

JOINT COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT
ST. LOUIS FIREMEN'S RETIREMENT SYSTEM
INFORMATIONAL MEETING
MARCH 1, 2012

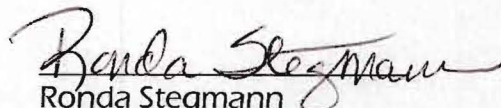
The Joint Committee on Public Employee Retirement held an Informational Meeting on Thursday, March 1, 2012 at 8:30 am in the Senate Lounge. Senator Crowell called the informational meeting to order. Joint Committee members in attendance were Senators Crowell, Green, Keaveny and Lamping and Representatives Anders, Atkins, Brown, Franz, Pierson and Wieland. Members absent were Senators Chappelle-Nadal and Rupp. Also in attendance were Senators Lager and Wright-Jones and Representatives Colona, Fuhr and Leara.

City of St. Louis staff including Sam Dotson, Director of Operations and Paul Payne, Budget Director presented information relative to the Firemen's Retirement System and recent proposed modifications. City Counselor Patti Hegeman also answered inquiries from the committee.

Local 73 Firefighters Union representatives including Ken Mitchell, John Brewer, and Bruce Williams as well as Retirement System legal counsel, Dan Toebben presented information and issues associated with the proposed firefighter modifications.

Senator Lamping made a request for additional information pertaining to historical plan data and experience for the 20 years prior to 2001 as well as information relative to debt servicing.

Senator Crowell requested the City assess the possibility of the local bills moving through the Board of Aldermen process and explore other options or compromises that can be reached. He offered additional committee workgroups or assistance with compromise proposals. Additionally, Senator Crowell suggested the City release any legal opinion or memorandum relative to proposed modifications.


Ronda Stegmann
Executive Director



JOINT COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT

ST. LOUIS FIREMEN'S RETIREMENT SYSTEM INFORMATIONAL MEETING

March 1, 2012

8:30 a.m.

Senate Lounge

AGENDA

Roll Call

Presentation by City of St. Louis Officials

Presentation by Local 73 Firefighters Union

Other Business





CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

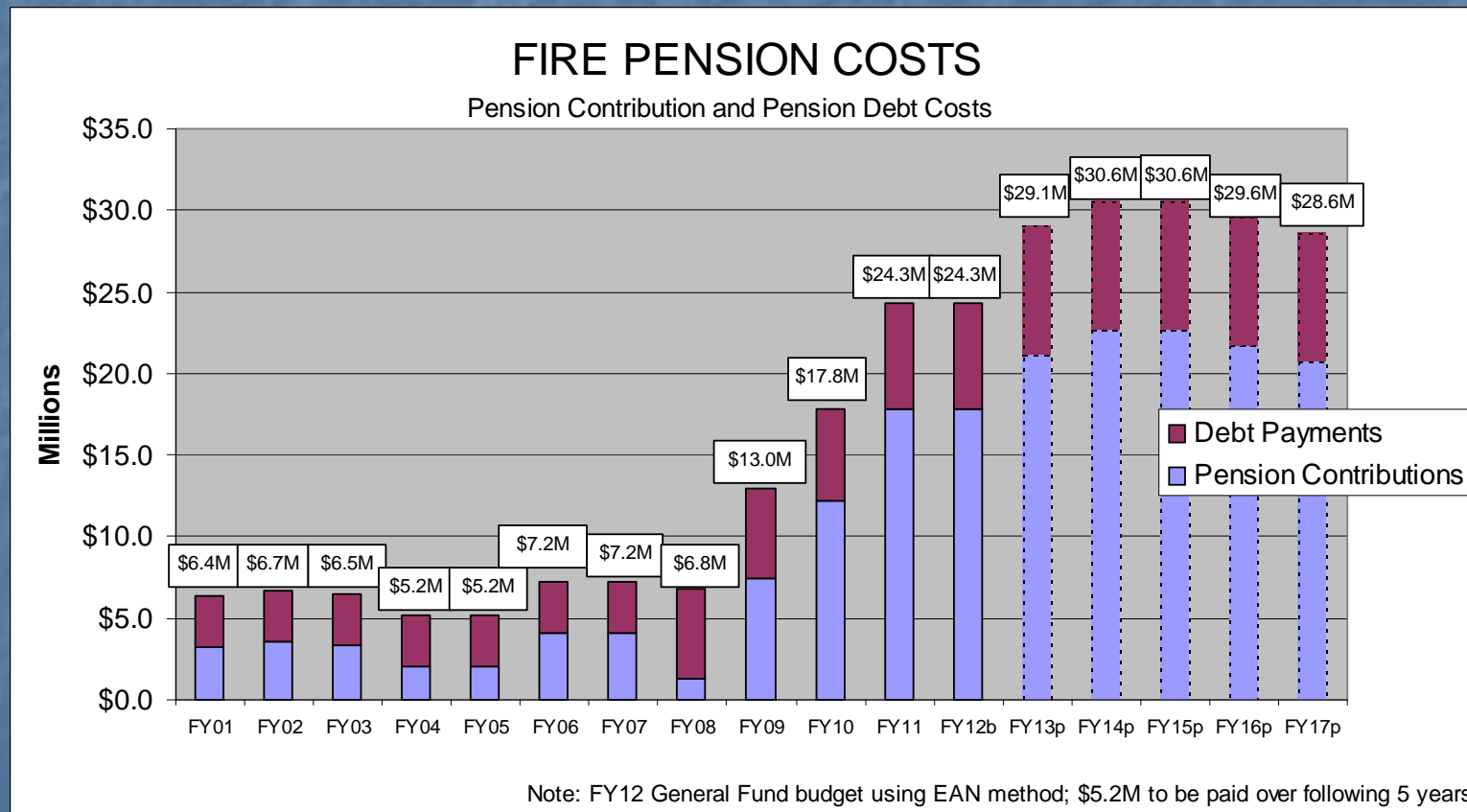
Presentation to Joint Committee on
Public Employee Retirement

March 1, 2012

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Firefighter Pension costs have increased 280% since FY01 and are projected to continue to rise over the next several years. (Updated to reflect 2011 results)

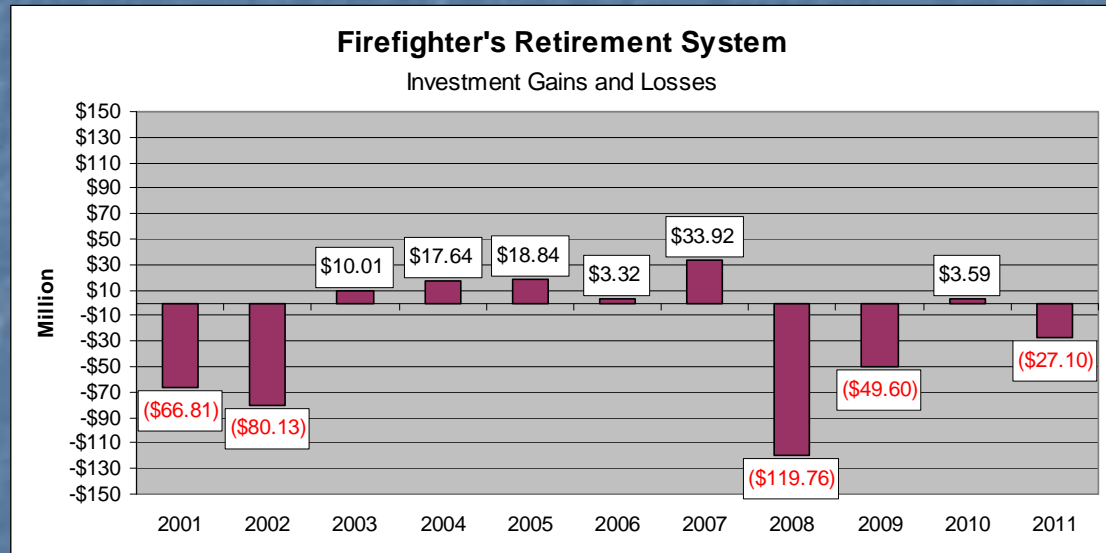


CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Market losses over the last 11 years have played a major part in these increases and costs will continue to rise should investments continue to under perform.

Plan Year	Investment Gain / (Loss)
2001	(\$66,813,450)
2002	(\$80,126,055)
2003	\$10,009,375
2004	\$17,640,613
2005	\$18,839,379
2006	\$3,321,145
2007	\$33,917,163
2008	(\$119,761,241)
2009	(\$49,595,731)
2010	\$3,594,154
2011	(\$27,101,232)
11 Year Total	(\$256,075,880)



Source: Firemen's Retirement System Actuarial Valuation Reports for respective years.

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Meanwhile, certain provisions within the existing plan contribute to its high costs, (e.g. nearly half of retired firefighters are on a disability pension).

Summary of FRS Plan Membership as of October 1, 2011

Active and DROP

Active (Non-DROP)	605
Active (DROP)	65
	<hr/> 670

Retirees

Service Retirees	376
Ordinary Disability	21
Accidental Disability	308
	<hr/> 705

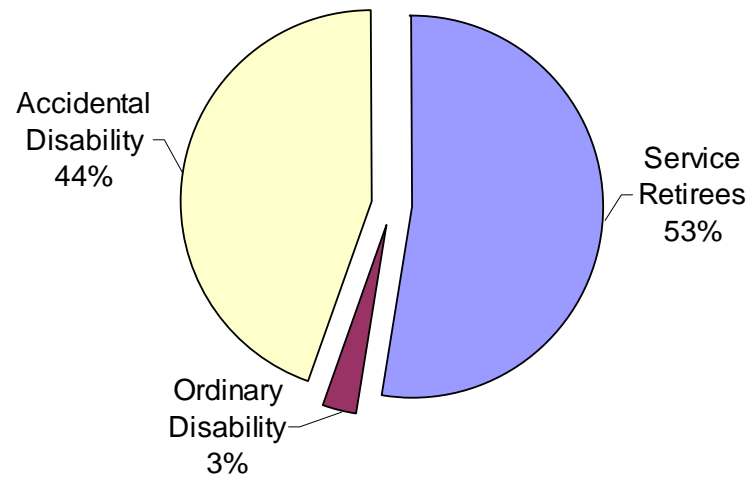
Dependents

Widows	290
Children	21
	<hr/> 311

Total	<hr/>1,686<hr/>
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Firefighter Pension System Retirees



Source: Firemen's Retirement System Actuarial Valuation Report as of 10/1/11.

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

While the FRS system has been relatively well funded, the losses have taken a toll and retirement Costs Per Employee are high.

	Employee Retirement System	Fire Retirement System		Police Retirement System
Valuations ¹ (as of 10/1/11)		EAN	FIL	
Assets - Market Value	\$585.6 M	\$387.2	\$387.2 M	\$596.3 M
Assets - Actuarial Value	\$661.9 M	\$404.1	\$404.1 M	\$695.4 M
Actuarial Accrued Liabilities	\$841.8 M	\$521.8	\$430.8 M	\$950.7 M
Actuarial Unfunded Liability	\$179.8 M	\$117.7	\$26.7 M	\$255.3 M
Funded Ratio - Actuarial Basis	78.6%	77.4%	93.8%	73.1%
Funded Ratio - Market Basis	69.6%	74.2%	89.9%	62.7%
1) Pension Costs				
Employer Contribution	\$28.0 M (prelim)		\$21.2 M *	\$28.5 M
Debt Service	\$3.9 M		\$6.5 M	\$3.2 M
Admin. & Other (net reimbursement)	--		\$1.4 M (EAN agmt)	\$0.3 M
Total	\$31.9 M		\$29.1 M	\$32.0 M
			* FIL	
2) Active Membership				
Active	4,851		605	1,161
Active In Drop	442		65	214
Less Non-City ²	-800		--	--
Less Depts. budgeted separately ²	-200		--	--
Total Active	4,293		670	1,375
3) Projected Pension Costs Per Active Participant	\$7,433		\$43,387	\$23,270
4) Retirement Costs As % of Pay				
Covered Payroll	\$196.5 M		\$37.2 M	\$67.6 M
City's Employer Contribution ³	14.27%		56.99%	42.13%
Pension Obligation Bond Debt	1.97%		17.39%	4.77%
EAN debt agreement	--		3.85%	--
FICA / Medicare ⁴	7.65%		1.45%	1.45%
Retiree Health Insurance ⁵	--		--	11.79%
	23.89%		79.68%	60.14%

Notes:

¹ Based on annual actuarial reports for plan years ending September 30, 2011 for each system respectively.

² Non City ERS members include employees of Zoo, Art Museum, Library and misc. smaller entities. Departments for which ERS payments are budgeted separately include fee offices, FRS and Parking Meter Division.

³ Contribution percentage as % of covered payroll per respective annual actuarial valuation reports as of 10/1/11: Employee Retirement System p.5, Fire Retirement System p. A-1, Police Retirement System pp. 8-9 (incl. interest).

⁴ Employer cost for employee members of ERS at full Social Security and Medicare rate of 7.65%. FRS and PRS do not participate in Social Security however, all employees hired after March 31, 1986 participate in Medicare with employer payroll cost of 1.45% of payroll.

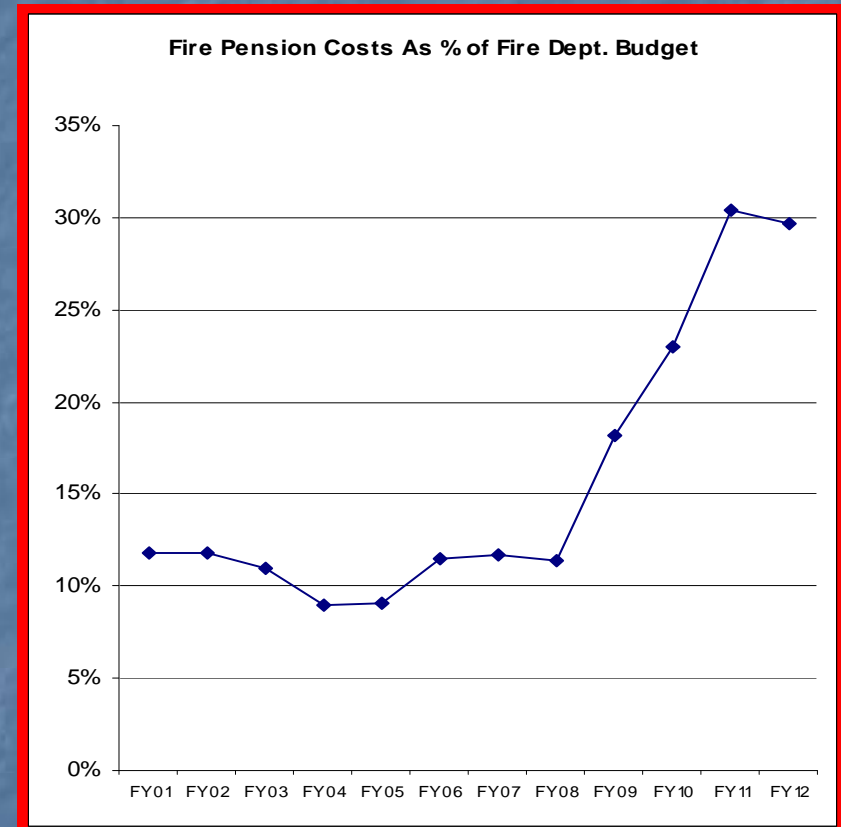
⁵ Represents SLPD FY12 budget for retiree health insurance of \$9.4M (of which est. 85% is for retired officers) as % of covered payroll.

