncollared” rate is calculated that reflects all other assumptions and methods (such as UAL amortization periods) as adopted by the PERS Board. (*Id.*). The uncollared rate is the “pure” actuarial rate, in the sense that it is the rate that would be adopted regardless of whether it is consistent with the PERS Board’s principle to strive for stable and consistent employer rates. (*Id.*). This uncollared rate is then compared to the rate currently in effect. (*Id.*). If the difference is large, the actual change in the rate is limited to the width of the Rate Collar. (*Id.*). This “collared” rate is the one adopted by the PERS Board and charged to employers for the biennium. (*Id.*). The difference between the collared and uncollared rate is “collared off” as a deferred increase that will occur in a subsequent biennium if future experience follows assumptions. (*Id.*).

#### Earnings, Employer Rates & Funding

11. **[STIPULATED State ¶6]** The PERS Board sets employer contribution rates biennially. (Larrabee Dec. ¶ 4). Rates are based on actuarial valuations conducted with measurement dates in odd-numbered years. (*Id.*). The rates are actuarially calculated, using a variety of assumptions and methods. (*Id.*). These assumptions include long-term investment return assumptions and life expectancy for retirees. (*Id.*). The methods and assumptions used by the actuary are reviewed by the PERS Board biennially. (*Id.*).

12. The PERS Actuary actually calculates hundreds of individual employer contribution rates for participating PERS employers. Periodic actuarial analysis presented to the Board includes average rates on a system-wide basis. (PERS Actuary Testimony). Throughout these findings of fact, references to employer rates are to those system-wide employer rates. **[SUPPLEMENTAL]**

13. **[STIPULATED]** From 2003 to 2007, the Fund consistently earned more than the 8% assumption (Ex. 34, p. 16) and as a result, funding of the plan increased until PERS funding reached 97.1% (111.5% with side accounts) by December 31, 2007. (Ex. 34, p. 13). Employer contribution rates for the 2009-2011 biennium, which were based on the status of the fund on December 31, 2007, were on average 12.4% (4.73% with side accounts). (Ex. 34, p. 19).

14. Prior to 2004, both employee and employer contributions supported the Tier I and Tier II pension plans. (PERS Actuary Testimony). Determining the total yearly contribution to the plan required combining these contributions. From 1975 to 2005, these combined rates generally fell into the 15 to 18% range. (Ex. 34, p. 19). With the 2003 legislation, commencing January 1, 2004 employee contributions were diverted to the IAP account leaving employer contributions as the sole source of new contributions to support the Tier I and Tier II system. (PERS Actuary Testimony). Any comparison of current employer contribution rates, therefore, must take into account that there is no longer an employee contribution to fund the Tier1 Tier 2 defined benefit. Comparing the 2009-2011

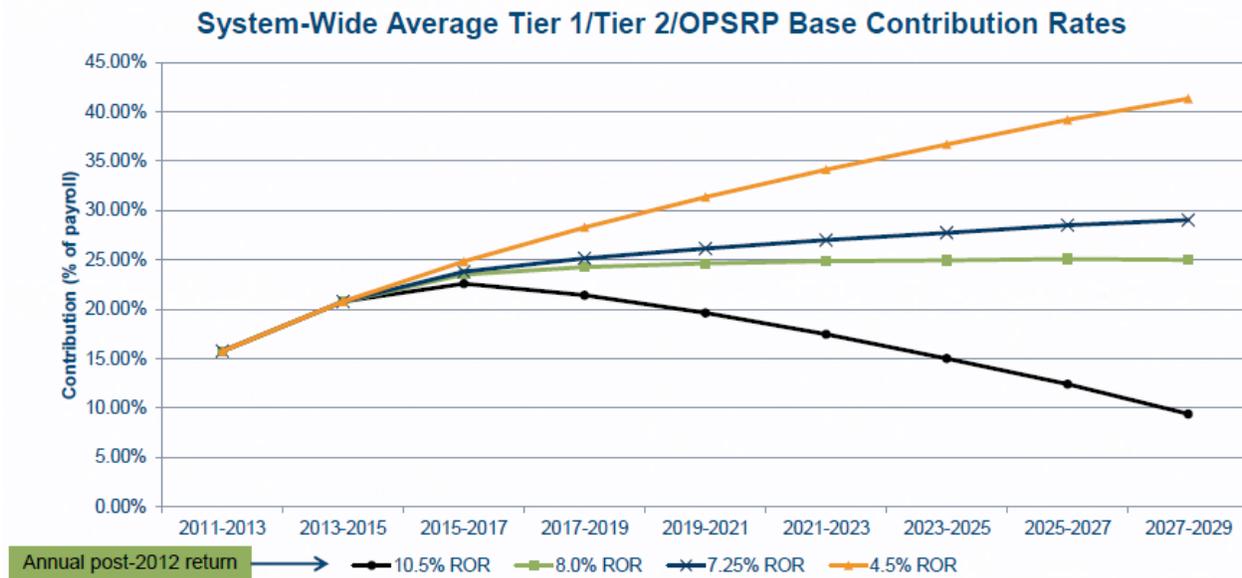
employer contribution rate of 12.4% to the range of total contribution rates paid during the period 1975-2005 shows that the 2009-2011 rate was substantially lower than average and lower than any single year by a substantial margin (Ex. 34, p. 19). **[Revised/Supplemented]**

15. In 2008, the PERS fund lost 27.18% of its total value. (Ex. 34, p. 16). This was comparable to the losses suffered by pension plans around the country. (PERS Actuary Testimony). PERS sets employer rates based on the calendar year and valuation in odd numbered years, with the rates going into effect 18 months after the close of that calendar year. (Rodeman Decl., ¶ 5). The 2008 loss, therefore, first had an impact on PERS employer rates in the 2011-2013 biennium, which was based on the financial condition of the plan on December 31, 2009. (Ex. 34, pp. 16, 19). As a result of these losses 2011-2013 PERS employer contribution rates increased to on average 16.3% (10.8% with side accounts) (Ex. 34, p. 16). This increase was limited by collaring. The average contribution rate of 16.3% was roughly comparable to the 1975-2005 total contribution rate of the system. (Ex. 18, p. 20). **[Revised/Supplemented]**

16. The 2011 actuarial valuation as presented to the PERS Board in August of 2012 (Ex. 18) recommended increased contribution rates for the 2013-2015 biennium to continue to address the losses suffered in 2008. As a result, rates as adopted by the Board were to increase to 21.4% (15.7% with side accounts) on a system wide basis. (Ex. 18, p. 16). Uncollared rates for the

same period on a system wide average basis would have been 23.7%. These would have been the system wide rates for 2013-2015 if the legislature had not acted. In the 2011 valuation the actuary indicated that barring investment experience in excess of assumptions that rates would likely stay at this level (or higher) for the foreseeable future. (Ex. 18, p. 12). **[Revised/Supplemented]**

17. In a November 30, 2012 analysis the PERS actuary produced a chart showing projected employer contribution rates:



(Ex. 22, p. 7). The chart showed rates increasing until they topped out at about 25% (without side accounts), and remaining at that level assuming earnings were at the then-current earnings assumption of 8%. The analysis included fund earnings through October 31, 2012. (Ex. S7, p. 3). If earnings were better than assumed, then rates fell and conversely if earnings were poorer than assumed, rates increased. **[Revised/Supplemented]**

## SB 822: Actuarial Estimates

18. **[STIPULATED]** Actuarial estimates done by the PERS Actuary in November of 2012 in preparation for the 2013 Legislative Session at the request of PERS showed that elimination of the ORS 238.372-378 (SB 656 (1991) and HB 3349 (1995)) benefits for out-of-state retirees would decrease average employer rates for the 2013-2015 biennium by 0.3% (Ex. 20), thereby lowering employer contributions for the biennium by about \$55 million. (Ex. 23, p. 6). This percentage decrease in employer rates and contributions would continue for the 20 year period PERS utilizes for amortizing liabilities. (Actuary Testimony).

19. Actuarial estimates provided to the legislature in March of 2013 estimated that the total benefit decreases included in SB 822 would lower the total liabilities of the system by \$3.2 billion and accrued liabilities by \$2.6 billion. (Ex. 27). Both sums are expressed on a present value basis. **[STIPULATED]** As a result of this decrease in benefits, projected uncollared employer rates for 2013-2015 were expected to be lower by 2.5% and would continue to be lower in future biennia. *Id.*

20. In that same analysis (Ex. 27, p. 2), the PERS Actuary compared the impact of SB 822 on current active employees, inactives, and retirees, showing a reduction in the system's total liabilities by 4.6% on average. The Actuary's analysis showed that reduction in total PERS liability as of December 31, 2011 attributable to the three classes of members was as follows: Current Actives –

4.9%, Inactives – 3.2%, and Retirees – 4.5%. As shown, the impact of SB 822 falls most heavily on current active members. (PERS Actuary Testimony).

**[Revised/supplemented].**

SB 822: Impact on Benefits & Employer Rates

21. **[STIPULATED State ¶9]** Prior to enactment of SB 822, the Consumer Price Index (“CPI”) to which the cost of living adjustment (“COLA”) referred varied from year to year. (Ex. 48, 2013 Purchasing Power Study, January 28, 2014). In most years since 1971, the CPI has been over 2%. (*Id.*). In some years, the CPI has been below 2%. (*Id.*).

22. **[STIPULATED State ¶11]** A “replacement ratio” is the percentage that a member’s retirement benefit bears to the member’s last salary paid before retirement. (Rodeman Dec. ¶ 19; see *also* Ex. 49, PERS by the Numbers, February 2014).

23. **[STIPULATED State ¶12]** The results of PERS’ Purchasing Power and Replacement Ratio studies show that members who retired in the mid- to late-1990s and after have a relatively higher replacement ratio than other retirees, and have not seen the purchasing power of their benefits erode as much as members who retired previous to that time. (Rodeman Dec. ¶ 20; see *also* Exs. 48, 49).