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Approximately 1/3 of the Fire Department's budget is now consumed by Pension Costs. This level of funding is unsustainable and has forced cuts in fire department operations.

Fiscal Year	Fire Dept. Oper. Budgets	Fire Pension (excl. Airport)	Total Fire Budget	Fire Pension As % Of Budget
FY01	\$42,959,567	\$5,731,482	\$48,691,049	11.8%
FY02	44,610,957	5,979,632	50,590,589	11.8%
FY03	47,217,723	5,835,587	53,053,310	11.0%
FY04	47,303,702	4,692,539	51,996,241	9.0%
FY05	47,070,101	4,677,085	51,747,186	9.0%
FY06	50,214,038	6,542,560	56,756,598	11.5%
FY07	49,359,670	6,539,172	55,898,842	11.7%
FY08	50,964,287	6,535,373	57,499,660	11.4%
FY09	53,637,933	11,896,073	65,534,006	18.2%
FY10	53,721,717	16,004,590	69,726,307	23.0%
FY11	50,122,301	21,886,898	72,009,199	30.4%
FY12b	50,522,718	21,303,348	71,826,066	29.7%



Note: FY12b assumed switch to EAN; actual % under existing valuation method would exceed 34% of budget

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

At approximately \$900k per year to staff a single fire company, the anticipated increase of \$5M in FY13 pension costs alone would be sufficient to fund about 5 fire companies or nearly a sixth of the Fire Department's entire engine fleet.

\$5M = Over 5 Fire Companies & 80 Firefighters



CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Problem:

Under the current structure, the City has been unable to enact changes that would bring these costs down to more sustainable levels.

- Needing to go to state for what is essentially a local issue?
- The City currently does not control its own fate with regard to these costs.

Solution:

Local Control of FRS

- Enact changes that would ensure system sustainability.

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Proposed Benefit Changes:

- Changes in benefits for current retirees or their dependents:
NONE
- Changes for current employees (active firefighters):
TO KEEP VALUE OF ALL BENEFITS ACCRUED AS OF IMPLEMENTATION DATE

Focus to be on preserving base benefit while reducing costly ancillary benefits on going forward basis only:

- Employee contribution to increase to 9% of pay (currently at 8%)
- Future contributions to be non-refundable at retirement
- Must wait until age 55 to receive full pension benefit
- Change in disability benefit
- Increase in benefit to widow(er)s for those killed in line of duty

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Proposed Benefit Changes:

- Changes for new employees:
 - Contributions at 9% of pay
 - No return of contributions at retirement
 - No DROP
 - Average Final Compensation based on final 3 years
 - 35 years to maximum 75% benefit (change in multiplier)
 - Must wait until age 55 to receive full pension benefit
 - Change in disability benefit
 - Change in COLA
 - 10 Year vesting (currently 20 years)
 - Increase in benefit to widow(er)s for those killed in line of duty

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Proposed Changes In Governance:

- No change in current Board of Trustees
 - make-up of board to remain the same with new elections to be held and new terms to begin after first year

(3 active firefighters, 1 retired firefighter, 1 Fire Chief,
2 members appointed by Mayor, 1 City Comptroller or Deputy)
- Staffing
 - patterned after ERS
 - trustees may opt to convert existing staff to civil service
 - staff to report to Director of Public Safety
- Trustees role limited to fiduciary duties only;
 - cannot challenge City on issues of plan establishment, amendment or design

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

What About Disability Benefit ?

Pension Benefits	Current System	Proposed Changes Board Bill No. 175 (revised)	Proposed Changes New Plan
Disability Benefit (incurred in line of duty)	<p>75% of highest annual salary in highest step in rank at time of disability;</p> <p>Line of duty presumption (after 5 yrs) includes diseases of the heart and lung.</p>	<p>If disability prevents work in any occupation, 75% of average compensation;</p> <p>If disability prevents work as a firefighter but not other gainful employment: Benefit of 25% of compensation, plus 2.75% for each year greater than 10 but no more 25 years of service; if more than 25 years, then total benefit is 75%;</p> <p>Option for tuition reimbursement at state university for up to five years for passing grades in a degree program plus 70% pay. If between 20-25 yrs of service could waive education benefit to add flat 40% benefit to 25% base. (65% total).</p> <p>Line of duty presumption adds infectious diseases and cancer</p>	<p>If disability prevents work in any occupation, 75% of average compensation;</p> <p>If disability prevents work as a firefighter but not other gainful employment: Benefit of 25% of compensation, plus 2.75% for each year greater than 10 but no more 25 years of service; if more than 25 years, then total benefit is 75%;</p> <p>Option for tuition reimbursement at state university for up to five years for passing grades in a degree program plus disability pay as described above;</p> <p>Line of duty presumption includes lung only. (unless rebutted by evidence of habitual smoking)</p>
Disability Benefit (not incurred in line of duty)	<p>Greater of 90% of accrued pension benefit or 25% of average final compensation;</p> <p>If 20 or more years of service, regular service retirement granted</p>	No change	No change

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

What About Disability Benefit ?

Pension Benefits	Current System	Proposed Changes Board Bill No. 175 (revised)	Proposed Changes New Plan
Cost of Living Adjustments	3% per year to age 60 then 5% up to max 25% after 60; (Each year limited by CPI; any amounts in CPI over limit can be applied to future years to max 25%)	If disability prevents work in any occupation – no change. Otherwise if 25 years of service or less: 1% per year to age 60 then 5% per year for 5 years If more than 25 years of service: 2 ¼% per year to age 60 then 5% per year for 5 years Same CPI provisions	Lesser of the annual increase in CPI or 3% per year up to a maximum aggregate of 25%
Disability Benefit (reviews and offsets)	Medical exam reviews. Reduction for earnings from subsequent employment so that total compensation does not exceed 150% of avg. compensation.	No change.	Medical exam reviews. Reduction for earnings from subsequent employment so that total comp. does not exceed 100% of pay; (e.g. cannot make more than before becoming disabled) Workers' Comp. payment offset (e.g. cannot be paid twice for same disability)

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Other Pension Reform Details:

Pension Benefits	Current System	Proposed Changes Current Employees	Proposed System New Employees
Multipliers	2% for first 25 years 5% for each additional year to maximum 75%; Unused sick leave (frozen as of Sept. 26, 2010) can be added to service	No Change	2% for first 25 years 2.5% for each additional year to maximum 75%; No sick leave credit applied to pension service
Average Final Compensation	Final 2 year average salary	No Change	Final 3 year average salary
Normal Retirement (unreduced annuity payable immediately)	20 Years – no age requirement	No change for benefit accrued prior to effective date; For service accrued on or after effective date, 20 Years and Age 55	20 Years and Age 55
Employee Contributions	Current contribution of 8% of pay refunded at retirement	To increase to 9% of pay All contributions made <u>before</u> effective date to be refunded upon retirement. No refund of contributions at retirement for contributions on or after effective date of change, balance to remain as benefit to system.	9%, not refundable at retirement; Refunded for unvested terminated members; optional refund in lieu of an early retirement pension or a vested deferred pension

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Other Pension Reform Details (cont.)

Pension Benefits	Current System	Proposed Changes Current Employees	Proposed Changes New Employees
Vesting	20 years	No change.	10 years
Employee Terminating Employment Prior to 20 Years	Receives refund of contributions With interest	No change.	<p>If less than 10 years of service, refund of contributions with interest</p> <p>If 10 or more years of service (but before 20 years of service); option to receive: (a) refund of contributions with interest; or (b) vested deferred pension beginning at age 62</p>

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Other Pension Reform Details (cont.)

Pension Benefits	Current System	Proposed Changes Current Employees	Proposed Changes New Employees
Early retirement pension	20 years and no age requirement.	No change except for actuarial reduction from Age 55 for future accruals.	If at least 20 years of service (but under age 55), a deferred pension beginning at age 55; with an option to receive an immediate pension actuarially reduced from age 55. Optional refund of contributions plus interest, in lieu of pension.
Sick leave conversion	<p>Three options for sick leave based on sick leave hours accrued as of Sept. 26, 2010: (date sick leave for pension benefit was frozen)</p> <ol style="list-style-type: none"> 1. 100% of accrued sick leave deposited into DROP account; 2. 50% of accrued sick leave deposited into DROP account and include 25% of sick leave in compensation and apply 25% of sick leave to buy service credit; or 3. 100% of sick leave applied to service credit for pension benefit (up to 30 yrs.) 	No change.	No sick leave conversion.

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Other Pension Reform Details (cont.)

Pension Benefits	Current System	Proposed Changes Current Employees	Proposed Changes New Employees
Deferred Retirement Option Plan (DROP)	Can remain in DROP for 5 years while continuing to work and benefit paid into DROP account; employee contributions reduced to 1% of pay while in DROP; option to have 100% of accrued sick leave deposited into DROP account; or to have 50% of sick leave deposited into DROP account and include 25% in compensation and apply 25% to buy service credit.	No change except for actuarial reduction from Age 55 for future accruals.	No DROP plan.
Cost of Living Increases	<p>< 25 Years: 1.5% per year to age 60; 5% per yr. thereafter to max 25% after 60</p> <p>25<30 Years: 2.25% per year to age 60; 5% per yr. thereafter to max 25% after 60</p> <p>>30 Years: 3% per year to age 60; CPI or 5% per yr. thereafter to max 25% after 60</p> <p>(Each year limited by CPI; any amounts in CPI over limit can be applied to future years to max 25%)</p>	<p>No change except for disability retirees.</p> <p>For disability retirees, lesser of the annual increase in CPI or 3% per year up to a maximum aggregate of 25%</p>	Lesser of the annual increase in CPI or 3% per year up to a maximum aggregate of 25%

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Other Pension Reform Details (cont.)

Pension Benefits	Current System	Proposed Changes Current Employees	Proposed Changes New Employees
Death Benefit	Widow(er) to receive 50% of compensation while a widow(er) plus 10% for each unmarried dependent child under age 18, up to 3 children	No change except that for those killed in line of duty, widow(er) benefit is increased 25%	No change except that for those killed in line of duty, widow(er) benefit is increased 25%
Valuation Method	Frozen Initial Liability Valuation Method	Entry Age Normal Valuation Method	Entry Age Normal Valuation Method

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Proposed Pension Reform Examples:

Example	Current System	Proposed Changes Current Employees	Proposed Changes New Employees
EXAMPLE 1 Age at Hire: 30 Age on Effective Date: 40 Service on Eff. Date: 10 Yrs. Age at Retirement: 55 Service at Retirement 25 Years Compensation: 2 Year Avg. Final \$70,000 3 Year Avg. Final \$69,000	Pension Start At Retirement: $2\% \times 25 \text{ yrs.} \times 2\text{yr AFC} =$ \$35,000;	Pension Start At Retirement: $2\% \times 25 \text{ yrs.} \times 2\text{yr AFC} =$ \$35,000; Contributions made after implementation date to be non- refundable at retirement.	Pension Start At Retirement: $2\% \times 25 \text{ yrs.} \times 3\text{yr AFC} =$ \$34,500; No return of contributions.
EXAMPLE 2 Age at Hire: 25 Age on Effective Date: 35 Service on Eff Date: 10 Yrs. Age at Retirement: 55 Service at Retirement 30 Years Compensation: 2 Year Avg. Final \$75,000 3 Year Avg. Final \$74,000	Pension Start At Retirement: $2\% \times 25 \text{ yrs} +$ $5\% \times 5 \text{ yrs.} \times 2\text{yr AFC} =$ \$56,250;	Pension Start At Retirement: $2\% \times 25 \text{ yrs} +$ $5\% \times 5 \text{ yrs.} \times 2\text{yr AFC} =$ \$56,250; Contributions made after implementation date to be non- refundable at retirement.	Pension Start At Retirement: $2\% \times 25 \text{ yrs.} +$ $2.5\% \times 5 \text{ yrs.} \times 3\text{yr AFC} =$ \$46,250; No return of contributions

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Proposed Pension Reform Examples:

Example	Current System	Proposed Changes Current Employees	Proposed Changes New Employees
EXAMPLE 3 Age at Hire: 25 Age on Effective Date: 35 Service on Eff. Date: 10 Yrs. Age at Retirement: 60 Service at Retirement 35 Years Compensation: 2 Year Avg. Final \$80,000 3 Year Avg. Final \$79,000	Pension Start At Retirement: $2\% \times 25 \text{ yrs} +$ $5\% \times 5 \text{ yrs.} \times 2\text{yr AFC} =$ \$60,000;	Pension Start At Retirement: $2\% \times 25 \text{ yrs} +$ $5\% \times 5 \text{ yrs.} \times 2\text{yr AFC} =$ \$60,000; Contributions made after implementation date to be non- refundable at retirement.	Pension Start At Retirement: $2\% \times 25 \text{ yrs.} +$ $2.5\% \times 10 \text{ yrs.} \times 3\text{yr AFC} =$ 59,250; No return of contributions.
EXAMPLE 4 Age at Hire: 25 Age on Effective Date: 35 Service on Eff Date: 10 Yrs. Age at Retirement: 45 Service at Retirement 20 Years Compensation: 2 Year Avg. Final \$65,000 3 Year Avg. Final \$64,000	Pension Start At Retirement: $2\% \times 20 \text{ yrs} \times 2\text{yr AFC} =$ \$26,000;	Pension Start - Age 45: Benefit for years accrued prior to change: $2\% \times 10 \text{ Yrs} \times 2\text{yr AFC} = \$13,000$ For years accrued after change: $2\% \times 10 \text{ yrs} \times 2\text{yr AFC} = \$5,478^*$ <div style="text-align: right;">Total \$18,478</div> (*actuarially reduced prior to age 55) Pension Start - Age 55: Benefit for years accrued prior to change: $2\% \times 10 \text{ yrs} \times 2\text{yr AFC} = \$13,000$ For years accrued after change: $2\% \times 10 \text{ yrs} \times 2\text{yr AFC} = \$13,000$ <div style="text-align: right;">Total = \$26,000</div> Contributions made after implementation date to be non- refundable at retirement.	Pension Start - Age 45: $2\% \times 20 \text{ yrs} \times 3\text{yr AFC} =$ \$10,787* (* actuarially reduced prior to age 55) Pension Start - Age 55: $2\% \times 20 \text{ yrs.} \times 3\text{yr AFC} =$ \$25,600; No return of contributions.

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Projected Impact on Contributions: (based on 10/1/10 results)

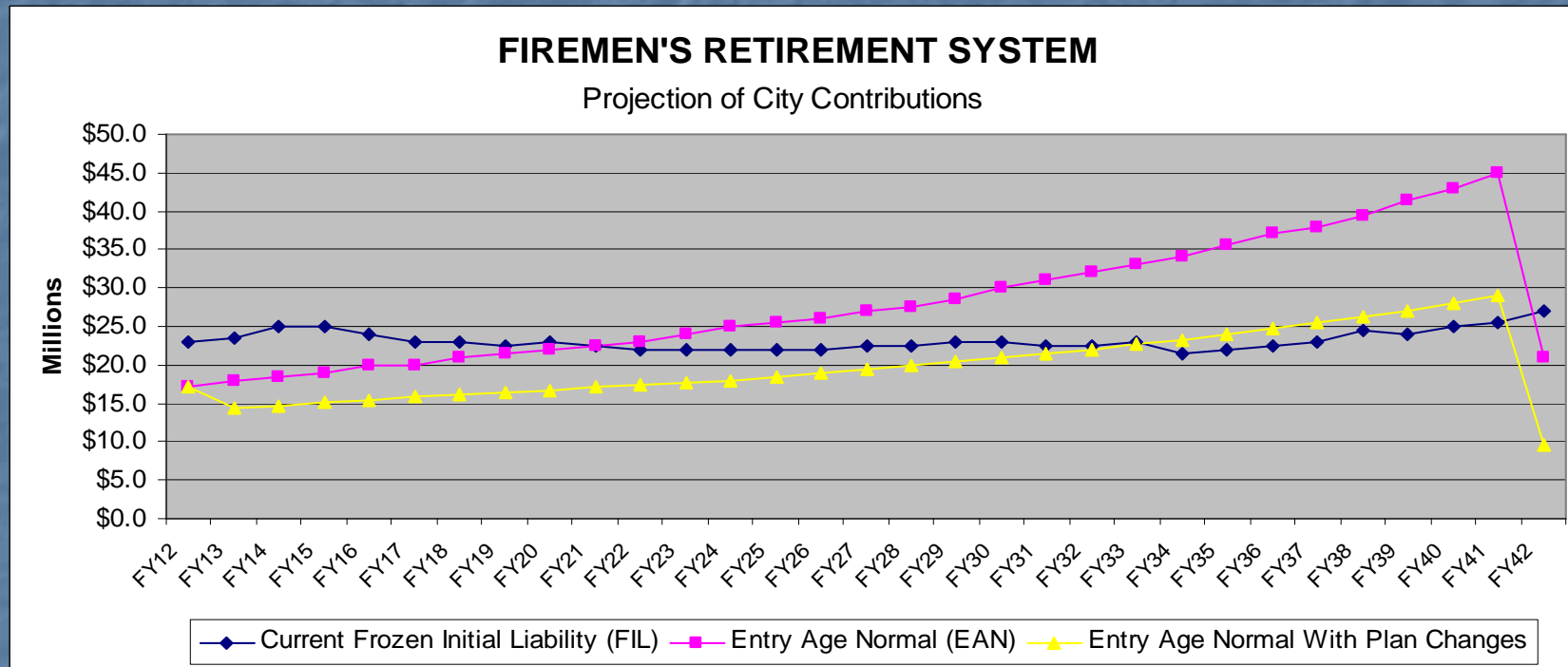
- Switch to EAN - \$5.3M
 - assumes amortization of unfunded accrued liability at level % of payroll (i.e. will increase over time)
- Plan Changes - \$4.1M
- Total Contribution Impact Summary:

	<u>Total</u>	<u>Chg.</u>
Current Plan - FIL Method	\$23.1M	
Current Plan - EAN Method	\$17.8M	(\$5.3M)
Proposed Plan - EAN Method	\$13.7M	<u>(\$4.1M)</u>
		(\$9.4M)

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Projected Impact on Contributions: Long Term



Based on Summary of Fire Retirement System Actuarial Report dated 2/15/11, utilizing plan data as of 10/1/10.
EAN methods assume amortization of the unfunded actuarial accrued liability over a 30 year closed period on a level % of payroll.

CITY OF ST. LOUIS

Firefighter Pension Plan Reform Proposal

Process and Next Steps:

- Legislation: Two Proposed Board Bills:

Board Bill #270 : Withdraws from existing plan; freezes existing benefits;

Board Bill #271 : Establishes new plan benefits and incorporates accrued benefits of old plan;

- Communications: Materials to be developed for plan members

Local 73 to the Missouri Joint Committee on Public Employee Retirement Systems

Let's be clear about who controls the System. The State of Missouri enables legislation and then the City of St. Louis either passes the same legislation or it doesn't. There are numerous legislative changes in Chapter 87 that have not been passed by the Board of Aldermen and those changes have never been implemented by the System since the City never passed the changes.

The Pension Board works within the laws governing the system. Many of these provisions being referred to have been altered through this legislative body and would reduce the very costs mentioned if only the accompanying permissive legislation would be passed and signed at the local level. It is the local controlling authority, the City of St. Louis, that is preventing reform of the disability program from taking place. The legislation was introduced in the Board of Aldermen on October 7, 2011 and has not been heard in committee yet. Had it been heard and hopefully passed the City would have seen another \$1M reduction in the City's contribution.

All aspects of the Retirement System have been adopted by City Ordinance. And the costs associated with those changes the City adopted are then passed on to the taxpayers. The State of Missouri in no way controls the System. It only enables the City to pass legislation if it seems fit to do so.

As indicated previously, this legislative body has already enacted provisions resulting in meaningful pension cost reductions. These provisions are being prevented from going into effect only by the very control the city purports to not have. Even today additional legislation is being prepared that will save the city even further on their required contribution by way of a 2nd tier for new hires.

Local control of the Retirement System would give leave to the City to re-structure the System as it chooses. If the new bills were passed it would only give fiduciary responsibility to the Board in regards to investments. The city specifically states in their proposal that the Board of Trustees could not litigate any matters regarding funding to the System by the Employer, any decreases in benefits for current employees, or any matters concerning retiree benefits.

With the changes to disability benefits already enabled by the State of Missouri and the new proposal for a new tier for new hires the City will see a reduction of approximately \$2M the first year.

In addition to those savings, this year's contribution amount was \$1.895M less than last year. That could bring total savings to the City of \$4M. If the funding methodology were to change that would bring an additional \$5M savings also and the City would then see a total approximate savings of \$9M for the upcoming fiscal year over last year. The Board of Trustees are aware that the funding method change would only defer costs to later years. This is also not a new concept to the Board as we first proposed this change in 2007 and again last year.

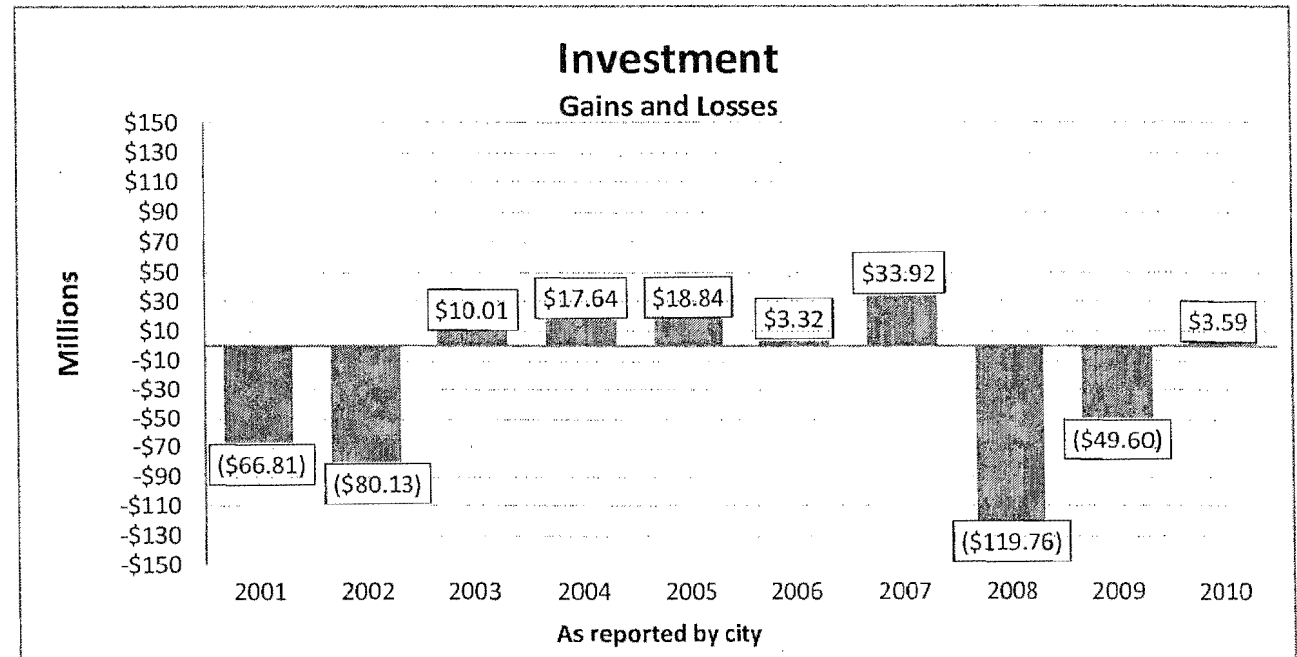
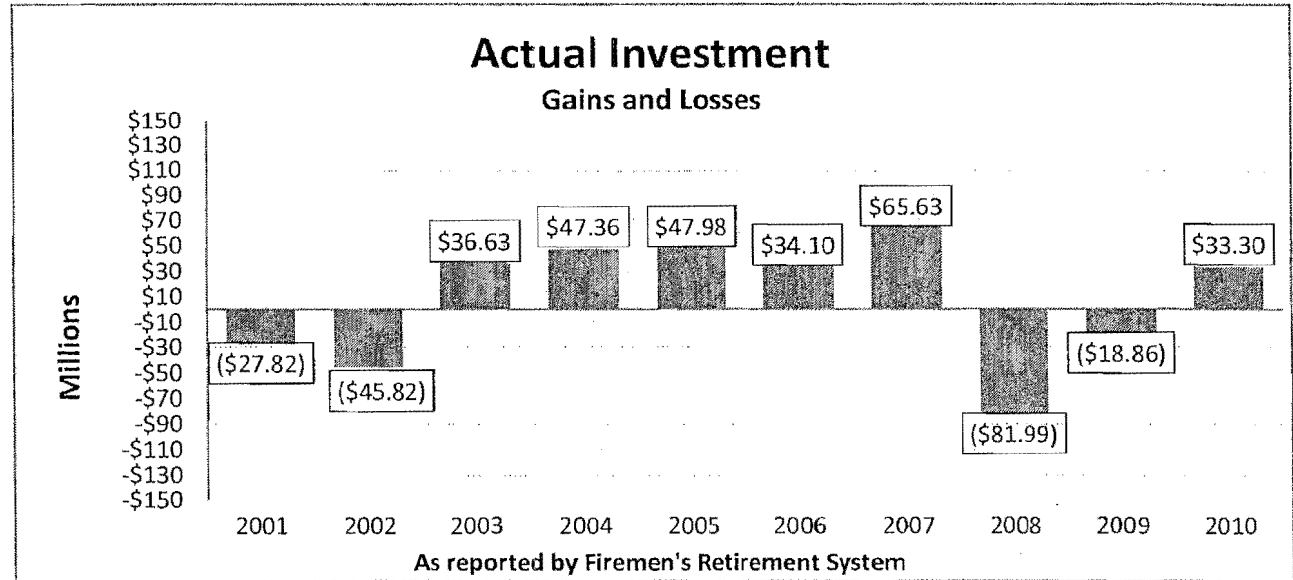
Two staff positions, the Executive Director and the Assistant Executive Director, would be accepted without competition in Civil Service, and two other positions would be filled by the Director of Public Safety. The employees would all be Civil Service and they would all answer to the Director of Public Safety. The Board of Trustees would have no authority over staff at all. This issue was also litigated and the Trustees prevailed in the Supreme Court in 1990 and the staff remained under the supervision of the Board of Trustees.

Comparison Chart of Gains/Losses as Reported by Firemen's Retirement System's Actuaries

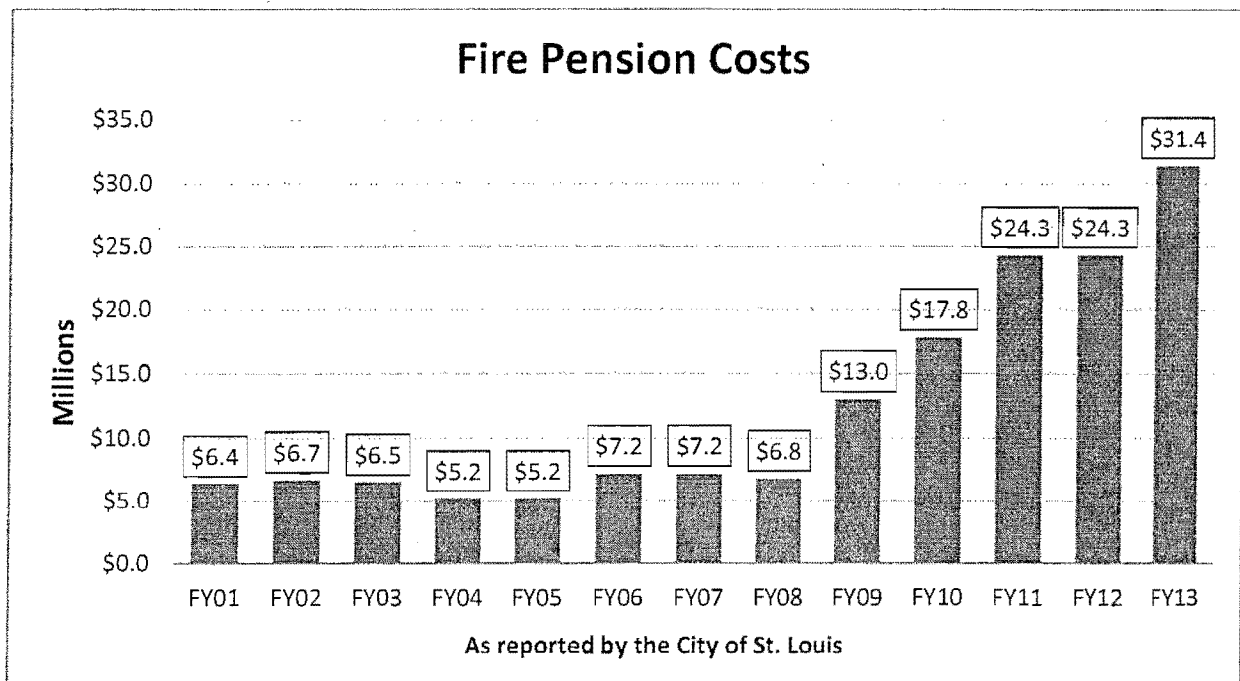
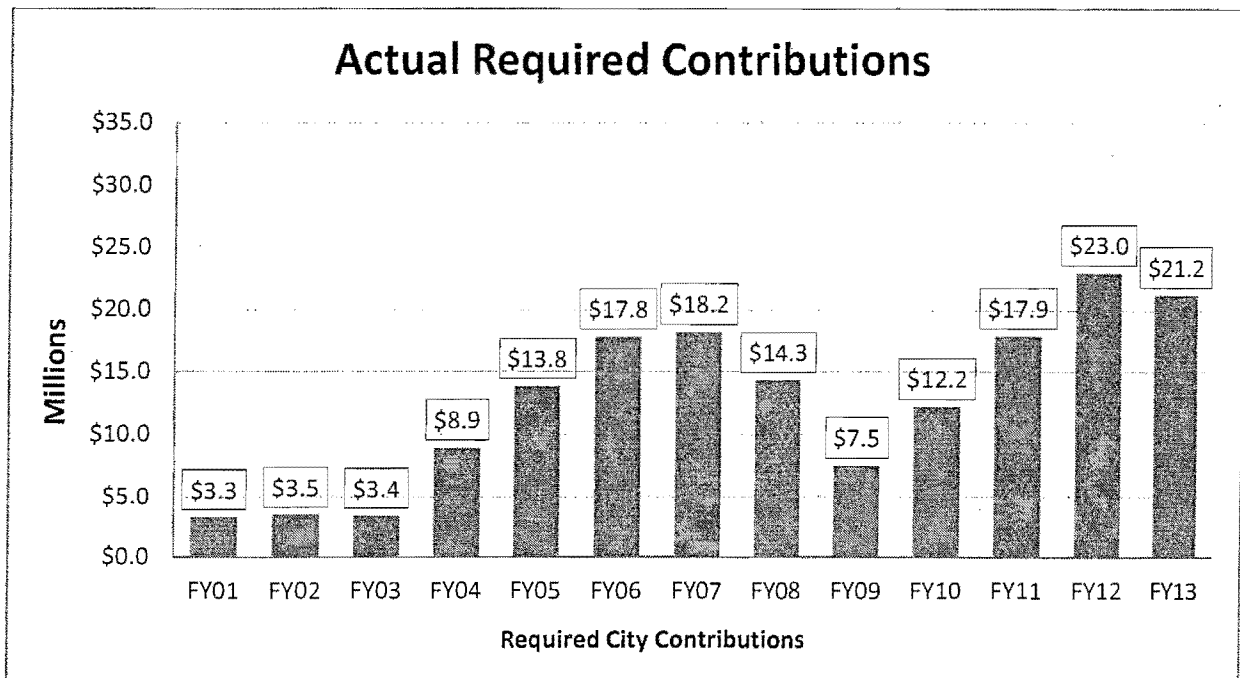
vs.