24. The legislature passed SB 822, and it became effective on May 6, 2013. 2013 Oregon Laws, ch 53. The law cut COLA increases for all PERS participants (active, inactive, retired) and eliminated the SB 656 and HB 3349 benefits for PERS retirees who reside outside the state of Oregon. **[See Comment A]**

25. Section 1 of SB 822, reduced the maximum COLA for 2013 from 2.0% to 1.5%. Section 3 of the law divorced the COLA benefit from any measure of inflation providing for an annual increase on and after July 1, 2014, as follows **[See Comment A][Revised/Supplemented]**:

Annual Benefit Amount	Applicable COLA
First \$20,000	2.00%
\$20,000 to \$40,000	1.50%
\$40,000 to \$60,000	1.00%
\$60,000 or more	0.25%

As the table prepared by the PERS Actuary (Ex. 27, p. 1) indicated those retirees with higher benefits suffered a more severe cut in their benefits. **[STIPULATED]**

26. Sections 11-17 of SB 822 eliminated SB 656 and HB 3349 benefits for any PERS retiree who does not reside in Oregon and is not subject to Oregon personal income tax effective January 1, 2014. **[See Comment A][Revised/Supplemented]**

27. Section 18 of SB 822 required the PERS Board, “As soon as possible after the effective date of this 2013 Act,” to “recalculate the contribution rates of all employers,” and to “issue corrected contribution rate orders to employers affected by recalculated rates [\*\*\*] within 90 days.” In addition, as a budget note the legislature directed the PERS Board to defer of 1.9% of the projected 2013-2015 increase. (Ex. 59, p. 389, 420). **[See Comment A][Revised/Supplemented]**

28. In response the PERS Board lowered rates for PERS employers 2.5% based on savings from the reduction of benefits and an additional 1.9% deferral. (Exs. 29, 30). The PERS Board limited this decrease so that no employer paid less than the amount of its 2011-2013 rate. As a result, system wide employer rates decreased by 4.28%. (Ex. 30, p. 3). Actual rates paid by employers for the 2013-2015 biennium dropped to an average of 17% (11.3% with side accounts). (Ex. 34, p. 19). **[STIPULATED]** This rate is consistent with the 1975-2005 total contribution rate of the system. (Ex. 34, p. 19). **[Revised/ Supplemented] [See Comments A and B]**

#### 2012 Advisory Valuation

29. In 2013, PERS made several other changes which will have an impact on future employer contribution rates. The PERS Board lowered its earnings assumption from 8% to 7.75%, adopted a new actuarial methodology (entry age normal), and re-amortized the UAL over a new 20-year period. (Exs. 28, 32).

These new assumptions were utilized in the 2012 Advisory Valuation (even-year valuations are advisory only and do not set biennial employer contribution rates). The 2012 valuation also included the excellent 2012 earnings of 14.29% (Ex. 34, p. 16). This valuation included the 2.5% lowering of employer rates by SB 822 but showed that this amount was roughly offset by the changes made by PERS in assumptions and methodology. See (Ex. 39, p. 12) (Comparing 2013-15 un-collared rates with 2015-17 advisory un-collared rates). Projected collared rates for 2015-2017 were on average 19.08% (12.93% with side accounts). (Ex. 39, p. 19). The collar lowered projected 2015-2017 rates by about 4%. (Ex. 39, p. 17). This valuation did not include the impact of SB 861.

**[Revised/Supplemental ] [See Comment B]**

30. The PERS earnings assumption along with all actuarial assumptions is reviewed once every two years by the Board in even numbered years. (Rodeman Testimony). Milliman (the Board's actuarial firm) presents analysis from their economic experts based on the asset allocation of the PERS Fund. In addition, the Oregon Investment Council (OIC) advisors provide their analysis of anticipated returns. These analyses are based on earnings expectations for each asset class. These projections are then adjusted to take into account the volatility of the actual PERS Fund investments. Based on this information, the PERS Board lowered the earnings assumption of the Fund to 7.75%. (PERS Actuary Testimony; Larrabee Dec., ¶ 30; Ex. 32, p. 20). **[Supplemental]**

SB 861: Actuarial Estimates

31. **[STIPULATED]** Although the PERS Actuary was not asked to provide the legislature with any actuarial estimates for SB 861, the actuarial analysis for SB 857, which had the same COLA reductions as SB 861, showed that such reductions would further lower the PERS UAL (12/31/11) by an additional \$2.1 billion and would lower employer contribution rates by an additional 2%. (Ex. 37, p. 3).

32. This analysis did not include the impact of any supplemental payments which were added to SB 861, to be paid to certain retirees through 2019. (PERS Actuary Testimony).

SB 861: Impact on Benefits/Employer Rates

33. The legislature passed SB 861, and it became effective on October 8, 2013. 2013 Oregon Laws, ch 2 (Spec Sess). The law further lowered COLA benefits according to the following schedule (Exs. 40; 37; Ex. 60, p. 144):

Yearly Benefit	Senate Bill 822 COLA  (No longer in effect after approval of SB 861)	Senate Bill 861 (*Ends in 2019)		
		COLA	First Supplemental payment for all benefit recipients*	Second Supplemental payment for benefit recipients whose yearly benefit is \$20,000 or less*
<\$20,000	2.00%	1.25%	0.25%	0.25%
\$20,000-\$40,000	1.50%			---
\$40,000-\$60,000	1.00%	0.15%	\$150	
>\$60,000	0.25%			

**[See Comments A and B] [Revised/Supplemented]**

34. Section 8(6) of SB 861 requires the PERS Board to pay the annual supplemental benefit payments out of the Contingency Reserve beginning in 2014. The statute sets out a tiered formula for calculating these payments (shown in the table above) and limits the amount of any annual supplemental payment to no more than \$150. The statutory provision and requirement for the PERS Board to pay annual supplemental payments sunsets on December 31, 2019. The total amount needed to fund these supplemental payments for the six-year period (2014 -2019) is estimated to be \$65 million. (Ex. 47). **[STIPULATED]** As of January 31, 2014 the contingency reserve had an estimated balance of \$600.2 million. (Ex. 47). **[Revised/Supplemented]**

35. Because SB 861 requires any supplemental payments to be paid from the PERS contingency reserve and the contingency reserve is not included as an asset when employer contribution rates are set, payment from that fund will have no immediate impact on employer rates due to the balance in that reserve. (PERS Actuary testimony). **[STIPULATED]** The benefit reductions of SB 861 did not impact the 2013-2015 revised rates but will impact 2015-2017 rates. The benefit reductions of SB 861 sufficiently lowered the System's projected liabilities so that the 1.9% deferral from the SB 822 Budget Note, which would have impacted 2015-2017 rates is no longer expected to be necessary. (Rodeman Decl. ¶ 15). **[Revised/Supplemented]**

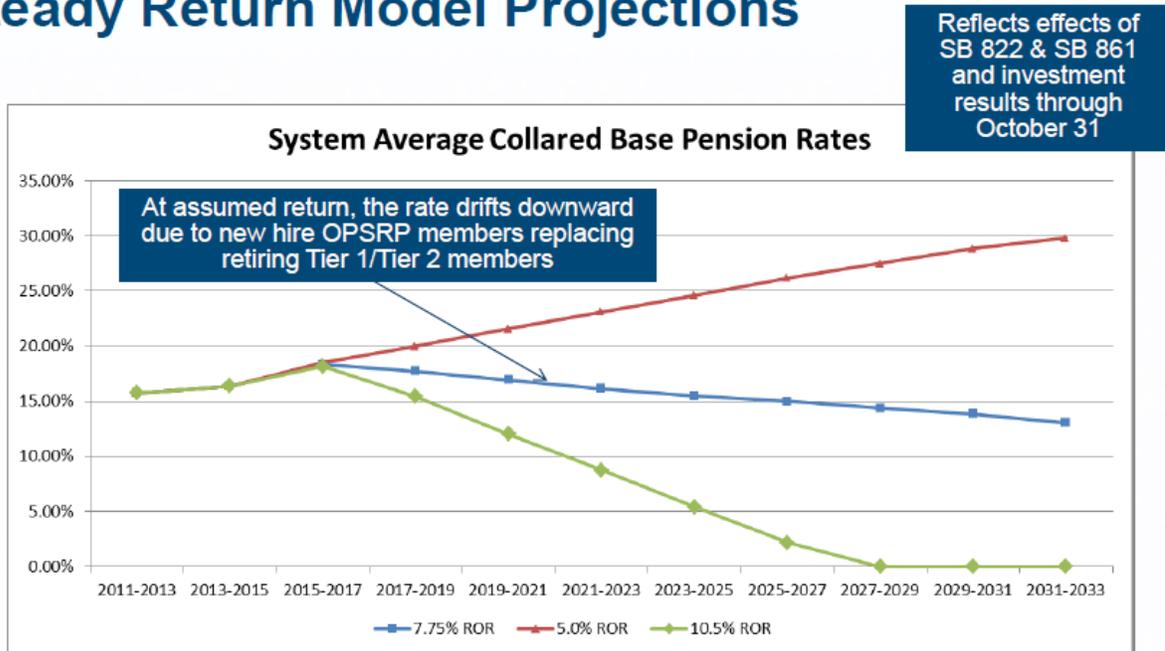
36. With the addition of the benefit reductions of SB 861, newly recalculated advisory 2015-2017 rates now show average employer collared rates at 18.7% (12.5% net rates with side accounts). Collaring has deferred approximately 2% of additional hikes, though excellent 2013 returns (15.95%) will lower that amount. (Ex. 49, p. 19; actuary testimony). The 2015-2017 rates currently being calculated will include this collared amount, thereby fully addressing the 2008 losses which will be paid over the System's amortization period (Actuary Testimony). This rate is only slightly higher than the 1975-2005 total contribution rate of the system. (Ex. 34, p. 19). **[Revised/ Supplemented]**

#### Current State of the System

37. On November 22, 2013, the PERS actuary presented a chart (Ex. 41, p. 16) to PERS similar to the one he had provided a year earlier (Ex 22, p. 7) leading-up to the 2013 legislative session. This chart included all of the PERS Board's changes from the 2012 actuarial valuation as well as 2012 and a substantial part of 2013 earnings (through October 31, 2013). The chart now shows rates topping out at approximately 18% and if earnings are at the now-assumed rate of 7.75%, rates trending downward to approximately 13% over the next 8 biennia. **[STIPULATED]** As in the 2012 chart (Ex. 22, p. 7), higher earnings than the assumption cause rates to decrease and earnings lower than the assumption cause rates to increase. The chart itself attributes the downward

trend in rates to the fact that new hire OPSRP members are replacing retiring Tier I and Tier II members. (Actuary Testimony). **[Revised/Supplemented]**

## Steady Return Model Projections



The steady rate model illustrates impact of consistently achieving the assumed 7.75% return compared to plus or minus 2.75% of that rate

**[Chart STIPULATED]**

38. **[STIPULATED]** As of December 31, 2013, PERS was estimated to be 96% funded with side accounts and 87% funded without side accounts. (Ex. 49, p. 13).