Investment Gains/Losses as Reported by The City of St.Louis

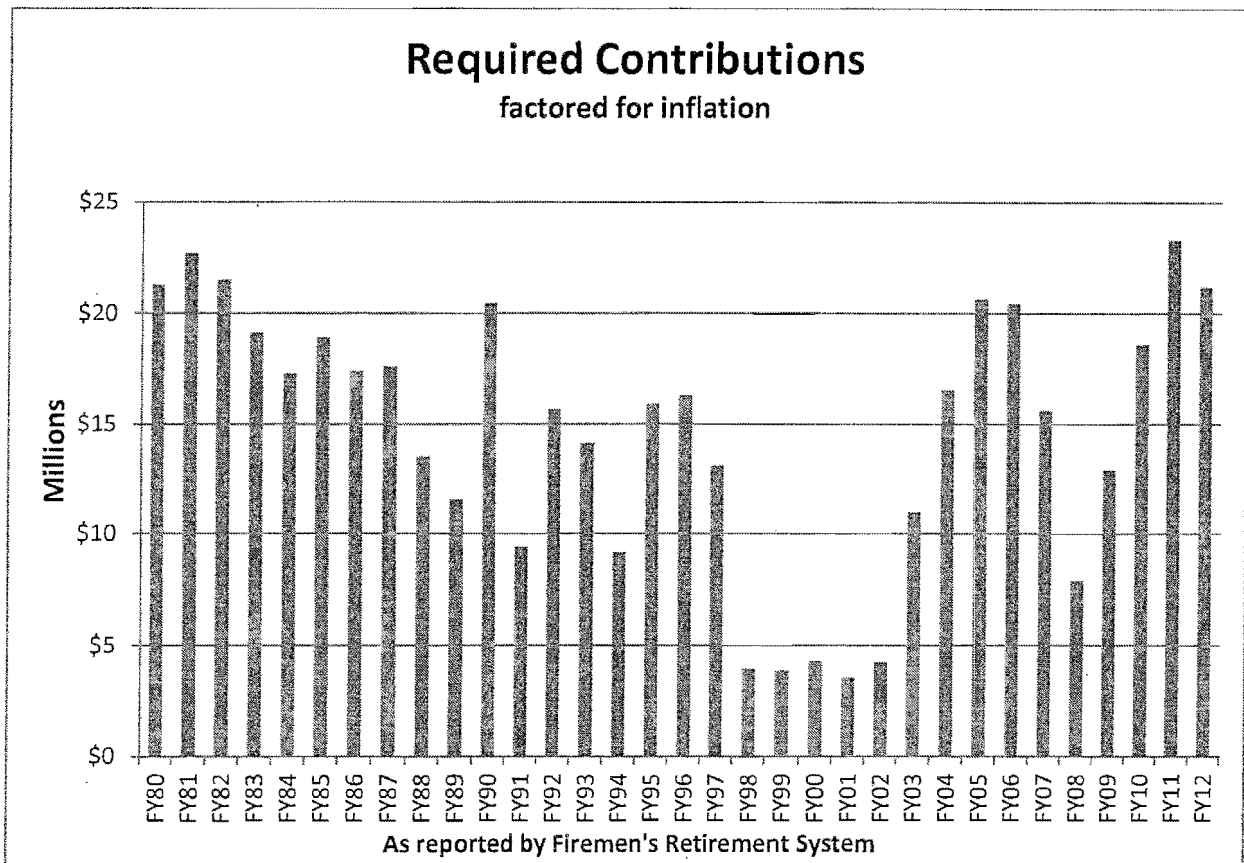
FRS reported Investment Gain / (Loss)	Plan Year	City's reported Investment Gain / (Loss)
(\$27,824,799)	2001	(\$66,813,450)
(\$45,824,827)	2002	(\$80,126,055)
\$36,632,933	2003	\$10,009,375
\$47,359,906	2004	\$17,640,613
\$47,975,057	2005	\$18,839,379
\$34,103,149	2006	\$3,321,146
\$65,629,492	2007	\$33,917,163
(\$81,989,764)	2008	(\$119,761,241)
(\$18,864,872)	2009	(\$49,595,731)
\$33,298,179	2010	\$3,594,154
10 Year		
\$90,494,454	Total	(\$228,974,648)



Although investment markets suffered two recessions in the last 10 years, including the great recession, investment gains for the Firemen's retirement System were actually in excess of \$90 million over that same time frame. Selection of 2001 as a starting point intentionally disregards the \$347 million in investment gains during the 90's and the vast economic relief they provided the city during that time period.



In FY03 the City of St. Louis decided to stop paying the required contribution mandated by both State Statute and City Ordinance. The City of St. Louis continued to underfund FRS until the Missouri Supreme Court ruled against the City and ordered full payment of the obligation.



As noted by the above graph, the required contributions of the late 1990's and early 2000's were not the norm. The graph demonstrates that costs are dynamic and fluctuate around a reasonable 30 year amortized average.

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March 25, 2010

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The Honorable Jason Crowell
Senator
State Capitol Building
Room 323
Jefferson City, Missouri 65101

Re: MOSERS

Dear Senator Crowell:

The Board of Trustees of the Missouri State Employees' Retirement System ("MOSERS") has asked Thompson Coburn LLP, in our role as counsel for MOSERS, to provide you with the following non-privileged analysis of whether the Missouri Constitution would prohibit certain changes to the MOSERS statutes to: (a) require current MOSERS members prospectively to make contributions to MOSERS to fund their retirement benefits; or (b) reduce future retirement benefits of current, non-retired MOSERS members. We expect that any change to the MOSERS statutes would face judicial challenges by current MOSERS members under article I, section 13 of the Missouri Constitution, which prohibits the State from passing laws that impair the obligation of contracts.¹ While it cannot be predicted with certainty how the Supreme Court of Missouri would rule on the legality of such changes to the MOSERS statutes, the following discussion addresses the legal and procedural issues that likely would arise in any case challenging such statutory changes.²

¹ Such judicial challenges might also assert claims under the Contract Clause in article I, section 10 of the United States Constitution, which also prohibits the State from passing laws that impair the obligation of contracts.

² Because the State clearly may require member contributions from future MOSERS members and may restructure retirement benefits for future MOSERS members, this letter does not further address those issues.

Summary

The Supreme Court of Missouri has not yet addressed whether an amendment to the MOSERS statutes requiring current MOSERS members to make contributions or reducing their future retirement benefits would violate the Missouri Constitution. However, based on decisions in other Missouri cases involving changes in retirement systems, the MOSERS statutes, and cases from other jurisdictions, there is a significant probability that the Supreme Court of Missouri would rule that such a change to the MOSERS statutes violates the prohibition in article I, section 13 of the Missouri Constitution against laws that impair the obligation of contracts.

The Supreme Court of Missouri has previously ruled that the MOSERS statutes create a contractual relationship between members, the State, and MOSERS. The court has further ruled that where a contract exists between an employer/sponsor of a statutory retirement system and an employee/member, article I, section 13 of the Missouri Constitution prohibits the State from amending the retirement system's statutes in a way that deprives the member of the current level of retirement benefits under the retirement system's existing statutes. Courts in other jurisdictions have generally held that changing retirement system benefit plans to require increased member contributions is an unconstitutional impairment of the members' contracts unless: (a) the statutes establishing the retirement system contain some indication that members are subject to increased contributions in the future; or (b) the increased member contributions are offset by increased benefits to the members. Here, no MOSERS statute expressly reserves any right to require member contributions.

Sections 104.540.1 and 104.1054.1 of the MOSERS statutes are part of the contract between the State and current MOSERS members. They provide: "No alteration, amendment, or repeal of [the MOSERS statutes] shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal." A plausible argument could be made that requiring member contributions for future service credit or reducing future retirement benefits only affects "rights ... as a result of services rendered by an employee after" an amendment of the MOSERS statutes and, therefore, is permissible under the contract between the State and current MOSERS members. However, the Supreme Court of Missouri is more likely to conclude that requiring future member contributions or reducing future retirement benefits would also impermissibly diminish the vested rights of current MOSERS members for prior services rendered. By requiring member contributions, the State would effectively diminish the value of previously promised retirement benefits by increasing the members' cost to obtain those promised retirement benefits. To be constitutional, a change in the MOSERS statutes to begin requiring contributions from current members would need to be accompanied by offsetting benefits to the members (such as salary increases).

Analysis

I. Relevant Missouri cases involving retirement systems.

Missouri appellate courts have addressed the general nature of statutory retirement systems in Missouri and the constitutionality of several types of changes to those retirement systems, including:

- removing non-retired members from a retirement system;
- increasing benefits for retired members of a retirement system;
- reducing the plan sponsor's contributions to a retirement system; and
- eliminating a portion of unpaid overtime and vacation pay from the calculation of pension benefits.

Missouri appellate courts have not specifically addressed whether a governmental entity may change a retirement system to require increased contributions from current members for future work.

A. Phillip

State ex rel. Phillip v. Public School Retirement System of City of St. Louis, 262 S.W.2d 569 (Mo. banc 1953), is the most analogous Missouri case that involved a change in a retirement system. As originally established in 1944, the Public School Retirement System of the City of St. Louis (the "Retirement System") covered full-time employees of the Board of Education of the City of St. Louis (the "Board of Education"), including non-teachers. In 1953, the General Assembly passed a law (the "1953 Act") that effectively terminated the membership of non-teachers in the Retirement System with the hope that these non-teachers would eventually be covered by the federal Social Security program. The Supreme Court of Missouri held that the State's attempted termination of the non-teachers' membership in the Retirement System was unconstitutional under article I, section 13 of the Missouri Constitution because the State had impaired the obligation of the contract among the non-teachers, the Retirement System, and the Board of Education.

The court observed that the issue was whether the State could exclude active non-teachers (who were not yet receiving retirement benefits) "from all future benefits to which they might be entitled under the terms of the existing Retirement System." Id. at 574. The court stated that this issue depended on: (1) whether the non-teachers had a contractual relationship with the Retirement System and the Board of Education providing for contractual rights to the benefits provided by the Retirement System as it existed before the 1953 Act; and (2) if so, whether the 1953 Act impaired obligations under that contractual relationship. Id. The court

noted that “[a] determination of these issues requires a careful review of specific statutory provisions governing the relationship between the Retirement System and its members prior to the effective date of the 1953 Act.” Id. The court further added “that the rights of any beneficiary, or member of any retirement system can only be determined by very careful scrutiny of the detailed provisions of the particular statute controlling the creation and operation of the particular retirement system and under the particular facts of the case.” Id. at 577.

The court reviewed the various statutory provisions governing the Retirement System and concluded that these provisions “were intended to and did provide for the creation of specific contractual rights in the members of the Retirement System to obtain specific benefits upon compliance with the terms.” Id. at 578. The court summarized these rights as being “to the effect that if such [non-teacher] employees remain employees of said Board and remain members of the Retirement System, make the necessary contributions and meet the requirements thereof, as provided, that they will be entitled to the proposed benefits thereunder.” Id. at 577-78. These “contractual rights to potential benefits came into existence as a result of the voluntary acceptance of the offer provided by the statute, the beginning of compliance by the employee-members and the payment of consideration in the form of contributions.” Id. at 578.

The court pointed to § 169.510(2), RSMo, which provided: “No alteration, amendment or repeal of sections 169.410 to 169.540 shall be deemed to affect the rights of members of any retirement system established thereunder with reference to deposits previously made, or to reduce any accrued or potential benefits to those who are members at the time when such alterations, amendments, or repeal became effective or to reduce the amount of any retirement allowance then payable.” The court found that this statute “evidence[d] an intention to create contractual rights” that “cannot be taken away by legislative action.” Id. at 578. Because the 1953 Act “tend[ed] to reduce, divest and destroy in a material and substantial manner the potential rights of the [non-teacher] employees ..., who were members and potential beneficiaries of the Retirement System ... on the effective date of the 1953 Act,” the court held that the 1953 Act impaired the obligation of contract and was unconstitutional and void. Id.

The court further observed in dictum that the General Assembly might have been able to implement a substitute retirement plan for the non-teachers so long as there was no material and substantial reduction in the non-teachers’ potential retirement benefits. Id. at 580. The court, however, found that the 1953 Act did not provide any substantial substitute plan. Id.

B. Breshears

In State ex rel. Breshears v. Missouri State Employees' Retirement System, 362 S.W.2d 571 (Mo. banc 1962), the Supreme Court of Missouri held that a 1961 amendment to the MOSERS statutes (the "1961 Act") that increased retirement benefits for already-retired MOSERS members was an unconstitutional impairment of the contracts of active MOSERS members in violation of article I, section 13 of the Missouri Constitution. Following its decision in Phillip, the court found that the MOSERS statutes create a contractual relationship among MOSERS members, the State, and MOSERS. Id. at 575. The court cited § 104.540.1, RSMo, which the court found to be similar to § 169.510(2) and which provided: "All payroll deductions and deferred compensation provided for under sections 104.310 to 104.550 are hereby made obligations of the state of Missouri. No alteration, amendment, or repeal of sections 104.310 to 104.550 shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal." The court noted "active members have certain vested interests, extending at least to all payments which have been made into the retirement fund to the present time; that the legislature may alter, amend or repeal the law, but only subject to the rights existing at that time." Id. at 576. The court believed that the 1961 Act impaired the contractual obligations of active members because the 1961 Act would take a portion of the existing fund to pay the benefit increases to retired members, thereby imperiling the ability of MOSERS to pay benefits to all members.

C. Tomlinson

In Tomlinson v. Kansas City, 391 S.W.2d 850 (Mo. 1965), the Supreme Court of Missouri stressed the significance that provisions such as § 169.510(2) and § 104.540.1 have in determining the contractual rights of members of a retirement plan. In Tomlinson, Kansas City had established the Firemen's Pension Fund of Kansas City (the "Fund") by ordinance. The ordinance required the city to contribute to the Fund the amount deemed necessary by an actuary to keep the Fund actuarially sound. After the actuary found that the city needed to increase its contribution rate from 10 percent to 14½ percent of employment compensation paid to members of the Fund, the city balked and amended its ordinance to grant it discretion as to the amount of contributions that it would make to the Fund. Some members challenged the city's actions in failing to contribute at the 14½-percent rate. The court rejected the challenge, concluding that the city's obligation to contribute to the Fund was not contractual in nature because the city's ordinance contained "no provision prohibiting amendments altering existing rights." Id. at 853. The court contrasted the case with Phillip and Breshears:

In both Phillip and Breshears, *supra*, the court en banc recognized that under certain circumstances and for certain purposes the interest of a member of a

public retirement system may attain a contractual or vested status. However, both of those cases involve the question of the effect of subsequent legislation upon the interest of members in a system established by legislation which specifically provided that subsequent legislation should not impair or diminish the interest originally established. In both cases the court expressly took notice of such provision.

There is no allegation in the plaintiffs' petition that the ordinance establishing the Kansas City Firemen's Pension System contained a similar provision.

Id. It is noteworthy that the court characterized § 104.540.1 as providing "that subsequent legislation should not impair or diminish the interest originally established."

D. Wehmeier

Wehmeier v. Public School Retirement System of Missouri, 631 S.W.2d 893 (Mo. App. E.D. 1982), did not involve any change in a retirement system, but the Missouri Court of Appeals characterized the nature of the Public School Retirement System of Missouri ("PSRS") as follows:

[T]he Missouri legislature established contractual rights for members of the Public School Retirement System of Missouri when it created that system. The legislation contains a statutory offer of retirement benefits to certain public school employees. The offer is accepted by the employee when he becomes a member of the retirement system and begins compliance with the statutory conditions. This is not to say that the employee's right to retirement payments vests at the time of acceptance. A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due. Thus, at acceptance a valid contract is formed, but the employee-member's right to receive retirement benefits does not finally vest until said member has fully complied with the statutory conditions. In other words, the retirement system is not obligated to pay retirement benefits to a member until the member satisfies the conditions prescribed by statute.

Id. at 896 (quotations and citations omitted). This summary, while dicta, suggests that where a retirement system establishes contractual rights for members, the member's contractual relationship arises when the member first begins employment under the retirement system statutes then in effect.

E. Fraternal Order of Police Lodge #2

In Fraternal Order of Police Lodge #2 v. City of St. Joseph, 8 S.W.3d 257 (Mo. App. E.D. 1999), the Missouri Court of Appeals held that a city's elimination of a portion of accrued but unpaid overtime and vacation pay from the calculation of a member's monthly retirement pension amount did not violate any contractual rights of the member. In that case, the city's ordinance left it to the general discretion of the city's director of finance to determine the method of calculating pension amounts. The court observed:

The general rule is that a pension granted by public authorities is not a contractual obligation but is a gratuitous allowance, in the continuance of which the pensioner has no vested right, and that a pension is accordingly terminable at the will of the grantor, either in whole or in part. And since there is no contract on the part of the state to continue the payment of a benefit or annuity, a change in the law affecting such benefit or annuity does not impair the obligation of a contract or deprive a pensioner of property within the constitutional meaning.

Governmental employees can have no property rights in a pension fund, nor can those claiming under them have any such rights except their claims be based upon and come within the laws governing the fund. The extent of the rights which vested in employees is governed by the controlling statute in effect at the time their rights to a pension vested, which became a part of the contract of employment as much as if its provisions were written therein.

Id. at 264 (citations omitted). The court reasoned that because "there is nothing in the ordinances or pension plan which creates a right to have a certain method of calculating pension amounts continued, employees have no vested right to the continuation of a certain method of calculating pension amounts." Id. In essence, this case was similar to Tomlinson, where there was no legislative provision establishing contract rights, and unlike Phillips and Breshears, where there were express legislative provisions establishing contract rights.

II. Cases from other jurisdictions on increased member contribution rates.

Although Missouri courts have not specifically addressed whether a governmental entity may change a retirement plan to require increased contributions from current members for future work, several courts in other jurisdictions have addressed this issue.³ These decisions are illustrative as to how Missouri courts might rule on this issue.

A. An increase in the member contribution rate is permissible when the retirement system statutes so allow or provide that they do not create any contractual rights.

Courts have permitted increased contribution rates for current members when the statutes establishing the retirement system: (a) specifically so allow, or (b) expressly say that the statutes do not create any contract rights. See Transport Workers Union v. Southeastern Pennsylvania Transp. Authority, 145 F.3d 619 (3d Cir. 1998) (switch from noncontributory plan to contributory plan was permissible because statute provided that employee contributions might be required in future); International Ass'n of Firefighters, Local 145 v. City of San Diego, 667 P.2d 675 (Cal. 1983) (increased contribution rates were permissible because city ordinance establishing retirement system provided that contribution rate would be adjusted from time to time based upon actuarial advice to adequately fund system); Coller v. State Univ. of New York, 439 N.Y.S.2d 474 (App.Div. 1981) (state could switch plan from noncontributory to contributory because statute expressly reserved to state the right to end payments made by state in lieu of employee contributions to plan); AFSCME Councils v. Sundquist, 338 N.W.2d 560, 566-57 (Minn. 1983) (state could require increased contributions because retirement system statute provided that it did not create any contract rights).

³ Courts have uniformly agreed that states may increase the member contribution rate for prospective members. See Booth v. Sims, 456 S.E.2d 167, 184 (W.Va. 1995); Opinion of the Justices, 303 N.E.2d 320, 331 (Mass. 1973).

B. Otherwise, increased member contribution rates are an unconstitutional impairment of the member's contract unless there are offsetting benefit increases.

Absent such provisions in a retirement system's statutes, courts typically have held that an increase in a current member's contribution rate, without offsetting increased benefits to the member, is an unconstitutional impairment of the member's contract with the retirement system and governmental employer. See:

- Oregon State Police Officers' Ass'n v. State, 918 P.2d 765 (Or. 1996) (requiring public employees to begin paying six percent contributions to retirement system impaired public employees' contract with state).
- Booth v. Sims, 456 S.E.2d 167 (W.Va. 1995) (modification of pension statute that increased employee contribution from six percent to nine percent of income was permissible because employees received increased salary and other benefits that offset their increased contribution to retirement plan).
- McDermott v. Regan, 624 N.E.2d 985 (N.Y. 1993) (statute changing funding method for state retirement system violated impairment of contracts clause of state constitution).
- Association of Pennsylvania State College and University Faculties v. State System of Higher Education, 479 A.2d 962 (Pa. 1984) (modification of pension statute that increased employee contribution by 1.25 percent of income, and that did not offer any corresponding new benefits, was impairment of pension contract).
- Singer v. City of Topeka, 607 P.2d 467, 475-77 (Kan. 1980) (increase in contribution rate of firefighters and police officers from three percent to seven percent was unconstitutional) ("Do the challenged statutes impose a substantial detriment on plaintiffs and the classes without correlative benefit? Amendments which more than double employee contributions without increasing benefits do just that, and run afoul of the rule....").
- Opinion of the Justices, 303 N.E.2d 320 (Mass. 1973) (increasing employee pension contributions from five percent to seven percent was unconstitutional).
- Wisley v. City of San Diego, 10 Cal.Rptr. 765 (Cal. App. 1961) (increasing contribution rate of active members of municipal fire departments and police departments from one percent to eight percent was unconstitutional).

- Allen v. City of Long Beach, 287 P.2d 765 (Cal. 1955) (increasing employee contribution from two percent to ten percent of income was unconstitutional).
- Marvel v. Dannemann, 490 F.Supp. 170 (D. Del. 1980) (statutory amendment that had effect of requiring public employee's pension contribution to increase from 1.1 percent to 4.3 percent of salary was impairment of contract).
- 60A Am. Jur. 2d Pensions § 1170 ("Generally, where the jurisdiction recognizes a contractual relationship between the employee and the pension system, a change in the rate of contribution in regard to employees who are active members in the pension system at the time of the change may violate a state constitutional provision that no law is to diminish a public officer's salary or emoluments after his or her election or appointment, or otherwise constitute a breach of contract, unless the employee is provided with a comparable new advantage in regard to his or her pension rights.").

These cases arise under state constitutional provisions prohibiting impairment of contracts (similar to article I, section 13 of the Missouri Constitution) and/or under the Contract Clause in article I, section 10 of the United States Constitution ("No State shall ... pass any ... Law impairing the Obligation of Contracts....").⁴

In Oregon State Police Officers Ass'n, the Oregon Supreme Court summarized the view generally held by the courts:

The common thread running through the Oregon cases cited above is that the state may undertake binding contractual obligations with its employees, including benefits that may accrue in the future *for work not yet performed*. Moreover, the cases recognize that the PERS pension plan is an offer for a unilateral contract which can be accepted by the tender of part performance by the employee. The Oregon line of cases is consistent with the majority of jurisdictions that have considered the issue and also is consistent with the modern

⁴ Analysis under the United States Constitution's Contract Clause has typically been the same as under state constitutional prohibitions on contract impairment, except that under the Contract Clause: (a) there must be a clear showing that a state law has unmistakably created a contractual obligation on the part of the state in the first place (this is known as the "unmistakability doctrine"); and (b) states may substantially impair their contractual obligations when the impairment is reasonable and necessary to serve an important public interest. See Parker v. Wakelin, 123 F.3d 1, 5 (1st Cir. 1997); State of Nevada Employees Assoc., Inc. v. Keating, 903 F.2d 1223, 1227 (9th Cir. 1990).

view of the nature of pensions. Most jurisdictions adhering to a contract theory of pensions construe pension rights to vest on acceptance of employment or after a probationary period, with vesting encompassing not only work performed but also work that has not yet begun.

918 P.2d at 773. The court observed that increasing the contribution rate effectively diminished the value of the promised pension benefits by increasing the employees' cost to obtain those promised pension benefits:

Under the *Taylor* analysis, and contrary to the state's argument here, ORS 237.075, and the state's implementation of the authority contained in that statute, promised a pension benefit that plaintiffs could realize only on retirement with sufficient years of service, that is, *after* rendering labor for the state. Plaintiffs accepted that offer by working. The change mandated by Section 10 alters the state's contractual obligation, in violation of *Taylor*, by increasing plaintiffs' cost of retirement benefits for services that, absent a lawful separation of employment, they will provide in the future. That consequence, if approved, would permit the state to retain the benefit of plaintiffs' labor, but relieve the state of the burden of paying plaintiffs what it promised for that labor. That result would frustrate plaintiffs' reasonable contractual expectations that were based on legal commitments expressly made by the state.

Once offered and accepted, a pension promise made by the state is not a mirage (something seen in the distance that disappears before the employee reaches retirement). Nullification of an express term of plaintiffs' PERS contract with the state is an impairment for purposes of Contract Clause analysis. Section 10 expressly and substantially changes the state's contractual promise to plaintiffs with respect to the cost of their participation in the PERS retirement plan and the benefits that they will receive on retirement. Under Section 10, the cost of participation to the employee increases while the benefits that the employee ultimately will receive on retirement decrease. Unquestionably, Section 10 impairs the obligation of plaintiffs' PERS contract.

The statutory pension system and the relationship between the state and its employees clearly established a contractual obligation to provide an undiminished level of benefits at a fixed cost. Under Section 10, because plaintiffs must pay six percent more, the value of their PERS pension contract has been diminished unilaterally. A contrary holding would serve notice on any person who might consider embarking on a career in public service that the state's promises could well prove to be worthless, even after the employees had given consideration for

those promises in the form of partial performance.

Id. at 775-76. See also American Federation of State, County, and Municipal Employees, AFL-CIO v. Commonwealth, 465 A.2d 62, 67 (Pa.Cmwlt. 1983) (“The increased contribution rate, without a commensurate increase in benefits, effectively diminishes the benefits received.”).

Courts generally reason that a legislative retirement scheme constitutes a unilateral contract offer, that a member accepts this unilateral contract offer once the member has provided substantial partial performance, and that a state cannot thereafter revoke its offer and demand substantially more from the member in exchange for the state’s promise of a pension than the state did when the member began his partial performance. See Marvel, 490 F.Supp. at 175.

By meeting certain eligibility requirements, a public employee acquires a *right* to payment under a pension plan. For any employee not yet eligible for payment, this is a mere expectancy; if the public employee does not meet the age and service requirements for benefits, his or her participation in a state pension plan does not allow receipt of a pension. But this same participation *does* create an employee’s reliance interest in pension benefits. Consequently, an employee’s membership in a pension system and his or her forbearance in seeking other employment prevents the legislature from impairing the obligations of the pension contract once the employee has performed a substantial part of his or her end of the bargain and has substantially relied to his or her detriment.

Booth, 456 S.E.2d at 182.

C. Vested vs. non-vested members.

In the above cases, the courts uniformly held that increased contribution rates are unconstitutional as applied to vested members. As for non-vested members, many of these courts further held that increased contribution rates are unconstitutional once a member begins employment. See Association of Pennsylvania State College and University Faculties v. State System of Higher Education, 479 A.2d 962 (Pa. 1984). Indeed, courts have generally noted that “the modern and better reasoned view recognizes that non-vested employees have contractual rights in pension plans subject to reasonable modification in order to keep the system flexible to meet changing conditions, and to maintain the actuarial soundness of the system.” State of Nevada Employees Assoc., Inc. v. Keating, 903 F.2d 1223, 1227 (9th Cir. 1990) (citing Public Employees’ Retirement Board v. Washoe County, 615 P.2d 972, 974 (1980)). This is because “employees accept their positions, perform their duties, and contribute to the retirement fund in reliance upon the governmental employer’s promise to pay retirement benefits. By rendering services and making contributions, an employee acquires a limited vested right to pension

benefits which may not be eliminated or substantially changed by unilateral action of the governmental employer to the detriment of the member.” Washoe County, 615 P.2d at 974.