39. If the court decides to set aside these statutes, then PERS base contribution rates would increase by about 4.5%. When those increases would take place would depend on collaring and future earnings of the fund. Should earnings be at the assumed rate of 7.75% then the above chart from the PERS

would move upward by about 4.5%. (Actuary testimony) Rates will continue to trend downward over time as a result of continuing increase in OPSRP members who are replacing retiring Tier I and Tier II members. (Actuary Testimony).

**[Revised/Supplemented]**

40. The amount which will not be paid to retirees in 2013-2015 as a result of the passage of SB 822 and SB 861 is approximately \$70 to \$85 million for COLA and \$60 to \$70 million for SB 656 and HB 3349 benefits. (Ex. 47, p. 3). If the court determines that these statutes must be set aside, there are sufficient funds in the Contingency Reserve (\$668.7 million) following the tentative distribution of 2013 earnings to pay these amounts to retirees. (Ex. 49, p. 18). **[Revised]**

History of COLA

41. **[STIPULATED]** From 1964 to 1971 (See ORS 237.198 (1969); Oregon Laws 1963, ch 608 §9), PERS retirees received additional payments in what has been referred to as a “13th check system.” PERS retirees received these additional checks based on the financial condition of the system. In the final years of this system, retirees were receiving a 13<sup>th</sup> check with as much as 3.5 times the amount of their regular monthly benefit. (Ex. 48, p. 3). These additional amounts were not added to the base amount of the retirees’ benefits.

*Id.*

42. In 1971, the legislature adopted an annual cost of living benefit adjustment with the passage of Oregon Laws 1971, ch 738 §§11-12. (Ex. 50).

The legislature also gave the first of what came to be called ad hoc increases by permanently increasing retirees' pensions in an amount consistent with the prior system of benefit increases (Ex. 48, p. 4). In addition, the legislature adopted a "permanent" approach to cost of living which granted an increase based directly on a cost of living index (CPI Portland area-all items) capped at 1.5%. This benefit was no longer dependent on the financial condition of the system and the amount of each COLA increase was added to the retirement base. According to the then PERS Actuary (Ex. 50, p. 91):

"This will provide, then, a permanent base for all pensions and will do away with the necessity of distributing excess interest to pre-1968 pensioners and will additionally provide all our pensioners with an annual cumulative increase of 1 ½ percent per year. In further explanation, were the index to go up to 3 percent in 1972, in 1973 a retirant would receive 1 ½ percent increase. In 1973, if it were 3 percent, he would receive 1 ½ percent of the 1973 computed base. In no event, should the CPI go downward, would the individual ever go below the starting base of benefits received at retirement.

**[See Comments A] [Revised/Supplemented]**

43. The COLA provision was a part of the "public employes retirement package, providing increased benefits." (Ex. 50, p. 5). PERS summary of the bill (Ex. 50, pp. 83-85) described the COLA as follows:

"The most important post-retirement increase benefit is an amount adjustment applicable to all PERS members who are retired after 1972. It allows an annual increase or decrease of no more than 1-1/2 percent of the current total service retirement benefit of a retired employee, based upon the increase or decrease in the Consumer

Price Index for the preceding year. In no event can a declining CPI reduce the retired member's service benefits below those to which he would have been entitled if no such cost-of-living adjustment had been adopted.

"Under current trends, this appears to assure an annual increase in service retirement benefits of 1-1/2 percent as long as current inflationary increases continue.

"The improvements indicated are all of a type which are becoming the accepted standard for retirement systems in either the public or private sector. Since HB 1397 does not envision any change in employee contributions, the entire cost must be financed from employer contributions. [\*\*\*]

"As proposed by HB 1397, the [total] package will cost the employer some 7.4 percent. [\*\*\*] Although this major package of retirement benefit increases can be financed within the state service for 1971-73 with little or no added costs above those already budgeted, it must be emphasized that some local governments will face increased costs as early as 1972-73."

**[See Comment A]**

44. PERS Director James McGoffin testified that, "The Board felt that under the evaluations they would be able to recommend one and a half automatic ongoing CPIs, Consumer Price Index post retirement increase." (Ex. 50, pp. 18-19). He was invited by the legislative committee to "go through that 1 and a half percent increases [\*\*\*] again." (Ex. 50, p. 27). He explained that:

"It is a 1 and a half percent increase. Whatever the cost of living change is, if it exceeds 1 and a half, there's a 1 and a half percent increase would be granted. [\*\*\*] So, say it increased 3 percent per year, 1 and a half percent would be used, and the increase would be there. The

extra one and a half percent [\*\*\*] would be carried forward to be considered in the following year with whatever took place. [\*\*\*] [T]he meaning or purpose of the benefit is to take account of what has happened to the cost [\*\*\*] of living in the interval of time, and the idea of putting a maximum on this is to set some basis of control as to cost of the benefit.”

**[See Comment A]**

45. In 1973, the legislature increased the COLA cap to 2%. See Oregon Laws 1973, ch 695 §1; (Ex. 51). The Committee Chair described the change (Ex. 51, pp. 87-88) as follows:

“The original bill contained a cost of living escalator. Presently PERS law contains a one and a half percent maximum cost of living escalator fee that is tied to the Consumer Price Index in the Portland area, and it says that by any amount that the Portland CPI raises that the benefit of employees in the year following who are retired will be increased by a similar amount, up to a maximum of 1 and a half percent. The proposal was to the bill [\*\*\*] to raise to whatever the increase in the Consumer Price Index might be [\*\*\*] and the actuary warned us earlier when he was here that he was not able to determine a cost factor for an unlimited Consumer Price Index escalator. He recommended that it be capped at some level and proposed 3 percent, a 2.5 percent, and the Oregon State Employees Association and others recently proposed a 2 percent level, so it increases only one half of 1 percent.

“As originally written, we weren’t quite able to determine what the price would be, but it would be in excess of nine tenths of 1 percent payroll if it’s reduced to only 2 percent for an increase of one half of 1 percent. That cost would be three tenths of 1 percent.”

**[See Comment A]**

46. PERS Director McGoffin explained that PERS was willing to support an increase of up to 2 and a half percent but in a “fiscally responsible” way with a maximum and a minimum. (Ex. 51, p. 25). He was questioned about where PERS ranked in comparison to western states in terms of overall benefits, McGoffin informed the committee that with the addition of SB 411 benefits Oregon would move from about 7<sup>th</sup> to about 4<sup>th</sup> or 5<sup>th</sup>. (Ex. 51, p. 40). **[See Comment A]**

47. Between 1973 and 1989, the legislature also provided additional ad hoc increases during times of high inflation (Ex 48 Attachment A) to protect the purchasing power of PERS retirees. The last ad hoc increase was in 1989 (Ex. 48, p. 4). **[See Comment A]**

48. Subsequently, the legislature made only “housekeeping” changes to the COLA statute. See Oregon Laws 1989, ch 799 §2 and Oregon Laws 2001, ch 945 §79. (Exs. 52, 57). In 1989, for “easier reading,” the legislature removed the original section 1 which provided for both the annual adjustment and the 2 percent cap and separated the two concepts into current sections 1 and 2. (Ex. 52, p. 17). In addition, the legislature clarified that COLAs are also payable to beneficiaries of retirees. *Id.* In 1995, the statute was renumbered from ORS 237.060 to ORS 238.360. Finally, in 2001, the legislature removed the old ORS chapter 237 words “current service” in front of “contributions of the public employers” from section 4 of the statute to clarify that the COLA would be funded from the usual

employer contribution rates set by the actuary under ORS 238.225. (Ex. 57).

**[See Comment A]**

49. For the past 40 years, therefore, all PERS retirees have received a yearly COLA increase capped at 2% (ORS 238.620), with the exception of the 2003 PERS Legislation COLA change struck down by the court in *Strunk*. To the extent that inflation exceeds 2% the additional percentage is banked so that in later years of low inflation the COLA increase will be 2% if the bank is sufficient. (Ex. 26). Historically PERS retirees receive the 2% COLA increase except in those instances when inflation is lower than 2% in their initial years of retirement (Ex. 48, p. 3). **[See Comment A]**

50. **[STIPULATED]** The current inflation assumption of PERS is 2.75%. This assumption is developed by the PERS actuary and approved by PERB (Ex. 32, Appendix p. 40). The CPI (Portland) upon which the 1973 statute based the COLA benefit has never been below zero in any year since it was first measured in 1962 (Ex. 48, Attachment A).

51. In support of the SB 822 changes, the legislature did not cite any problems with the CPI system. Instead, Senator Develin explained, “Much of the conversation about the Bill so far has been whether across the board 2 percent COLA should remain in effect or whether there should be a reduction in COLAs so that employer costs may be reduced, making more funds available for schools and other employers participating in PERS to devote to their core governmental

functions.” (Ex. 59, p. 578). Similar arguments were raised in support of passage of SB 861 (Ex. 60, p. 166 (“massive layoffs in schools”), p. 171 (“thousands of people with mental health issues” and “the people we have to protect the public from” through our “public safety system.”) **[Revised]; [See Comment A]**

#### History of SB 656 & HB 3349 Benefits

52. For PERS members who became part of the PERS retirement system prior to 1991, their contract of employment with the state entitled them to eventual retirement under one of three methods that produced the highest retirement benefit. **[See Comments A and B]**

a. Those methods included the so-called full formula, pension plus annuity and money match methods. *See, generally Strunk*, 338 Or at 160. Regardless of the method chosen, retirement benefits earned before 1991 were exempt from the state's income tax. *Strunk* at 176 (*citing* ORS 237.201 (1989)). **[See Comments A and B]**

b. The factors the PERB used in calculating the service retirement allowance for a member under the three formulae were the following: the member's length of service (ORS 238(2)(a)(B)); the member's final average salary (ORS 238(2)(a)(B) ; the member's accumulated contributions (account balance) at the time of retirement (ORS 238.300(1); unused sick leave (ORS 238.350) ; and the member's age at retirement (ORS 238.280). A member's actual service

retirement allowance also depended on PERB's application of actuarial equivalence factors that PERB had adopted and were in effect at the time of the member's retirement. ORS 238.607. **[See Comments A and B]**

53. In 1991, the state decided to begin taxing the retirement benefits of PERS retirees. *Strunk* at 176 (*citing* Oregon Laws 1991, ch 823). In 1991, the state decided to begin taxing the retirement benefits of PERS retirees. *Strunk* at 176 (*citing* Oregon Laws 1991, ch 823). The retirement incomes of PERS retirees, therefore, were treated similarly to the retirement incomes of all non-PERS retirees, both resident and non-resident, whose retirement incomes that were based on work performed in Oregon already were subject to Oregon income tax. ORS 316.127(1)(a). **[See Comments A and B]**

a. The state estimated that taxation of PERS retirees' benefits would result in a net revenue gain to the General Fund for the 1991-93 and 93-95 biennia of \$98.9 and \$97.7 million respectively. See Revenue Analysis of HB 2352-B, Legislative Revenue Office, June 24, 1991. **[See Comments A and B]**

54. Also in 1991, the state legislature decided to grant some PERS retirees an increase in their service retirement allowances to ameliorate the effects of subjecting their retirement incomes to the state's income tax. Oregon Laws 1991, ch 796. That increase ranged from 1% to 4% of a PERS retiree's service retirement allowance, based on the years of service of that retiree. *Id.* The

increase was to be funded by employer contributions. *Id.* **[See Comments A and B]**

a. The state estimated that the service retirement allowance increase would cost all public employers \$50.6 million in each of the 1991-93 and 1993-95 biennia. See Fiscal Analysis of SB 656, C-Engrossed, Prepared by Legislative Fiscal Office, 6/18/91 (Ex. 53). Of that amount, \$18.8 million would be borne by state agencies, of which 40% would be paid out of the General Fund ("GF"). *Id.* **[See Comments A and B]**

b. The GF also would receive \$2.25 million in additional taxes generated by the increase. See SB 656-C, Legis Rev Office, 6/19/91 (Ex 53).

55. In 1995, the legislature enacted a second law that also increased PERS retirees' service retirement allowances. Oregon Laws 1995, ch 569 (HB 3349). **[See Comments A and B]**

a. Rather than simply ameliorate to some degree the economic consequences of the income tax on PERS retirees' retirement incomes, as the 1991 increase had done, this increase sought to fully nullify the tax consequences for work performed prior to 1991. See Revenue Impact of HB 3349, Legislative Revenue Office, June 6, 1995 (Ex. 54). In granting this increase, the legislature was fully aware that the increase would more than offset the economic consequences of subjecting PERS retirees' retirement incomes to state income taxation for three categories of retirees: 1) those for whom a portion of their

retirement incomes were simply a return of contributions and therefore not subject to income taxation; 2) those who resided out of state and, therefore, paid no state income tax; and 3) those in lower income tax brackets who paid less than the top marginal state tax rate. See House State and School Finance Committee, May 12, 1995, Tape 227B (testimony of Dick Yates, Legislative Revenue Office).

**[See Comments A and B]**

b. In considering HB 3349 as originally introduced, the House State and School Finance Committee ("HSSFC") chair expressed concern that while the intention behind the bill was to satisfy a lawsuit (*Chess/Stovall*) then pending in Marion County Circuit Court concerning the damages to be awarded PERS retirees as a result of the Hughes decision), he had no intention of endorsing a bill unless it stated that it was in settlement of the lawsuit. See HSSFC, May 12, 1995, Tape 225B. Sections 2(1) and 2(3) of the bill were drafted to address the Chair's concerns. Section 2(1) provided that the increase in benefits was intended to fully compensate for damages as a result of the state's decision to subject PERS retirement benefits to state income taxation. Section 2(3) specified that no person would acquire a contractual right to the benefit increase provided for in the bill. The Chair summarized the intent behind section 2(3) as follows: "So if plaintiffs in case decided not to accept this settlement, we would have no obligation to pay that beyond any funds that we might obligate during the current biennium. If we chose to rescind this." *Id.*, tape

227B. The chair summarized his position with respect to both sections 2(1) and 2(3) as follows:

"I would like to say for the public record that between the section sub 1 and the entire section 2 this is intended to settle the suit that has been brought by the public retirees and uh PERS retirees and there is not a contractual right to this benefit if it is awarded and if the settlement should not work out then we would anticipate actually rescinding this benefit."

*Ibid.* A settlement was reached and approved ultimately by the *Chess/Stovall* court. See *Strunk*, 338 Or at 176. **[See Comments A and B]**

56. The increase authorized by House Bill 3349 was an alternative to the increase granted by the 1991 legislature, and any retiree was entitled to the benefit increase that was the more advantageous of the two. Ch 569, §3(1). **[See Comments A and B]**

57. The 1995 law utilized a formula to calculate the amount of the increase. First, the formula required PERS to calculate the percentage of benefits due a PERS retiree for work performed prior to 1991 when the tax exemption was repealed. Next, PERS was required to multiply the percentage times a fraction --1/.91 -- and took that result, expressed as a percentage, and multiplied it times the benefit amount due the retiree under one of the three methods mentioned above to calculate the amount of the increase. Or Law 1995, ch 569, §3. **[See Comments A and B]**

58. HB 3349's revenue analysis projected \$19 million in tax revenues stemming from paying \$250 million in past-due increased benefits for the period January 1, 1991 to December 31, 1995. See Revenue Impact of HB 3349C, Legislative Revenue Office, June 6, 1995 (Ex. 54). The report noted that some of the \$250 million in benefits would not be taxable either because the retiree lives out-of-state or has no taxable income." *Id.* The revenue report declined to project a revenue gain going forward as a result of taxation of the increased benefits, concluding that "because, like salary increases and other state expenditures, they are considered part of the growing Oregon economy." *Id.* **[See Comments A and B]**

59. HB 3349 was also projected to cost public employers \$53.9 million and \$71.8 million in the 1995-97 and 1997-99 biennia, respectively. See Legislative Fiscal Analysis, HB 3349 C-Engrossed, June 6, 1995 (Ex. 54). Of those amounts \$27.3 million and \$36.4 million, respectively, were to paid by state agencies, of which 34% would come from the General Fund. *Id.* **[See Comments A and B]**

60. At the same time the legislature was considering House Bill 3349, a second bill was pending in the legislature that would provide an alternative means of achieving compliance with the equal-tax-treatment mandate of *Davis v. Michigan*, 489 US 803, 109 S Ct 1500 (1989). Instead of taxing all state and federal retirement benefits, Senate Bill 562 would have exempted state and

federal retirement incomes from the state's income tax. This bill was estimated to negatively impact the state's General Fund due to lost tax revenue to the tune of \$496 million in the 1995-97 biennium, and \$172 million in the 1997-99 biennium. See Revenue Impact of SB 562, Legislative Revenue Office, February 24, 1995.

**[See Comments A and B]**

61. Chapter 569 (HB 3349) became effective on July 14, 1995. At the time of its enactment, non-resident PERS retirees' retirement incomes remained subject to Oregon's income tax. ORS 316.127(1)(a) (1995 Replacement Part). That changed in 1997, when the legislature amended ORS 316.127 by adding a section 8 to the statute. That section declared that "[r]etirement income received by a nonresident does not constitute income derived from sources within this state unless the individual is domiciled in the state." Or Laws 1997, ch 839, §10. It further provided that the amendment applied retrospectively to income received after December 31, 1995. Ch 839, §11. **[See Comments A and B]**

62. From January 1, 1996 until December 31, 2011, non-resident PERS retirees received the same gross monthly service retirement allowance as their state resident PERS counterparts who, except for their post-retirement residence, were otherwise similarly situated. In fact non-resident and resident retirees received the same gross monthly service retirement allowance without regard for post-retirement residency since the PERS system first started in 1945. From 1945 until December 31, 2011, the PERS statutes did not authorize PERB to use

as a factor in calculating or adjusting a member's gross service retirement allowance, nor has PERB ever attempted to use as a factor in calculating or adjusting a member's gross monthly, the post-retirement residency of the member. (Rodeman Testimony).

**[See Comments A. Petitioners wish to point out, however, that the State's claim that this proposed finding is a "statement or argument of law" mischaracterizes what is contained in the proposed finding. This proposed finding contains several "factual" assertions, to wit: 1) "[f]rom January 1, 1996 until December 31, 2011, non-resident PERS retirees received the same gross monthly retirement allowance as their state resident PERS counterparts who, except for their post-retirement residence, were otherwise similarly situated; " 2) "non-resident and resident retirees received the same gross monthly service retirement allowance without regard for post-retirement residency since the PERs system first started in 1945;" and 3) "[f]rom 1945 until December 31, 2011, the PERS statutes did not authorize PERB to use as a factor in calculating or adjusting a member's gross service retirement allowance, nor has PERB ever attempted to use as a factor in calculating or adjusting a member's gross monthly [sic], the post-retirement residency of the member." With the exception of the first part of the third factual assertion, which could be characterized as a mixed fact-law statement, these assertions are all factual. They are either true or they are not as historical facts. As with most of the State's objections, the State does not dispute their truth.]**

63. In 2011, for the first time ever, the legislature decided to begin treating non-resident PERS members differently from their in-state, similarly-situated counterparts in the payment of their gross monthly service retirement allowance. Effective January 1, 2012, the legislature required PERB to adjust downward a non-resident PERS member's gross service retirement allowance by an amount equal to that which PERB included in the member's service retirement allowance as a result of applying House Bill 3349. Or. Laws 2011, Ch 653, § 2(1) (codified

as ORS 238.372(1)). The law achieved this result by stating that the increase authorized under the 1995 law could not be paid to a PERS member "if the board receives notice under ORS 238.372 to 238.384 that the payments made to the person under this chapter are not subject to Oregon personal income tax under ORS 316.127 (9)." However, the legislature limited the application of the law only to members retiring after January 1, 2012. Chapter 653, §2(2), codified as ORS 238.372(2). **[See Comments A and B]**

64. The 2013 legislature, in Senate Bill 822, changed the 2011 law in two primary respects. First, the legislature amended ORS 238.372(1) to extend the reduction in a non-resident member's service retirement allowance to those non-resident retirees whose service retirement allowance had included the increased benefits under Senate Bill 656 (1991). SB 822, §11. Second, it repealed ORS 238.372(2), thereby including all non-resident PERS retirees whose retirement allowances included increases under the 1991 or 1995 law and regardless of the date of their retirement. Senate Bill 822, section 11. **[See Comments A and B]**

a. Prior to Senate Bill 822, Oregon statutes governing PERS, with a few exceptions, had never authorized PERB to adjust downward a member's service retirement allowance after the member has retired and begun receiving a service retirement allowance. Those exceptions included instances in which: a) the initial award was erroneous due to errors in computation or reporting by the

employer; b) PERB has made an erroneous payment and seeks to recoup that erroneous payment from the member; c) adjustments are required because the member has elected to remain in the variable account upon retirement; d) the retiree has returned to work, suffered a disability or some other circumstance has occurred necessitating a downward adjustment of the retiree's service retirement allowance. The authority to make these adjustments have been set forth in PERS statutes or administrative rules and were in effect at the time the member retired.