Other courts have taken a somewhat narrower view of the rights of non-vested members and held that increased contribution rates are unconstitutional only as to non-vested members who have had “[c]ontinued employment over a reasonable period of time during which substantial services are furnished to the employer,” Singer, 607 P.2d at 474-75, or who have “sufficient years of service on the system that he or she can be considered to have relied substantially to his or her detriment on the existing pension benefits and contribution schedules,” Booth, 456 S.E.2d at 181. These cases, however, do not specify what is a “reasonable period of time” or “sufficient years of service.”

Another possible position is that contractual rights in a retirement system are limited to vested members and that detrimental modifications of a retirement system may be applied to all non-vested members. See Blackwell v. Quarterly County Court of Shelby County, 662 S.W.2d 535, 543 (Tenn. 1981) (change in benefit base applied to members who did not yet have sufficient creditable service to receive pension benefits). This appears to be a distinct minority position, however.

D. The possibility of offsetting increased benefits.

As noted above, courts allow for “reasonable modifications” of retirement systems that apply to members prior to retirement for the purposes of keeping the system flexible and accommodating changing conditions while maintaining the integrity of the system. However, “[t]o be sustained as reasonable, the modification must bear some material relationship to the purpose of the pension system and its successful operation; and any disadvantage to employees must be accompanied by comparable new advantages.” Washoe County, 615 P.2d at 974-75; see also Singer v. City of Topeka, 607 P.2d 467, 475 (Kan. 1980); Allen v. City of Long Beach, 287 P.2d 765, 767 (Cal. 1955). In other words, there must be increased benefits to offset the increased deductions. Singer, 607 P.2d at 477. Missouri seemed to adopt this approach in Phillip, 262 S.W.2d at 580, discussed above.

Some states hold that the reasonableness of legislative changes is to be measured by the advantage or disadvantage to the affected employees as a group (or groups) and that the validity of the changes is not dependent upon the effect upon each employee. Other courts hold that this measurement must be done on an individual basis. Booth, 456 S.E.2d at 185. These courts reason that “[t]he State cannot justify impairing its contractual obligations to public employees by pointing to advantages accrued by former employees.” Keating, 903 F.2d at 1227.

In some cases, courts have found that increased benefits sufficiently offset increased contribution rates such that the increased contribution rates were constitutional. See Booth v. Sims, 456 S.E.2d 167 (W.Va. 1995) (employees received increased salary and other benefits that offset their increased contribution to retirement plan; state may “apportion future wage increases between immediate cash payments to existing workers and improved funding of pension systems” and “may ask workers to help make pension funds solvent by contributing to the funds new money given to them by the State for this purpose”); City of Downey v. Board of Administration, 121 Cal.Rptr. 295 (Cal. App. 1975) (court approved amendments increasing employee contributions and also increasing benefits, reducing mandatory retirement age, and granting benefits to surviving spouses).

Some courts have suggested that in evaluating whether an increased contribution rate is constitutional as applied to a particular member, the court may consider any cumulative benefit increases that were enacted after the member began employment and before the contribution rate increase. In Opinion of the Justices, the court observed in dicta:

What has been said about the presumptive invalidity of the proposed increase in the rate of members’ contributions applies most clearly to members who entered the retirement system at approximately its present level of benefits for them (and while § 25(5) in its present form was on the statute book). But there may be other members who entered when the level was lower and who have been the recipients of step-by-step enlargements of retirement rights and benefits through favorable legislation over the years. We revert to the question whether they can claim impairment if the proposed change of the rate of contribution, while worsening their current situation, does not reduce them in net effect below the level at which they entered the system. If they can claim impairment, the question would remain whether, in considering the seriousness of the impairment as related to a claimed justification for it, the government is conceivably entitled to any credit (so to speak) for its past indulgences to those members. One sees in the decisions a tendency to compare the situation just before the proposed reduction of benefits with that which would exist afterwards, without much if any consideration of the significance of a progressive increase of benefits in the past: perhaps the courts implicitly assume that there are corresponding enhancements of the members’ just expectations. But the problem has not been analyzed exhaustively, and we can do no more than advert to it in the absence of concrete states of fact.

303 N.E.2d at 330. Research found no case embracing this theory, which would be highly difficult to apply in practice where a retirement system (such as MOSERS) has experienced numerous legislative changes over the years.

E. A state's financial difficulties probably will not justify increased member contributions.

Some cases have suggested in dicta that impairment of contract rights by modifications to a retirement plan might be permissible if the state faces a precarious financial state. Marvel v. Dannemann, 490 F.Supp. 170, 177 (D. Del. 1980). Courts, however, have not upheld modifications on such a basis, noting "[t]hat the maintenance of a retirement plan is heavily burdening a governmental unit has not itself been permitted to serve as justification for a scaling down of benefits figuring in the 'contract.'" Opinion of the Justices, 303 N.E.2d at 329-30.

III. How Missouri courts would likely rule on the constitutionality of prospectively requiring contributions from current MOSERS members or reducing their future retirement benefits.

As noted in the Supreme Court of Missouri's decision in Phillip, analysis of whether the State may prospectively require contributions from current MOSERS members or reduce their future retirement benefits depends on: (1) whether MOSERS members have a contractual relationship with MOSERS and the State; and (2) if so, whether requiring member contributions from existing MOSERS members would impair obligations under that contractual relationship. 262 S.W.2d at 574. On the first issue, the Supreme Court of Missouri previously held in Breshears that the MOSERS statutes create a contractual relationship. It is unlikely that the Supreme Court of Missouri would reconsider that holding. Since Breshears was decided in 1962, the vast majority of courts in the United States have adopted the position that retirement benefits for public employees are contractual in nature.

Assuming that the Supreme Court of Missouri would continue to recognize that the MOSERS statutes create a contractual relationship, it is necessary to determine the extent of that contractual relationship as set forth in the MOSERS statutes and whether the obligations under that contractual relationship would be impaired if the State required contributions from current MOSERS members or reduced future benefits of current MOSERS members. Phillip, 262 S.W.2d at 574, 577.

A. The MOSERS statutory scheme.

1. Participation and retirement benefits.

MOSERS was established in 1957. Participation in MOSERS has always been mandatory for state employees. RSMo § 104.330.1. Chapter 104 has always provided retirement benefits depending on: (1) the member's position (e.g., state employee, General Assembly member, statewide officeholder); (2) the member's number of years of service credit; and (3) the member's compensation during employment. The following chart summarizes service credit requirements for state employees to draw a normal retirement annuity:

Time Period	Years of "Vesting Service" Needed
1957 to September 1, 1972	15 years
September 1, 1972 to July 1, 1981	15 years or 10 years if member terminated employment after he was 35 years old
July 1, 1981 to September 28, 1992	10 years
September 28, 1992 to present	5 years

(The General Assembly provided partial retirement annuities for state employees who retired between October 1, 1984 and September 28, 1992 with at least five years, but less than ten years, of "vesting service.") These retirement annuities have generally increased over the years.

2. Member contributions.

In 1957, § 104.360.1 required members to contribute four percent of the first \$7,500 of their annual compensation. Section 104.360.2 authorized MOSERS to increase the members' contribution rate if necessary to pay benefits. Under § 104.370, the State and employers of members who are not paid out of funds in the state treasury were required to remit to MOSERS sufficient funds that, along with the members' contributions, would cover MOSERS' liabilities and cost of administration, but the State's contribution could not exceed four percent of compensation paid to members. Unlike the members' contribution rate, the State's maximum contribution rate was not subject to increase by MOSERS.

In 1967, § 104.360.1 was amended to require members to contribute four percent of the first \$15,000 of their annual compensation.

In 1972, the General Assembly repealed § 104.360 and eliminated contributions for most members. (However, members of the General Assembly were required under new § 104.365 to contribute five percent of their compensation.) New § 104.372.1 provided: "Except as provided

in sections 104.365 and 104.515, no payroll deduction shall be made from the compensation of any employee for the [MOSERS'] fund after August 31, 1972." Section 104.372 also entitled members to a refund of their contributions, with interest, upon their retirement or death. Section 104.370 was amended to provide that the State and employers of members who were not paid out of funds in the state treasury were required to provide all of the necessary funding to cover MOSERS' liabilities and costs of administration (taking into consideration the still-required contributions of members of the General Assembly).

In 1976, the General Assembly amended § 104.365 to eliminate contribution requirements for its members and to provide for a refund of contributions made by members of the General Assembly in office on September 1, 1976 upon their retirement or death. (The General Assembly later enacted provisions providing for immediate refunds of contributions for members of the General Assembly and elected state officeholders.)

In 1981, the General Assembly moved § 104.372 to a new § 104.366 and enacted a new § 104.372 that was entirely unrelated to the old § 104.372. The new § 104.366.1 provided: "Except as provided in section 104.515, no payroll deduction shall be made from the compensation of any employee for the [MOSERS'] fund after August 31, 1972." Section 104.366 and a new § 104.367 also allowed for immediate refunds of member contributions that had not been previously refunded under the old § 104.372.

In 1988, § 104.365, § 104.366, and § 104.367 were repealed. While the prohibitions on payroll deductions for members and General Assembly members were repealed, the General Assembly did not enact, and has not since enacted, any provision requiring member contributions, authorizing MOSERS to require member contributions, or expressly providing that the State might require member contributions in the future. MOSERS has continued to be non-contributory for members and has been funded by the State (and employers of members who are not paid out of funds in the state treasury) since 1972 for state employees and since 1976 for General Assembly members.

3. Sections 104.540.1 and 104.1054.1.

Since 1957, the General Assembly has amended the MOSERS statutes on several occasions. While a comprehensive review of all such amendments is beyond the scope of this analysis, these amendments generally have worked to the favor of MOSERS' members, particularly with increased benefits and eliminated contribution requirements.

The only MOSERS statutes that address the impact of statutory changes are § 104.540.1 for the Closed Plan and § 104.1054.1 for the Year 2000 Plan. Section 104.540.1 provides:

All premium payments and deferred compensation provided for under sections 104.320 to 104.540 are hereby made obligations of the state of Missouri. No alteration, amendment, or repeal of sections 104.320 to 104.540 shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal.⁵

The Year 2000 plan contains a similar provision:

The benefits provided to each member and each member's spouse, beneficiary, or former spouse under the year 2000 plan are hereby made obligations of the state of Missouri and are an incident of every member's continued employment with the state. No alteration, amendment, or repeal of the year 2000 plan shall affect the then existing rights of members, or their spouses, beneficiaries or former spouses, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by a member after such alteration, amendment, or repeal.

§ 104.1054.1.

B. Possible interpretations of §§ 104.540.1 and 104.1054.1 and the contract between the State and current MOSERS members.

Sections 104.540.1 and 104.1054.1 can plausibly be interpreted in two ways. First, the statutes could be interpreted to mean that changes to the MOSERS statutes apply to all future services rendered by current MOSERS members, regardless of whether the changes are detrimental to the current MOSERS members. Second, the statutes could be interpreted to mean that changes to the MOSERS statutes that are significantly detrimental to current MOSERS members do not apply to current MOSERS members, but apply only to future MOSERS members. Missouri courts have not determined which interpretation of §§ 104.540.1 and 104.1054.1 is correct, but we believe that they would likely adopt the latter interpretation and hold that significant detrimental changes in the MOSERS statutes—such as requiring member contributions or reducing future retirement benefits—cannot be applied to current MOSERS members.⁶

⁵ Prior to 1988, the phrase “payroll payments” was used instead of “premium payments” and “104.310” was used instead of “104.320.”

⁶ Our analysis only addresses changes in the MOSERS statutes that require member contributions or reduce future retirement benefits of current MOSERS members. We have not

1. The literal language of Sections 104.540.1 and 104.1054.1 supports an argument that all changes to the MOSERS statutes apply to future services rendered by current MOSERS members.

The literal language of §§ 104.540.1 and 104.1054.1 supports an argument that the contract between the State and current MOSERS members allows the State to change the MOSERS statutes as to future services rendered by current MOSERS members, regardless of whether the statutory changes are favorable or unfavorable to current MOSERS members. Sections 104.540.1 and 104.1054.1 provide that alterations, amendments, and repeals of MOSERS statutes do not “affect the then existing rights of members and beneficiaries” but do apply “to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal.” The phrase “the then existing rights” likely refers to the “deferred compensation” (and the “premium payments”) mentioned in the first sentence of §§ 104.540.1 and 104.1054.1 that current MOSERS members have earned through their prior services for the State. Consistent with basic contract law, §§ 104.540.1 and 104.1054.1 make clear that once current MOSERS members have performed services for the State, they are permanently entitled to the benefits and compensation, including the deferred compensation, that they have already accrued for those services.

After §§ 104.540.1 and 104.1054.1 provide that future changes in the MOSERS statutes will not affect the deferred compensation that current MOSERS members have earned for their prior services, those provisions proceed to state that future changes in the MOSERS statutes “shall be effective [] as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal.” The word “rights” in this latter clause should have the same meaning as the word “rights” in the earlier phrase “the then existing rights” and likely means the rights of “deferred compensation” (and the “premium payments”) mentioned in the first sentence of §§ 104.540.1 and 104.1054.1. In turn, those statutes provide that the MOSERS statutes, as changed, will govern the deferred compensation that current MOSERS members earn for their future services for the State.

State employees, as a class, generally have no right to continued employment at any definite level of compensation, and the State may decrease their compensation for future services

examined other types of potential changes to the MOSERS statutes, such as changes in retirement annuity options and beneficiary designations. We do not believe that the contractual relationship between the State and current MOSERS members prohibits subjecting current MOSERS members to statutory changes whose potential detrimental effects are de minimis.

at any time.⁷ Because deferred compensation is merely one component of the overall compensation of MOSERS members, the State should be able to decrease the deferred compensation of current MOSERS members for future services, including by requiring current MOSERS members to make contributions as to future services. Sections 104.540.1 and 104.1054.1 arguably confirm this right on the part of the State as part of the contractual relationship between the State and current MOSERS members.

Sections 104.540.1 and 104.1054.1 indicate that the State may repeal the Closed Plan and the Year 2000 Plan altogether. With such a repeal, current MOSERS members would receive no further service credit and the amount of their retirement benefits would be frozen under the benefit formula in place before the repeal. For example, a member who had not yet worked five years would receive no retirement benefits because he had not yet worked the requisite five years, and a member who had worked ten years would receive retirement benefits based on ten years of service credit, regardless of how many years he worked for the State. If the State may repeal the plans in this manner, then the State may surely take the less drastic step of amending the plans to require member contributions or reduce retirement benefits attributable to future services rendered.