**[See Comments A and B]; [Revised/Supplemented]**

b. Prior to Senate Bill 822, PERS statutes contained the express condition that the increase in HB 3349 and SB 656 may be taken away if the exemption from Oregon's income tax for PERS members' retirement benefits is ever reinstated. The legislature has not reinstated the income tax exemption for PERS members' retirement benefits. **[See Comments A and B] [Revised]**

65. Approximately 18,000 PERS retirees (or beneficiaries), or 15% of PERS retirees, are non-residents. (Budget Report and Measure Summary, Joint Committee on Ways and Means, April 5, 2013) (LFO Bill information packet).

**[See Comment A]**

a. Putting COLAs aside, Senate Bill 822 will, over the 2013 -2015 biennium, produce a savings of \$55 million in employer contributions. (Fiscal Impact of Proposed Legislation (SB 822), Legislative Fiscal Office, March 28, 2013). **[See Comment A]**

b. All other things being equal, PERS members who retired before or closer to the time of the 1991 tax repeal were awarded a service retirement allowance that included a larger benefit increase under House Bill 3349 than PERS members retiring later. Necessarily, the negative financial impact on their overall service retirement allowance caused by Senate Bill 822 will be much greater than the average, while the impact will be less than average for PERS members retiring later and with fewer pre-1991 years of public service. (Ex. 20, p. 2). **[See Comment B]**

66. Senate Bill 822 as a whole was projected to achieve \$810 million in system-wide savings for the 2013-15 biennium. (Budget Report and Measure Summary, Joint Committee on Ways and Means, April 5, 2013). The \$55 million in cost savings achieved by reducing non-resident retirees' service retirement allowances represents 6.8% of the system-wide cost savings that Senate Bill 822 would achieve. **[See Comment A]**

67. The state collects state income taxes on resident retirees' retirement incomes by having the PERS employer withhold projected tax amounts from resident retirees' paychecks, subject to correction at the end of the year for any over-withholding or under-withholding of taxes due. **[See Comment B]**

68. The state collected revenue from taxing PERS pensions in the years 2007 – 2012 in the following amounts:

2007 -	\$105 million	(Ex. 72, p. 19)
2008 -	\$117 million	(Ex. 71, p. 18)
2010 -	\$125 million	(Ex. 70, p. 18)
2011 -	\$136 million	(Ex. 25, p. 18)
2012 -	\$141 million	(Ex. 34, p. 20; Ex. 49, p. 2)

**[Revised] [Comment: The State objected that Petitioners provided no cites to the figures contained in the proposed finding. The State did acknowledge, however, that economic impact studies PERS has prepared do show projected tax revenues for 2012 of \$141 million, which is consistent with the figure for that year contained in the proposed finding. The remaining figures are taken as well from PERS-prepared documents, which petitioners have added to their exhibit list.]**

### MORO PETITIONERS' PROPOSED FINDINGS

Instead of responding point by point to the State's objections to the assumptions used by their actuary to project the impact of SB 822 and 861 on the individual petitioners, Moro Petitioners respond generally that, their expert's projections are within a reasonable range of difference from those of the State. In addition, Moro Petitioners maintain that the percentage approach to analyzing the impact of the legislation on their benefits is the better approach because it avoids the question of what is the appropriate rate to calculate actuarial present value. As Petitioners explain in their response to the State's Proposed Findings of Fact, they disagree that 7.75% is the appropriate rate for an individual petitioner. Petitioners further note the following stipulated facts are offered merely to demonstrate that, based on an actuary's projections, SB 822 and SB 861 will have a substantial, adverse impact on petitioners. Petitioners do not concede that the

projections of their actuary or of PERS are an accurate measure of actual damages petitioners will suffer as a result of these two bills.

69. The State and Moro Petitioners prepared detailed analyses of the financial impact of SB 822 and 861 on the individual petitioners' benefits. Both sets of analyses provide not only a measure of nominal damages, but also a percentage loss of benefit on a yearly basis for each of the petitioners. According to the PERS Actuary, an analysis which shows percentage impact on a yearly basis is one appropriate way to measure the impact of the legislation. Though the calculation of impact and percentage are not identical, nonetheless, the results are comparable. Since these documents are not intended to support a precise calculation of damages, the court can rely upon either set of calculations in reviewing the general impact of the challenged legislation on the petitioners.

70. The State also provided a calculation of the present value of the impact on petitioners based on the System's earnings assumption of 7.75%. (Rodeman Declaration ¶133; Exs S9-21). While this analysis may accurately show the present value of the savings to PERS from the benefits which will not be paid under the legislation, nonetheless, it does not adequately measure the value of the lost benefits from the petitioners' perspective. Petitioners who wish to duplicate the lifetime benefits lost under the legislation could only do so through the purchase of a single premium annuity, which the PERS Actuary indicated would have an underlying earning assumption of approximately 4 percent. The cost of

such an annuity would, therefore, be substantially in excess of the present value amounts shown in the State’s calculations.

71. Petitioner Everice Moro (“Moro”)(DOB 3/19/49) is a Tier I PERS retiree and an Oregon resident. (Ex. 1). Prior to retirement, she was employed as an Educational Assistant by the Estacada School District and was a member of the Oregon School Employees Association (OSEA). She retired from PERS employment effective July 1, 2011, under the Money Match calculation method, Benefit Option 2A, with a gross monthly benefit of \$1,509.28 and with 30 years and 3 months of service. Based on this service time, her SB 656 benefit percent is 4%. Of this service, 10 years and 7 months were prior to October 1, 1991, resulting in an HB 3349 benefit 3.4602%. She has a COLA Bank balance of 1.67% as of July 1, 2013. According to the calculations of Actuary David MacLennan, her total loss attributable to SB 822 and 861 is as follows:

<u>Everice Moro’s Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	<b>\$8,101</b>	<b>1.2%</b>
Attributable to SB 861:	<b>\$68,573</b>	<b>10.2%</b>

72. Petitioner Terri Domenigoni (“Domenigoni”)(DOB 7/1/49) is a Tier I PERS retiree and an Oregon resident. (Ex. 2). Prior to retirement, she was employed as an Elementary School teacher by the Oregon City School District and was a member of the Oregon Education Association (OEA). She retired from PERS employment effective July 1, 2005, under the Formula plus Annuity

calculation method, Option 2A, with a gross monthly benefit of \$1,930.86 and with 24 years 0 months of service. Based on this service time, her SB 656 benefit percent is 2%. Of this service, 10 years and 3 months were prior to October 1, 1991, resulting in an HB 3349 benefit of 4.2239%. She has a COLA Bank balance of 3.77% as of July 1, 2013. According to the calculations of Actuary David MacLennan, her total loss attributable to SB 822 and 861 is as follows:

<u>Terri Domenigoni's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	<b>\$28,797</b>	<b>3.0%</b>
Attributable to SB 861:	<b>\$101,315</b>	<b>10.5%</b>

73. Petitioner Charles Custer ("Custer")(DOB 6/27/40) is a Tier I PERS retiree and an Oregon resident. (Ex. 3). Prior to retirement, he was employed as a Fire Fighter by the Tualatin Valley Fire & Rescue and was a member of the International Association of Fire Fighters (IAFF). He retired from PERS employment effective July 1, 1993, under the Full Formula calculation method, Option 3A, with a gross monthly benefit of \$2,740.83 and with 25 years 0 months of service. Based on this service time, his SB 656 benefit percent is 3.0%. Of this service, 23 years and 3 months were prior to October 1, 1991, resulting in an HB 3349 benefit of 9.1978%. He has a COLA Bank balance of 13.31% as of July 1, 2013. According to the calculations of Actuary David MacLennan, his total loss attributable to SB 822 and 861 is as follows:

<u>Charles Custer's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	\$44,287	4.2%
Attributable to SB 861:	\$72,200	6.9%

74. Petitioner John Hawkins ("Hawkins")(DOB 5/2/45) is a Tier I PERS retiree and an Oregon resident. (Ex. 4). Prior to retirement, he was employed by Linn County and was a member of the Service Employees International Union (SEIU). He retired from PERS employment effective February 1, 2003, under the Money Match calculation method, Option 2, with a gross monthly benefit of \$2,289.09 and with 25 years 3 months of service. Based on this service time, his SB 656 benefit percent is 3.0%. Of this service, 13 years and 11 months were prior to October 1, 1991, resulting in an HB 3349 benefit of 5.4510%. He has a COLA Bank balance of 3.77% as of July 1, 2013. According to the calculations of Actuary David MacLennan, his total loss attributable to SB 822 and 861 is as follows:

<u>John Hawkins's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	\$32,752	3.30%
Attributable to SB 861:	\$91,371	9.20%

**[Revised]**

75. Petitioner Michael Arken ("Arken")(DOB 1/28/46) is a Tier I PERS retiree and an Oregon resident. (Ex. 5). Prior to retirement, he was employed by

City of Portland and was a member of the Oregon AFSCME Council 75 (AFSCME). He retired from PERS employment effective March 1, 2002, under the Money Match calculation method, Option 2, with a gross monthly benefit of \$2,505.60 and with 21 years 10 months of service. Based on this service time, his SB 656 benefit percent is 2.0%. Of this service, 11 years and 5 months were prior to October 1, 1991, resulting in an HB 3349 benefit of 5.1715%. He has a COLA Bank balance of 3.77% as of July 1, 2013. According to the calculations of Actuary David MacLennan, his total loss attributable to SB 822 and 861 is as follows:

<u>Michael Arken's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	<b>\$59,767</b>	<b>4.48%</b>
Attributable to SB 861:	<b>\$147,540</b>	<b>11.06%</b>

76. Petitioner Eugene Ditter (“Ditter”)(DOB 7/31/53) is a Tier I PERS retiree and an Oregon resident. (Ex. 6). Prior to retirement, he was employed as an Aparatus Operator and Paramedic by the Tualatin Valley Fire & Rescue and was a member of the International Association of Fire Fighters (IAFF). He retired from PERS employment effective January 1, 2003, under the Full Formula calculation method, Option 3, with a gross monthly benefit of \$6,339.94 and with 30 years 0 months of service. Based on this service time, his SB 656 benefit percent is 4.0%. Of this service, 18 years and 9 months were prior to October 1, 1991, resulting in an HB 3349 benefit of 6.1813%. He has a COLA Bank balance

of 3.77% as of July 1, 2013. According to the calculations of Actuary David MacLennan, his total loss attributable to SB 822 and 861 is as follows:

<u>Eugene Ditter's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	<b>\$458,474</b>	<b>13.6%</b>
Attributable to SB 861:	<b>\$530,421</b>	<b>15.7%</b>

**[Revised]**

77. Petitioner John O’Kief (“O’Kief”)(DOB 9/9/45) is a Tier I PERS retiree who is a resident of Sequim, Washington. (Ex. 7). Prior to retirement, he was employed as an Elementary School teacher by the Ontario School District and was a member of the Oregon Education Association (OEA). He retired from PERS employment effective June 1, 2002, under the Money Match calculation method, Option 2, with a gross monthly benefit of \$3,372.50 and with 27 years 11 months of service. Based on this service time, his SB 656 benefit percent 3.0%. Of this service, 17 years and 3 months were prior to October 1, 1991, resulting in an HB 3349 benefit of 6.1112%. He has a COLA Bank balance of 3.77% as of July 1, 2013. According to the calculations of Actuary David MacLennan, his total loss attributable to SB 822 and 861 is as follows:

<u>John Okief's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822 (COLA):	\$187,356	
Attributable to SB 822 (Tax Adj.):	\$52,272	
Total:	\$239,628	10.7%
Attributable to SB 861 (COLA):	\$296,532	
Attributable to SB 822 (Tax Adj.):	\$55,200	
Total:	\$351,732	15.7%

78. Petitioner Michael Smith ("Smith")(DOB 10/20/39) is a Tier I PERS retiree who is a resident of Tucson, Arizona. (Ex. 8). Prior to retirement, he was employed as a Principal by the Beaverton School District and is a member of the Oregon PERS Retirees, Inc. (OPRI). He retired from PERS employment effective July 1, 1996, under the Money Match calculation method, Option 1, with a gross monthly benefit of \$4,466.81 and with 30 years 0 months of service. He changed his option to 15-year certain on November 11, 1996. Based on his service time at retirement, his SB 656 benefit percent is 5.0%. Of this service, 25 years and 3 months were prior to October 1, 1991, resulting in an HB 3349 benefit of 8.3242%. He has a COLA Bank balance of 8.49% as of July 1, 2013. According to the calculations of Actuary David MacLennan, his total loss attributable to SB 822 and 861 is as follows:

<u>Michael Smith's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822 (COLA):	\$55,256	
Attributable to SB 822 (Tax Adj.):	\$36,094	
Total:	\$91,350	8.4%
Attributable to SB 861 (COLA):	\$68,344	
Attributable to SB 822 (Tax Adj.):	\$35,862	
Total:	\$104,206	9.6%

**[Revised]**

79. Petitioner Lane Johnson ("Johnson")(DOB 8/17/55) is an active Tier I PERS member and an Oregon resident. (Ex. 9). He is employed as a teacher by West Linn School District and is a member of the Oregon Education Association (OEA). As of May 31, 2013, he had 23 years and 3 months of credited service time. If he retired as intended effective July 1, 2014, he would have a total of 24 years and 4 months of service time and would retire under the Full Formula calculation method. Based on this service time, his SB 656 benefit percent would be 2.0%. Of this service time, 1 years and 7 months were before 1991, resulting in an HB 3349 benefit of 0.6435%. If he selected Option 2 and his beneficiary were the same age as he, according to the calculations of Actuary David MacLennan, his projected monthly benefit amount at an age 58 retirement would be \$1,995 and his total loss attributable to SB 822 and 861 is as follows:

<u>Lane Johnson's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	\$31,418	2.8%
Attributable to SB 861:	\$140,867	12.4%

**[Revised]**

80. Petitioner Greg Clouser (“Clouser”)(DOB 2/8/68) is an active Tier II PERS member and an Oregon resident. (Ex. 10). He is employed as a Corrections Corporal by the State of Oregon, Department of Corrections and is a member of Oregon AFSCME (AFSCME). As of May 31, 2013, he had 12 years and 3 months of credited service time. If he retired at age 55, he would have a total of 22 years and 1 months of service time and would retire under the Full Formula calculation method. If he selected Option 2 and his beneficiary were the same age as he, according to the calculations of Actuary David MacLennan, his projected monthly benefit amount at retirement would be \$3,330 and his total loss attributable to SB 822 and 861 is as follows:

<u>Gregory Clouser's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	\$157,492	7.4%
Attributable to SB 861:	\$294,914	13.8%

**[Revised]**

81. Petitioner Brandon Silence (“Silence”)(DOB 10/28/81) is an active OPSRP member and a resident of Oregon. (Ex. 11). He is employed as a Fire Fighter/Paramedic by City of Salem and is a member of the International

Association of Fire Fighters (IAFF). As of December 31, 2013, he had 6 years and 5 months of credited service time. If he retired as intended effective July 1, 2035, he would have a total of 28 years and 11 months of service time and would retire under the OPSRP Formula calculation method. If he selected Option 2 and his beneficiary were the same age as he, according to the calculations of Actuary David MacLennan, his projected monthly benefit amount at retirement would be \$7,922 and his total loss attributable to SB 822 and 861 is as follows:

<u>Brandon Silence's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	<b>\$1,107,583</b>	<b>19.7%</b>
Attributable to SB 861:	<b>\$1,260,580</b>	<b>22.5%</b>

82. Petitioner Alison Vickery ("Vickery")(DOB 6/5/61) is an active Tier II PERS member and an Oregon resident. (Ex. 12). She is employed as a teacher by the Bend School District and is a member of the Oregon Education Association (OEA). As of May 31, 2013, she had 12 years and 2 months of credited service time. If she retired as intended at age 60 effective July 1, 2021, she would have a total of 20 years and 3 months of service time and would retire under the Full Formula calculation method. If she selected Option 2 and her beneficiary were the same age as she, according to the calculations of Actuary David MacLennan, her projected monthly benefit amount at retirement would be \$2,167 and her total loss attributable to SB 822 and 861 is as follows:

<u>Alison Vickery's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	\$38,389	3.2%
Attributable to SB 861:	\$147,862	12.2%

**[Revised]**

83. Petitioner Jin Voek ("Voek")(DOB 5/20/83) is an active OPSRP member and an Oregon resident. (Ex. 13). He is employed as a Fire Fighter by the City of Portland and is a member of the International Association of Fire Fighters (IAFF). As of December 31, 2012, he had 2 years and 0 months of credited service time. If he retired as intended at age 53, he would have a total of 25 years and 6 months of service time and would retire under the OPSRP Formula calculation method. If he selected Option 2 and his beneficiary were the same age as he, according to the calculations of Actuary David MacLennan, his projected monthly benefit amount at retirement would be \$4,334 and her total loss attributable to SB 822 and 861 is as follows:

<u>Jin Voeks's Estimated Benefit Loss</u>	<u>Dollar Loss</u>	<u>Percentage Loss</u>
Attributable to SB 822:	\$366,416	11.8%
Attributable to SB 861:	\$497,419	16.0%

**[Revised]**

## **Economic Findings**

### **General**

84. The 2007 recession, like past recessions, reduced general fund revenues for Oregon and it will take some time before tax revenues return to previous levels. Given Oregon's greater reliance on income taxes as the major source of general fund revenues, taxes tend to be volatile through the business cycle and difficult to predict. (Ex. 73).

85. In Oregon public education resources are more than 50% dependent on state revenue and thus the source of funding is more unpredictable. This over-reliance on state funding is the long-term consequence of Measures 5, 47 and 50, which changed the way property taxes are assessed in early to mid-1990. (Ex. 73).

86. Short term effects of the recession have compounded the longer-term effects from Measures 5, 47, and 50. These longer-term effects have been impacted by the increasing demands for other state needs, especially social services/health care and public safety. (Ex. 73).

87. In contrast to the long-term factors, the recovery out of the recent recession is in full swing. Recent employment numbers show improvement and the recovering economy is showing up in improving general fund tax revenues for Oregon. The result is better funding for state services, including the state school fund that is distributed to school districts and education service districts. (Ex. 73).

Economic Conditions in the State of Oregon and Influences  
on General Fund Revenues

88. Oregon tends to be more volatile through the business cycle compared to the nation as a whole. With Oregon's relative concentration in durable manufacturing, from electronics to wood products, the Oregon economy tends to grow faster during expansions and fall deeper into recession during contractions of the national economy. Of all the tax bases, income tends to be the most volatile source through the business cycle. This combination places Oregon in the position of having general fund revenues that are difficult to predict and move in a very wide band. (Ex. 73)

89. In comparing changes in employment from the start of each of the recessions suffered by the state of Oregon back to 1948, the recent recession had a total job drop of slightly more than 8% while the 1980 recession had a total job loss of almost 12%. The expected length of time to recover these lost jobs is likely to be similar to what took place in the 1980s. Job loss recovery has been very slow but steady and we expect to recover lost jobs by early to mid-2015. Unemployment changes show a similar picture. (Ex. 73).

90. Income taxes tend to be more volatile compared to sales and property taxes. Oregon relies on personal income taxes more than any other state. With this combination of a more volatile economy and a more volatile tax base, general fund revenues can rise rapidly in recoveries and fall steeply in economic downturns. (Ex. 73).

91. With personal income taxes making up 85% of the general fund revenues, state funding is very much influenced by the business cycle. General fund revenues tend to fall during recessionary periods, which places constraints on all services provided by the state. (Ex. 73).

### Longer-Term Pressures on Financing Local Public Education

#### Long Term Factors for State General Fund Revenue

92. Downturns in the business cycle cause state general fund revenues to decline. In the last recession it took more than four years to get back to the same level of general fund revenues. Comparing the December 2007 projection to actual revenues, Oregon collected \$8.3 billion less for the general fund between 2007-2009 and 2011-2013 biennia. For both 2009-11 and 2011-13 actual general fund revenues were more than \$3 billion (20%) less than predicted in December 2007. (Ex. 73).

93. Although Oregon is considered a high tax state when looking only at personal income tax, the same cannot be said when comparing Oregon to other states when looking at all general fund revenue. Oregon is a relatively lower tax burden state in comparison with others, with taxes 11.8% lower per capita than the U.S. average. Oregon is ranked 33rd for state taxes as a percentage of personal income. State taxes as a percentage of state product show Oregon as 14.8% below the national average. (Ex. 73).

## Changing the Formula for Property Taxes

94. Property taxes are the primary source of funding in Oregon for local governments. With the advent of Measures 5, 47 and 50, the formula for calculating property taxes limited their growth and made the state responsible for replacing lost funding to K-12 school districts. Prior to Measure 5, about 2/3 of school funding came from local property taxes. After Measure 5 changes were phased in, about 2/3 of school funding now comes from the state. This shift moved K-12 school district funding from a relatively stable funding source of property taxes to the more volatile income taxes. (Ex. 73). In addition, it is clear that not only did Oregon's K-12 level of support become more volatile, but also has been reduced over time from being substantially above the national average to below average. (Ex. SDLC 109, p. 43) **[Revised/Supplemented]**.

95. Measure 5 (1990) put caps on the maximum property tax rates. At the beginning of the 1990s, the average rate was about \$27 per \$1,000 of real market value. Now the average effective rate is about \$12 per \$1,000 of real market value. (Ex. 73).

96. Measure 47 was passed in 1996, then amended by Measure 50 in 1997. These measures suppressed the value at which property would be assessed. Measure 50 changed the way property is assessed for taxation, lowering the assessed value and limiting the annual growth in assessed value, which ensured that assessed value would not grow as fast as real market value.

Indeed, over time the difference between real market value and assessed value has increased, even after accounting for reduction in market values after the housing bubble burst. (Ex. 73).

97. Combined with the cap on tax rates, limits on assessed values means over time property taxes are increasingly limited in the amount of revenue they are able to raise. Together, Measures 5 and 50 amount to a \$13 billion reduction in property taxes in the 2011-2013 biennium. (Ex. 73).

#### Growth of Other State Services

98. State funding for public safety has increased faster than population growth. The lion's share goes to the Department of Corrections due to expanding prison populations. The prisoner population more than doubled since the passage of Measure 11 so that today, more than 14,000 people are imprisoned by the State of Oregon. (Ex. 73).

99. Spending on human services has also outpaced population growth. This includes spending on the Oregon Health Plan and other Human Services spending. (Ex. 73).

100. Since Measure 5 changes were fully phased in, the amount of state general fund/lottery fund funding for education has remained flat while inflation-adjusted spending for human services and public safety has increased. And while state education funding has stayed relatively constant, the state population has grown. That means less real money is spent per person for

education over time. If inflation-adjusted state GF/LF spending on education had increased at the same rate as population growth instead of staying flat, about \$4.25 billion more in state funding would have gone to K-12 education between 1999-2001 and 2013-2015. (Ex. 73).

101. Oregon invests less in education than nearly every other state as a percent of the total state budget. So while the state is responsible for most K-12 funding, the state doesn't prioritize education funding as much as other states do. In 2012 only Maine and Wyoming spent a smaller percentage of their state budgets on education than Oregon. (Ex. 73).

#### Recent Economic Conditions and Budgeting for the 2013-2015 Biennium

102. While the recent recession has been dubbed the "Great Recession" for the United States, in fact Oregon's Great Recession was in the early 1980s. At that time job losses almost reached 12%, while the recent recession has seen job losses of slightly more than 8%. The state's seasonally adjusted unemployment rate topped out at 12.1% in 1982 while the highest seasonally adjusted unemployment rate for the recent recession was 11.6%. (Ex. 73).

103. The economic recovery will be reaching its fifth year as we move into late summer-early fall. Job growth has been steadily climbing, reaching 2% growth in April 2013 and now is growing faster than the U.S. job growth rate. For all of 2013, Oregon had the third fastest job growth of the 50 states. (Ex. 73).

### Better Job Growth Will Continue into 2015

104. In Oregon, the economy has already experienced an acceleration in job growth in 2013. Similar to the U.S. as a whole, this was largely due to improvement in housing and the public sector. As a result, more regions of the state began adding jobs. Looking forward growth is likely to pick up a bit further, into the 40,000 jobs per year range, or an annual growth rate of 2.4 percent in 2015. (Ex. 73).

105. Better economic times have translated into higher general fund tax revenues. The 2013-15 general fund budget showed a 14% increase over the budget for the prior biennium. This is a significant increase relative to past biennia. The increase between the two biennia is largely due to \$1.9 billion more in general fund resources being authorized for expenditure in the 2013-15 biennium than were spent in 2011-13. This 14% increase in general fund expenditures is the largest percentage increase since a 14.9% increase in the 1999-2001 biennium. Drilling down into the 2013-15 Oregon state budget, K-12 education was allocated \$6.55 billion compared to \$5.714 billion allocated for the 2011-13 biennium. Estimates to maintain service levels of the 2011-13 biennium suggest that the allocation for 2013-15 would have been \$6.315 billion, or an increase of approximately \$601 million. The allocated increase for 2013-15 above 2011-13 was \$836 million, or around \$235 million above maintaining current service levels for K-12 education. (Ex. 73).

106. The current forecast for general fund revenues is for continued growth, though not as strong as we have seen from some previous recoveries. Current projections show 10.9% growth for 2015-2017 general fund revenue (\$1.711 billion more than 2013-2015), 8.6% growth in 2017-2019 (\$1.507 billion more than 2015-2017) and 9.8% growth for the 2019-2021 General Fund revenue (\$1.868 billion more than 2017-2019). (Ex. 73).

107. The personal income tax kicker will occur if personal income taxes plus all other general fund revenues except for corporate income taxes increase 2% or greater for the biennium compared to the close of session estimate for that biennium. The kicker is a refund to personal income taxpayers of the amount that is above the COS estimate once the 2% threshold is obtained. As of the March 2014 forecast for general fund revenues, the advent of triggering the personal income tax kicker is only \$100 million (the forecast is 1.3% above COS). (Ex. 73).

### Summary

108. Many state and local governments have struggled during this last recession including adequate funding of K-12 education. Oregon shares in this struggle and has some unique factors that compound this challenge, which have been discussed above. (Ex. 73). Some of those factors are:

a. Demographic changes along with shifts in spending from an aging population will mean slower tax revenue growth relative to past periods. Oregon's general fund revenues are concentrated in personal income taxes. You

have a highly volatile tax with a highly volatile economy, making revenue projections and expenditure planning difficult.

b. Oregon moved the major funding for K-12 education from a more stable property tax base to the more uncertain personal income tax base.

c. With K-12 education now dependent on state funding, it is in competition with public safety and human services for scarce resources. (Ex. 73).

d. Oregon, by many measures, is a relatively low tax burden state and percent of budget spent on education is one of the lowest among the states.

e. The underlying volatility of Oregon and its public finance system shows up in this recent recovery with faster job growth for Oregon compared to the nation and rapid growth in general fund revenues.

f. Changes to Oregon's PERS benefits which lower employer contributions do not make any fundamental change to Oregon's revenue system and ultimately will not resolve Oregon's K-12 funding issue. While changes to Oregon's PERS benefits which lower employer contribution rates would lower the cost of services (as would cutting teacher's salaries or larger classrooms with fewer teachers), they do not address the fundamental issues underlying our tax revenue system for funding Oregon's K-12 education.

**Respondent School District Funding**

109. According to the Oregon Department of Education (Ex. 64), Respondent West-Linn Wilsonville School District’s funding for the period 2005-2015 was estimated as follows:

<b>School Year</b>	<b>ADMW</b>	<b>Total Formula Revenue per Extended ADMW</b>	<b>Total Formula Revenue</b>
2005-2006	8,950.50	\$5,540	\$49,586,331
2006-2007	9,170.90	\$5,900	\$54,108,893
2007-2008	9,170.90	\$6,223	\$57,073,874
2008-2009	9,187.30	\$6,096	\$56,007,737
2009-2010	9,185.40	\$6,147	\$56,462,396
2010-2011	9,264.31	\$6,014	\$55,719,470
2011-2012	9,274.22	\$6,199	\$57,487,021
2012-2013	9,427.35	\$6,318	\$59,561,862
2013-2014	9,776.06	\$6,825	\$66,721,161
2014-2015	9,933.10	\$7,181	\$71,332,201

110. According to the Oregon Department of Education (Ex. 65), Respondent Oregon City School District’s funding for the period 2005-2015 was estimated as follows:

<b>School Year</b>	<b>ADMW</b>	<b>Total Formula Revenue per Extended ADMW</b>	<b>Total Formula Revenue</b>
2005-2006	9,271.80	\$5,506	\$51,051,802
2006-2007	9,143.60	\$5,864	\$53,620,109
2007-2008	9,393.10	\$6,188	\$58,125,259
2008-2009	9,376.00	\$6,052	\$56,742,470
2009-2010	9,357.50	\$6,136	\$57,413,348
2010-2011	9,279.96	\$6,013	\$55,796,804
2011-2012	9,332.00	\$6,191	\$57,772,836
2012-2013	9,345.00	\$6,320	\$59,059,079
2013-2014	9,250.78	\$6,842	\$63,291,797
2014-2015	9,194.91	\$7,197	\$66,084,607

111. According to the Oregon Department of Education (Ex. 66), Respondent Estacada School District's funding for the period 2005-2015 was estimated as follows:

<b>School Year</b>	<b>ADMW</b>	<b>Total Formula Revenue per Extended ADMW</b>	<b>Total Formula Revenue</b>
2005-2006	2,886.70	\$5,548	\$16,014,987
2006-2007	2,779.20	\$5,903	\$16,405,166
2007-2008	2,732.20	\$6,189	\$16,910,496
2008-2009	2,972.00	\$6,024	\$17,902,732
2009-2010	3,262.20	\$6,076	\$19,821,679
2010-2011	3,262.24	\$5,917	\$19,303,395
2011-2012	3,316.80	\$6,152	\$20,403,621
2012-2013	3,278.20	\$6,163	\$20,202,090
2013-2014	3,138.25	\$6,705	\$21,042,967
2014-2015	2,744.64	\$7,133	\$19,576,703

112. According to the Oregon Department of Education (Ex. 67), Respondent Bend-La Pine School District's funding for the period 2005-2015 was estimated as follows:

<b>School Year</b>	<b>ADMW</b>	<b>Total Formula Revenue per Extended ADMW</b>	<b>Total Formula Revenue</b>
2005-2006	16,802.90	\$5,485	\$92,160,949
2006-2007	17,170.70	\$5,826	\$100,042,204
2007-2008	17,761.40	\$6,141	\$109,078,492
2008-2009	17,885.10	\$6,022	\$107,520,720
2009-2010	17,855.10	\$6,120	\$109,274,439
2010-2011	18,115.44	\$5,981	\$108,354,855
2011-2012	18,160.03	\$6180	\$112,236,904
2012-2013	18,421.67	\$6,299	\$116,032,143
2013-2014	18,471.81	\$6,814	\$125,865,191
2014-2015	18,879.43	\$7,152	\$135,028,138