Moreover, the situation with MOSERS can arguably be distinguished from the situation in Phillip concerning the Public School Retirement System of the City of St. Louis because the statutes governing changes to the MOSERS statutes are different than the statutes governing changes to the Retirement System's statutes. While § 169.510(2) provides that changes would not "reduce any accrued or potential benefits" of current members of the Retirement System, §§ 104.540.1 and 104.1054.1 do not expressly mention "potential benefits" of current MOSERS members, but only expressly mention "the then existing rights," which could be construed to mean only accrued benefits and not future, potential benefits. Further, while §§ 104.540.1 and 104.1054.1 expressly state that changes in the MOSERS statutes apply "to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such" change, § 169.510(2) contains no similar, express provision. Based on these differences in the statutes, one could argue that the contract of current MOSERS members (as contained in the MOSERS statutes) is significantly less protective than the contract of Retirement System members (as contained in the Retirement System statutes) and that, as a result, the court's holding and reasoning in Phillip do not preclude changing the MOSERS statutes to require contributions of current MOSERS members as to their future services or to reduce their future accrual of retirement benefits.

⁷ Many individual state employees enjoy certain protections under the State Personnel Law, RSMo Chapter 36, which governs the appointment, promotion, transfer, layoff, removal, and discipline of employees in many state agencies.

2. **The Supreme Court of Missouri would likely conclude that the MOSERS statutes provide a contractual right to retirement benefits at currently-existing levels without member contributions and that changing the MOSERS statutes to require member contributions or reduce future retirement benefits of current MOSERS members would unconstitutionally impair the contract between the State and current MOSERS members.**

While the above interpretation of §§ 104.540.1 and 104.1054.1 and the contract between the State and current MOSERS members is plausible, it is more likely that the Supreme Court of Missouri would reject it and, instead, find that the MOSERS statutes provide current MOSERS members with a contractual right to receive retirement benefits at currently-existing levels with no member contributions as to future services. Based on Phillip⁸, the court would likely view the MOSERS statutes as providing a unilateral offer that if a person accepts employment with the State and works at least five years for the State, he will receive retirement benefits at the currently-existing levels at no cost to himself or herself (through member contributions) based on his or her compensation and how long he or she works for the State. The court would further likely rule that once a person accepts that offer and commences his employment with the State, there is a valid contract between him, MOSERS, and the State that the State cannot thereafter change to the person's detriment. Such prohibited detrimental changes would likely include reducing retirement benefits below currently-existing levels⁹ or requiring the person to pay contributions as a condition of earning the service credit upon which retirement benefits are based, unless the person is afforded increased benefits that fully offset the added cost to him of the contributions.

⁸ As discussed above, Phillip is arguably distinguishable from the situation with MOSERS because of the differences between §§ 104.540.1 and 104.1054.1 (the MOSERS statutes) and § 169.510(2) (the statute governing the Public School Retirement System of the City of St. Louis). However, there is a good chance that the Supreme Court of Missouri would find that these differences in the two sets of statutes are not significant enough to warrant the court departing from its holding and reasoning in Phillip. Indeed, in Tomlinson, the court treated both sets of statutes as effectively providing "that subsequent legislation should not impair or diminish the interest originally established." 391 S.W.2d at 853.

⁹ Such prohibited reductions in retirement benefits would probably include: (1) changing the retirement benefit formula; (2) modifying the accrual of salary credit or service credit; (3) raising the retirement age of current MOSERS members; and (4) changing the current MOSERS plans from defined-benefit plans to defined-contribution plans.

In Phillip, the Supreme Court of Missouri embraced the view that a legislative retirement scheme constitutes a unilateral contract offer, that a member accepts this unilateral contract offer once the member begins partial performance through employment, and that a state cannot thereafter change the terms of the contract in a way that is unfavorable to the employee on balance. As discussed above, courts in other jurisdictions have embraced the same view expressed in Phillip, and they have held that increasing an employee's contribution rate after employment begins impermissibly alters the terms of the employee's contract because such increase in the employee contribution rate diminishes the value of the retirement benefits that had been promised to the employee. It is reasonable to assume that the Supreme Court of Missouri would follow these courts and their reasoning, both for vested members and non-vested members, given its holding in Phillip that a member's contractual rights come into existence once the member begins employment.

Sections 104.540.1 and 104.1054.1 clearly state that legislative changes to the MOSERS statutes do not affect the "then existing rights of members," including the deferred compensation that current MOSERS members have earned for prior services. Requiring member contributions or negatively altering the retirement benefit formula as to future services by current MOSERS members would effectively reduce the value of the deferred compensation that current MOSERS members have already earned for prior services.

The Supreme Court of Missouri indicated in Phillip that a member's existing rights include a right to have the retirement system continued throughout his employment in a manner that is at least as favorable as when the member began his employment. Many courts in other jurisdictions have concluded that these existing contractual rights include the right to earn service credit for future work based upon the member contribution rate in effect when one begins public employment.

The Supreme Court of Missouri has used § 104.540.1 and similar statutes to protect retirement system members and prevent legislative changes from adversely affecting their potential retirement benefits. In Phillip, the court refused to allow a legislative change that took away potential retirement benefits from certain non-vested members altogether. Notably, the court could have ruled, but did not rule, that the members had to be allowed to remain in the system, but were not entitled to earn any further service credit. Instead, the court found that it would be unjust to deprive the members of their ability to obtain the retirement benefits that they thought were attainable when they began their employment.

Moreover, in Breshears, the court refused to allow a legislative change that might diminish the future retirement benefits of active MOSERS members by depleting the fund from which those benefits would be paid. Finally, in Tomlinson, the court noted that § 104.540.1 and

similar statutes provide “that subsequent legislation should not impair or diminish the interest originally established.” 391 S.W.2d at 853. The theme of these cases is that statutes such as § 104.540.1 are designed to protect current retirement system members from legislative changes that work to their disadvantage.

The Supreme Court of Missouri could adopt the principle that the State has a contractual duty of good faith and fair dealing that precludes the State from making changes to the MOSERS statutes that are detrimental to current MOSERS members. Sections 104.540.1 and 104.1054.1 indicate that as part of its contract with current MOSERS members, the State has discretion to make changes to the MOSERS statutes that impact the contractual relationship. Missouri courts have previously held that contracts to which the State is a party and that grant discretion to the State impose an obligation of good faith and fair dealing on the State. Missouri Consol. Health Care Plan v. Community Health Plan, 81 S.W.3d 34, 45-47 (Mo. App. W.D. 2002). Thus, in dealing with current MOSERS members, the State must exercise its discretionary power in good faith and not in a manner that evades the spirit of its contractual relationship with current MOSERS members or denies current MOSERS members of the expected benefits of the contract. *Id.* at 46. To act in “good faith,” the State must act consistently with the justified expectations of current MOSERS members and cannot act unfairly or unreasonably. *Id.* at 47.

As discussed above, the Supreme Court of Missouri could conclude that current MOSERS members have justified expectations that they will continue to receive retirement benefits at current levels with no member contributions as to future services. The court could stress that:

- The MOSERS statutes (former § 104.360) used to reserve the power to increase member contribution rates, but this power was repealed effective September 1972.
- Between September 1972 and 1988, the MOSERS statutes (former §§ 104.366 and 104.372) expressly provided that there would be no member contributions.
- While these statutes expressly providing for no member contributions were repealed in 1988, since September 1972, MOSERS has always been a noncontributory system for state employees, and there has been no indication in the MOSERS statutes that members might be called upon to make contributions again in the future.

Given this statutory history, the court would likely be reluctant to imply in §§ 104.540.1 and 104.1054.1 a reserved power by the State to require contributions from current MOSERS members for future services.

C. Offsetting benefits.

Courts have allowed increased member contribution rates when accompanied by an offsetting increase in benefits to member. In Phillip, the Supreme Court of Missouri suggested that legislative changes to retirement plans are permissible when the benefits to the members of the changes are equal to or greater than the detriments to the members from the changes.

Here, increasing the retirement benefits of current MOSERS members does not appear to be plausible. Presumably, the State would require increased member contributions to bolster the funding of MOSERS. That goal would not be fulfilled if increased member contributions were matched by increased member benefits.

The General Assembly might be able to match any future salary increases for state employees with future member contribution requirements. This was the approach approved by the West Virginia Supreme Court in Booth v. Sims, 456 S.E.2d 167 (1995). In that case, West Virginia modified a pension statute to increase employee contribution from six percent to nine percent of income while simultaneously increasing salary and other current employment benefits. Because the increase in salary and current benefits was greater than the increase in employee contributions, the legislative change was permissible: "The legislature may increase a public employee's salary contribution to a pension plan if it gives a corresponding raise in salary or other benefits that offsets the employee's increased contribution to the system. To be constitutional ..., the additional salary or other benefits must at least cover the public employee's extra contribution to the system." Id. at 187. The court reasoned: "[T]o the extent that the government wishes to apportion future wage increases between immediate cash payments to existing workers and improved funding of pension systems, it may do so: No state or local employee has a right to a wage increase, and (as in the case before us), the State may ask workers to help make pension funds solvent by contributing to the funds *new* money given to them by the State for this purpose." Id. at 184 (emphasis in original).


Hon. Sen. Jason Crowell
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* * *

We appreciate the opportunity to provide this analysis to you and would be pleased to answer any questions or provide additional information.

Very truly yours,

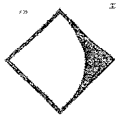
Thompson Coburn LLP

By 
Allen D. Allred

ADA/jf

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cc: Ryan Nonnemaker
Jake McMahon, Esq.



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February 14, 2012

VIA E-MAIL - vgrass@sbcglobal.net

Vicky Grass, Executive Director
Firemen's Retirement System of St. Louis
1601 South Broadway
St. Louis, MO 63104

RE: Firemen's Retirement System of St. Louis/Business Advice
Our File No.: 5985-0101

Dear Vicky:

At your request, we have set forth, in bullet-point format, significant issues and related topics regarding the City's proposed opting out of FRS and its attempted creation of a separate, independent retirement system for St. Louis firefighters. In summary, we believe the City's course of action is illegal. The following bullet points address these topics and issues:

1. The City has a history of violating the law with respect to FRS, and the City or its key agencies have lost three straight cases to FRS in the Missouri Supreme Court. This initiative appears to follow that pattern of ignoring or violating the law. The last loss cost the City \$47 million to FRS and well over \$100 million to the three City pension plans.
2. After the appropriate enabling legislation for FRS was passed by the State Legislature (except for the pending sick leave matter), all FRS provided benefits were approved by prior Boards of Aldermen or the current and prior Mayors – the benefits were not mandated by the State.
3. The Missouri Constitution (Art. VI, Sec. 25) requires specific legislative grants of authority in order for cities to provide pensions. For FRS and St. Louis, that grant is found in § 87.120 *et seq.* R.S.Mo. (See briefs filed in the pending sick leave case).
4. The City cannot act contrary to State statutes or the Missouri Constitution, therefore, on firefighters pensions it cannot opt out of § 87.120 *et seq.* R.S.Mo. and do something different. See Art. VI, § 19(a), Mo. Const.

5. All current firefighters, retirees and beneficiaries have, in our opinion, contractually protected rights, guaranteed by the Missouri and U.S. Constitutions. This is currently being litigated as part of the ongoing "sick leave" litigation.
6. The private attorneys that have advised the City on this matter have previously advised Senator Jason Crowell, of MOSERS, that benefits of MOSERS' existing employees could not be decreased, nor could those state employees be required to contribute more for the same benefits. See, Allen D. Allred's letter to Jason Crowell of March 25, 2010.
7. The funding language in the City's proposed ordinances is very weak and, in fact, provides that the City is not liable for benefits promised to the firefighters if the plan is not funded properly, and does not mandate full funding.
8. The City's proposed ordinances do not adequately deal with all federal requirements imposed on governmental plans.

Vicky, I am providing this bullet point summary to you without waiver regarding all other attorney-client communications or attorney work product on this or related topics, including the pending sick leave lawsuit.

Yours very truly,


DANIEL G. TOBBEN

DGT:sll/tks

cc: Leonard J. Wiesehan, Chairman

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Future Missouri teachers' pensions likely to be smaller

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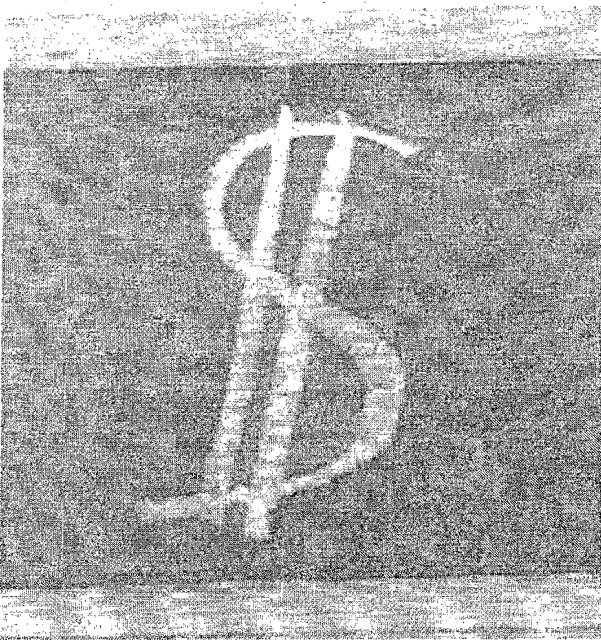
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Please refer to pgs. 7 & 8

Teacher pension plans

Details of a proposal to change the Public School Retirement System of Missouri:

Employee contributions

Current • 14 percent of salary (to rise to 14.5 percent next July and more later), matched by the school district.

Proposed • 15 percent cap for current teachers and 12 percent for new teachers, matched by the school district.

Pension

Current • After 30 years of service, teachers draw 75 percent of their salary as a pension.

Proposed • Current teacher pensions unchanged. But future teachers would draw 60 percent of salary at 30 years of service.

Retirement age

Current • 60. Younger teachers can retire and draw full pension after they've taught at least 30 years or when their age and years of service total 80.

Proposed • 62. Provisions above eliminated.

JEFFERSON CITY • Facing a mounting funding gap, the retirement system that covers most public school teachers in Missouri is exploring an option that would slash benefits for future teachers.

While calling the plan a working draft, officials say some type of reduction for future educators is needed to pay for the pensions already promised to current teachers and retirees.

The stock market meltdown in 2008 wiped out \$5.3 billion in assets held by the Public School Retirement System of Missouri. Though investments rebounded last year, revenue isn't growing fast enough to cover liabilities.

"If my wife was running our house budget that way, I'd tell her she's got to stop spending some money," actuary Sheldon A. Gamzon of PriceWaterhouseCoopers LLP said at a retirement board work session last week.

The system covers about 80,000 working educators and 44,000 retirees across the state. All school districts except the St. Louis and Kansas City districts participate in the plan. So do most community colleges, including the St. Louis Community College system.

Pressure has mounted nationwide to reduce public sector pensions since the stock market nosedived. The Missouri Legislature passed a bill this summer requiring future state employees to contribute to their pensions and work longer to draw them.

Teachers in the state plan already contribute to their pensions. They pay 14 percent of their salaries to the system; school districts match the money, chipping in 14 percent of their payrolls. Teachers in the system do not pay Social Security taxes or draw Social Security benefits.

But they have one of the best benefit packages in the country, thanks to increases approved by the Legislature in the 1990s, when the fund's coffers were swelling.