113. According to the Oregon Department of Education (Ex. 68), Respondent Ontario School District's funding for the period 2005-2015 was estimated as follows:

<b>School Year</b>	<b>ADMW</b>	<b>Total Formula Revenue per Extended ADMW</b>	<b>Total Formula Revenue</b>
2005-2006	3,590.50	\$5,446	\$19,552,935
2006-2007	3,590.50	\$5,780	\$20,753,043
2007-2008	3,537.30	\$6,108	\$21,604,999
2008-2009	3,411.40	\$5,972	\$20,373,122
2009-2010	3,333.70	\$6,034	\$20,116,202
2010-2011	3,308.97	\$5,902	\$19,528,727
2011-2012	3,308.97	\$6,113	\$20,228,007
2012-2013	3,216.82	\$6,234	\$20,055,211
2013-2014	3,202.68	\$6,753	\$21,626,242
2014-2015	3,198.21	\$7,075	\$22,627,248

114. According to the Oregon Department of Education (Ex. 69), Respondent Beaverton School District's funding for the period 2005-2015 was estimated as follows:

<b>School Year</b>	<b>ADMW</b>	<b>Total Formula Revenue per Extended ADMW</b>	<b>Total Formula Revenue</b>
2005-2006	42,425.30	\$5,414	\$229,707,068
2006-2007	43,361.30	\$5,768	\$250,128,666
2007-2008	43,408.20	\$6,084	\$264,093,694
2008-2009	43,471.30	\$5,976	\$259,767,156
2009-2010	43,933.40	\$6,053	\$265,950,432
2010-2011	44,647.62	\$5,915	\$264,079,704
2011-2012	44,956.91	\$6,122	\$275,217,042
2012-2013	45,131.46	\$6,242	\$281,691,636
2013-2014	45,421.95	\$6,761	\$307,089,053
2014-2015	45,828.81	\$7,158	\$328,024,479

## **School District and Linn County Economic Defense**

For all the reasons stated below, the expert report and testimony of John Topogna does not support a finding that the changes made by SB 822 and SB 861 were justified by an important, significant, and legitimate public purpose of remedying a broad and general economic problem.

115. The changes made by SB 822 as amended by SB 861 were not justified by an important, significant, and legitimate public purpose of remedying a broad and general economic problem.

116. Respondents School Districts and Linn County (“SDLC”) presented no evidence in general or in particular of the comparable level of services provided in Oregon, Washington or Idaho. Therefore, no findings can be supported relating to relative level of services in these states or the potential impact on location decisions of businesses and households.

117. The fact that SB 822 and SB 861 lower benefits and thereby lower employer contributions does not provide a justification for their enactment.

118. SDLC expert John Topogna lobbied the legislature on behalf of Intervenor Oregon School Board’s Association (OSBA) in support of various proposed legislative changes. The OSBA’s proposed legislative changes would have had a more substantial adverse impact on the benefits of PERS members than SB 822 and SB 861. (Topogna Testimony).

119. Mr. Topogna testified that he, like many other individuals and organizations, presented information to legislators regarding OSBA's pension proposals. (Topogna Testimony). There is no evidence in the record to indicate that the legislature gave the information presented by Mr. Topogna any greater weight than information presented by any other individual or group.

120. Mr. Topogna testified that the following informed his analysis:

a. The 2011 PERS Valuation (Ex. 18) and the chart contained in the PERS Actuary's presentation to the Board on November 30, 2012 (Ex. 22, p. 8). The chart projected rates based on the actuarial assumption as well as earnings above and below that assumption. He did not reference the similar chart presented by the PERS Actuary to the Board on November 22, 2013 (Ex. 41, p. 17).

b. The 2012 Pew Report showed Oregon PERS being funded at 87% (including side accounts) for fiscal year 2010. (Ex. 78). This places Oregon PERS among the best funded plans in the country. (Ex. 79). Pew placed Oregon PERS in the "needs improvement" category based on their mistaken finding that Oregon had not paid all required actuarial contributions during the period 2005-2010. This finding is not correct as the PERS Actuary testified that PERS employers have made all required contributions during the period he has been the actuary for the system. (PERS Actuary Testimony).

c. The October 1, 2012 University of Chicago's IGM Forum's surveyed responses from 39 leading US economists to two questions regarding the funding of public employee pension systems in the U.S. (Ex. SDLC 109, pp. 8-9). The economists expressed general concerns about pension funding and concerns about the ability of "some U.S. states" to fund their pension liabilities. Neither the questions nor the responses related specifically to Oregon PERS. In addition, a study of the responses to questions made by the economists as part of the IGM forum were studied by the IGM Expert Panel Director, who cautioned against "using these economic expert opinions as a policy tool" and noting further that, "Hopefully, the same economists, when they do policy advice, would answer the same questions very differently." (Ex. 76, p. 11).

d. In both 2011 and 2012, Robert Novy-Marx and Joshual Rauh authored articles relating to the funding of public pensions in the U.S. (Exs. 74 and 80). In both articles, the authors re-analyzed pension funding required for state plans based on their assumption of 1.71% of real earnings above inflation. These reports have generally been criticized for using earnings assumptions unrelated to the actuarial assumptions generally used by pension plans (including Oregon PERS) and therefore have limited application for policy makers. (Ex. 75, p. 1). In both articles, the authors reanalyze necessary pension contributions under their assumptions, compare them with 2009 actual contributions, and rank order states based on the percentage increase in contribution rates under their

methodology. (Ex. 74, Table 2; Ex. 80, Table 3). This rank ordering tends to place well-funded states among those requiring the highest percentage increase in contribution rates (7 out of 10 of the top ranked states are in the Pew Study's best funded category), and tends to show poorly funded plans as requiring lower percentage increases (the states showing the lowest required percentage increases are among the worst funded plans in the Pew Study). Oregon was ranked first as requiring the highest percentage increase in necessary funding, but Mr. Topogna acknowledged that while the study was based on Oregon's funding including side accounts, it failed to include the bond payments being made by Oregon employers to fund those accounts. This artificially underestimated Oregon's employer actual costs thereby overstating Oregon's required percentage increase under their methodology. Had the authors correctly included bond payments in Oregon rates, then Oregon would not have been identified as the state requiring the greatest percentage increase in contribution rates under their methodology. (Topogna Testimony). This initial analysis formed the basis for all additional analysis performed by the authors, and for the reasons stated above tended to overstate the impact of their analysis on the Oregon PERS.

e. A May 2013 report issued by Portland State University's Center for Public Service showed that at certain times PERS Tier I Money Match retirees received higher benefits than other identified Oregon and Washington pension plans. (Ex. SDLC 109, p. 18). Mr. Topogna also provided graphs of

replacement ratios for Tier I retirees for 2000 and 2011, confirming that 2000 benefits generally showed higher replacement ratios than 2011. (Ex. SDLC 109, pp. 16-17). Mr. Topogna acknowledged that the impact of Money Match was known to the 2003 Legislature and was cited in the Special Master's Report regarding the 2003 legislative changes. (Ex. 15, p. 18). Mr. Topogna further acknowledged that concern about increases in the Money Match benefit were the motivating factor in the 2003 Legislature's decision to divert employee contributions from member accounts and limit earnings on member accounts. (Topogna Testimony). The 2003 legislation has lowered and continues to lower the relative value of Money Match benefits. (Ex. 49, p. 5).

f. Mr. Topogna pointed out that 60% of the system's liabilities were associated with retirees and an additional 10% with actives and inactive who would retire under Money Match. Therefore, a targeted response designed to impact the design and implementation of the Money Match formula on liabilities would necessarily focus on these populations of PERS retirees and members. Mr. Topogna acknowledged that he was unaware that the financial impact of SB 822 fell most heavily on all active members (including Tier II and OPSRP) (Ex. 27, p. 2) and was not focused on Tier I Money Match recipients. (Topogna Testimony).

121. Mr. Topogna testified that his client the OSBA preferred payment for current government services, including K-12 expenses, rather than payment of “legacy” pension costs.

122. Mr. Topogna’s analysis is not related to any specific legislative change and he freely acknowledged that his testimony and the information he presented in support of SDLC’s economic defense of SB 822 and SB 861, would also, in his opinion, have justified the more severe cuts advocated by the OSBA during the 2013 legislative session. (Topogna Testimony). In fact, Mr. Topogna’s analysis is an “all-purpose” analysis which could be utilized to support any change in PERS benefits.

#### **Governor’s Position on Potential PERS Changes**

123. During the development of the Governor’s Budget in 2012, the Governor was concerned that there may be a budget gap, making it impossible to continue services at the current level. As a result, the Governor’s Budget for 2013-2015 presented to the legislature included an \$865 million savings from changes to PERS during the biennium. (Ex. 59, p. 385).

124. The Governor’s Chief of Staff, Curtis Robinhold, testified that the Governor considered several options in an effort to find an option that would be politically feasible. COLA was one of these options. Robinhold testified that the Governor eventually focused primarily on COLA changes because the cost of the system was being driven by current PERS retirees whose benefits were relatively

high, particularly those receiving benefits substantially in excess of income replacement. (Robinhold Decl. ¶ 6; Robinhold Testimony).

125. Though Mr. Robinhold testified that throughout the 2013 session they became even more narrowly focused on what they considered to be the problems driving PERS costs, nonetheless, Mr. Robinhold acknowledged that SB 822 was not narrowly focused but rather impacted all PERS members, including impacting current actives most significantly. He also acknowledged SB 861, which became necessary to meet the Governor's goals, adversely impacted even the members receiving the lowest benefits in the system. Mr. Robinhold acknowledged that the Governor's signed both bills knowing their impact. (Robinhold Testimony).

DATED this 8<sup>th</sup> day of April, 2014.

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## CERTIFICATE OF FILING

I certify that on April 8, 2014, I filed the original of this PETITIONERS' JOINT & MORO PETITIONERS' REVISED AND SUPPLEMENTAL PROPOSED FINDINGS OF FACT by electronic filing with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16.

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PETITIONERS' JOINT & MORO PETITIONERS' REVISED AND SUPPLEMENTAL PROPOSED FINDINGS OF FACT upon the following individuals on April 8, , 2014, by email or by using the court's electronic filing system pursuant to ORAP 16 on April 8, 2014:

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