The market's plunge two years ago changed that. Today, the system estimates it has enough money to fund only about 76 percent of its future liabilities, down from 103 percent in 2000.

If costs aren't reduced, teachers and school districts could eventually have to kick in 19.5 percent each, warns Steve Yoakum, executive director of the retirement system.

School officials say the current payment — which is slated to rise to 14.5 percent next year — is already hard on young teachers making entry-level salaries, as well as cash-strapped districts.

"I don't see how we can keep increasing this rate year after year after year," Bernard DuBray, superintendent of the Fort Zumwalt School District in St. Charles County, said in an interview. "It's becoming a serious burden."

The two-tiered plan being developed would address that concern: The contribution rate would be capped at 15 percent for current teachers and 12 percent for new teachers getting the reduced package.

Unveiled at last week's work session, the draft aims to reduce pensions for teachers hired after June 30, 2013, by roughly 15 to 20 percent, Yoakum said.

For example, after 30 years of service, current teachers draw 75 percent of their compensation, which includes salary and board-paid health insurance, as a pension. Under the proposal, new teachers would draw 60 percent of salary and insurance after 30 years. That would drop the pension for a \$60,000-a-year teacher to \$36,000 annually, down from \$45,000.

Also, the normal retirement age would go to 62 from 60. Provisions that allow teachers to draw full benefits earlier — after they've taught at least 30 years or when their age and years of service total 80 — would be eliminated.

Administrators hope to develop a consensus among teachers groups. If so, a bill will be drafted to take to legislators, probably in 2012. The Legislature would have to approve any benefit changes.

At least 11 other states, including Illinois, have increased employee contributions, reduced benefits or lengthened how long employees must work to receive pensions, according to the National Conference of State Legislatures.

In Missouri, the average age for teachers who retired last year under the state system was 57. On average, they had taught 25.7 years and drew benefits of \$3,527 a month.

Teachers' pensions rise with inflation, up to 5 percent a year. For example, those who retired in 1991 have received total cost-of-living increases that boosted their original benefits by 51.7 percent.

But in a sign that the retirement system's board is serious about cost-cutting, that automatic perk already is on the chopping block.

Last week, the board — made up primarily of educators and retired educators — decided against awarding a 1.1 percent cost-of-living increase to retirees.

Yoakum said the cost-of-living increase would have added \$130 million to the system's "unfunded liabilities."

Jim Kreider, who represents the Missouri Retired Teachers Association, offered no objection, calling the decision "necessary under the circumstances."

That may be the only sacrifice retirees are asked to make. Officials contend that new hires must bear most of the pain because the state can't legally reduce benefits promised to retirees and teachers.

Administrators base that conclusion on research done by the system's St. Louis law firm, Thompson Coburn. Yoakum declined to release the firm's memo, saying it fell within attorney-client privilege.

But Thompson Coburn addressed the same question for the Missouri State Employees Retirement System, and that opinion was obtained by the Post-Dispatch.

The memo said the constitution bars the state from passing laws that impair the obligation of contracts. The law firm concluded that there was a 'significant probability' the state would lose a lawsuit if benefits to current members were cut.

Yoakum said Missouri may get additional guidance on the issue from Colorado, which has been sued for reducing benefits to retirees.

So far, teachers groups in Missouri have greeted the proposed changes warily. They noted that the system's portfolio is rebounding: It gained 13 percent last year.

"It looks like the system is not falling off a cliff," said Otto Fajen, a lobbyist for the Missouri National Education Association. So why, he asked, should the groups push for something that will divide teachers?

Yoakum said investment returns wouldn't be enough to put the fund on solid footing. He also worries that the public is increasingly hostile toward public pensions and that the Legislature could do something drastic, such as move new teachers to a defined contribution plan.

Such a plan would operate like a 401(k), which does not guarantee a certain annuity for life but instead depends on the market value of the investments made.

In that event, new teachers wouldn't help pay off the pensions already promised. That, said Yoakum, would make it "a real challenge to fund our plan."

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- [Molina, Cardinals restart contract talks](#)
- [Mozeliak: Oswalt not for Cards](#)



PAUL W. PAYNE
BUDGET DIRECTOR

City of St. Louis
BOARD OF ESTIMATE AND APPORTIONMENT
BUDGET DIVISION

February 10, 2012

CITY HALL
1200 MARKET STREET, ROOM 419
ST. LOUIS, MO 63103-2861
(314) 589-6697
FAX: (314) 622-3519

Via E-Mail:

Ms. Ronda Stegmann
Executive Director
Joint Committee on Public Employee Retirement
State Capitol, Room 219-A
Jefferson City, MO 65101

Re: Board Bills 270 and 271 – Firefighters' Retirement System

Dear Ms. Stegmann:

This letter transmits an actuarial cost statement related to Board Bill Nos. 270 and 271 now pending on the legislative calendar of the St. Louis Board of Aldermen.

As indicated in the "Proposed Changes" section of the enclosed cost statement, the proposed Board Bills address a number of benefit changes that would result from the creation of a new Firefighter's Retirement Plan that would replace the existing plan administered by the Firemen's Retirement System of the City of St. Louis ("FRS"). The actuarial cost impact details are included in the attachment identified as "Exhibit 1" to the enclosed cost statement.

Since these changes in the retirement plan will have a significant impact on the cost of the of the pension plan and retirement system that benefits the City's firemen, we have arranged for the preparation of the attached cost statement in accordance with R.S. Mo. Section 105.665 and are, via this transmittal letter, filing this statement with you as the Executive Director of the "joint committee on public employee retirement."

Please make the enclosed statement of cost immediately available for public inspection.

Thank you for your assistance. If there is anything else you need, please let me know.

Sincerely,

Paul W. Payne
Budget Director

Attachment

cc: Mike Garvin, City Counselor's Office



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ACTUARIAL COST STATEMENT RELATING TO THE PROPOSED CHANGES FOR MEMBERS UNDER THE CITY OF ST. LOUIS FIREMEN'S RETIREMENT SYSTEM

Prepared and Presented February 7, 2012

In accordance with R.S.Mo. §105.665, this actuarial statement is to disclose the financial impact of a change in cost method and reduction in plan benefits that qualifies as a Substantial Proposed Change to the City of St. Louis Firemen's Retirement System Defined Benefit Plan, which is to be effective immediately upon passage of proposed legislation identified as Board Bill Nos.270 and 271 that are currently under consideration by the City of St. Louis Board of Aldermen. This statement is prepared using the actuarial assumptions consistent with those employed in the most recent actuarial valuation of the Plan as of October 1, 2010.

Proposed Changes

The proposed Board Bills address changes from the current plan design to the pension plan structure described below. In addition, the proposed Board Bills address changes from the current contribution requirement, calculated using the Frozen Initial Liability cost method, to a contribution requirement calculated using the Entry Age Normal cost method. The attached exhibit shows the impact of individual proposed plan changes described below on current members as of October 1, 2010, with each subsequent change layered on top of prior changes.

In each of the following scenarios, the changes described apply only to benefits accrued on or after June 1, 2012, except as noted.

Scenario 1: Retirement Eligibility

- Eligibility for an unreduced pension is the later of age 55 and 20 years of service.
- A participant who terminates employment after completing at least 20 years of service (but prior to the unreduced retirement eligibility age) may receive either 1) a deferred pension payable at age 55, or 2) an early retirement pension actuarially reduced from age 55 payable immediately.
 - For this scenario, it is assumed that active participants under age 55 with at least 20 years of service will receive an immediate pension with the portion of the benefit accrued after June 1, 2012 actuarially reduced from age 55. For example, a participant age 53 with 23 years of service is assumed to be able to receive his pension immediately, but the portion accrued subsequent to June 1, 2012 would be actuarially reduced from age 55. A participant who is age 55 with 20 years of service is able to receive his pension immediately with no reduction.

Scenario 2: Return of Contributions

- Changes described in Scenario 1 are included.
- All contributions without interest made prior to June 1, 2012 are refunded to a participant who receives a pension. However, contributions made after June 1, 2012 will not be refunded to a participant who receives a pension.

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Scenario 3: Disability Benefits

- Changes described in Scenarios 1 and 2 are included.
- For members who become disabled on or after June 1, 2012, post-retirement cost-of-living increases are limited to the lesser of annual increases in the CPI or 3% per year, up to a maximum lifetime aggregate increase of 25%.
- The benefit for a disability incurred in the line of duty that prevents work in any occupation is 75% of average final compensation.
 - For this scenario, 20% of disabilities incurred in the line of duty are assumed to prevent work in any occupation.
- The benefit for a disability incurred in the line of duty that prevents work as a fireman, but not other gainful employment, is 25% of average final compensation plus 2.75% of average final compensation for each year of service in excess of 10 years, up to 25 years of service. For a participant with at least 25 years of service, the benefit is 75% of average final compensation. In addition, tuition at a state university for up to five years for passing grades in a degree program is reimbursed.
 - For this scenario, 80% of disabilities incurred in the line of duty are assumed to prevent work as a fireman, but not other gainful employment.
 - Each recipient of the tuition reimbursement benefit is assumed to enroll in 18 credit hours per year. The cost of each credit hour is assumed to be \$245.60 as of October 1, 2010, and is assumed to increase 3% per year.
- The benefit for a disability not incurred in the line of duty that prevents work in any occupation is the greater of 1) 90% of the pension benefit accrued to date and 2) 25% of average final compensation.
 - For this scenario, 100% of disabilities not incurred in the line of duty are assumed to prevent work in any occupation.
 - Participants with 20 years of service at the time of disablement are assumed to elect the greater of any disability benefit and the service pension described in Scenario 1.

Scenario 4: Increase Employee Contributions

- Changes described in Scenarios 1 through 3 are included.
- Employee contributions are increased from 8% of salary to 9%.

Actuarial Analysis

The attached exhibit reflects the Level Normal Cost, Contribution for Unfunded Accrued Liabilities and the Total Annual Cost as of the most recent actuarial valuation as of October 1, 2010 both as dollar amounts and as percentages of covered and total salary. For cost comparison purposes, the plan changes were valued as of October 1, 2010.

The City has historically paid and is currently paying the Statutory Annual Required Contribution as shown in the attached exhibit.

The proposed changes represent a reduction in future benefits and do not require additional funding. As a result, no additional funding from the City is mandated in relation to the proposed changes. The proposed changes will serve to enhance and not impair the ability of the Plan to meet its obligations to pay benefits.

All of the results in this statement have been estimated based on the most recent actuarial valuation as of October 1, 2010 and reflect the following Actuarial Methods and Assumptions in accordance with R.S.Mo. §105.665.

Actuarial Cost Method

Previous method: Frozen Initial Liability Actuarial Cost Method. This method determines a normal cost on an aggregate basis expressed as a level percentage of pay. The normal cost rate equals the ratio of (a) the present value of future benefits less the actuarial value of assets less the frozen unfunded actuarial liability, to (b) the present value of future salaries. Under this method, the actuarial gains (losses), as they occur, reduce (increase) future normal costs.

New method: Entry Age Normal (level percent of salary) Actuarial Cost Method, with entry age determined as the age at date of employment. Normal Cost and Actuarial Accrued Liability are calculated on an individual basis and are allocated by service. Normal Cost is offset by projected employee contributions.

Amortization of Unfunded Accrued Liabilities

Previous method: Unfunded actuarial accrued liabilities for changes in assumptions, plan provisions, or methods are amortized on a level dollar basis over 30 years from the creation of the unfunded base.

New method: The total unfunded actuarial accrued liability (UAL) is amortized over a 30-year closed period as a level percent of payroll.

Valuation of Assets

The actuarial value of assets is determined by adjusting the market value of assets, excluding the future benefit fund, to reflect the investment gains and losses (the difference between the actual investment return and the expected investment return) during each of the last three years at the rate of 33 percent per year.

Mortality Rates

1994 Group Annuity Mortality Table

With ages set forward 6 years for disability retirement mortality

Investment Earnings

7.625% per annum, net of expenses, compounded annually

Salary Appreciation

4.00% per annum, compounded annually

Rates of Retirement

<u>Years of Service</u>	<u>Rate of Retirement</u>
20	20.00%
21	12.50%
22 – 29	5.00%
30 or more	100.00%

Rates of Withdrawal prior to Retirement other than Death

Rates per 1,000 Members

<u>Years of Service</u>	<u>Rate of Withdrawal</u>
0	80.0
1	50.0
2 – 8	20.0
9 – 12	15.0
13 – 15	10.0
16 – 19	5.0
20 or more	0.0

Rates of Disability

Rates per 1,000 Members

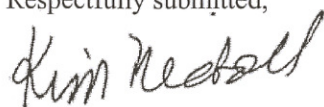
<u>Age</u>	<u>Ordinary</u>	<u>Accidental</u>
20 – 32	0.7500	4.2500
33 – 39	1.5000	8.5000
40 – 46	3.0000	17.0000
47 – 49	3.7500	21.2500
50 – 67	5.2500	29.7500

Additional Assumptions

- Decrements are assumed to occur mid-year.
- 100% of actives are assumed to be married, with males assumed to be 3 years older than females. No additional liabilities are assumed due to the payment of dependent child benefits.
- Actuarially equivalent early retirement reductions are based on the 1994 Group Annuity Mortality table for males and an interest rate of 7.625%.
- Current DROP participants are assumed to remain in the DROP program and retire immediately at the end of their DROP period under the plan provisions in effect on October 1, 2010. As a result, current DROP participants are assumed to generate no normal cost.
- Future increases in the Consumer Price Index are assumed to be 3% annually.
- Disability benefits plus earnings from any subsequent employment are assumed to be less than average final compensation.

To the best of my knowledge and belief, this cost statement is complete and accurate. In my opinion, the actuarial assumptions in the aggregate are reasonable expectations of anticipated experience under the Plan.

Respectfully submitted,



Kim Nicholl, FSA, MAAA
Enrolled Actuary No. 11-03573

5246307v1/13487.002

Exhibit 1

	Proposed Plan - Entry Age Normal Cost Method											
	Amortization of UAL - level percent of payroll											
	Scenario 1		Scenario 2		Scenario 3		Scenario 4					
	Current Plan - Frozen Initial Liability Cost Method	Current Plan - Entry Age Normal Cost Method	Percent Change from Current Plan (FIL)	Retirement Eligibility	Percent Change from Current Plan (EAN)	Return of Contributions	Percent Change from Scenario 1	Disability Benefits	Percent Change from Scenario 2	Increase Employee Contributions to 9%	Percent Change from Scenario 3	Total Percent Change from Current Plan
Present Value of All Future Benefits												
Retirees and Beneficiaries	\$ 294,536,666	\$ 294,536,666		\$ 294,536,666		\$ 294,536,666		\$ 294,536,666		\$ 294,536,666		
Active Firemen	267,656,593	\$ 267,656,593	0.00%	264,625,178	-1.13%	252,751,600	-4.49%	234,933,589	-7.05%	235,022,600	0.04%	-12.19%
DROP Firemen	58,388,077	\$ 58,388,077		58,388,077		58,388,077		58,388,077		58,388,077		
System Employees Benefit Fund	<u>298,721</u>	<u>298,721</u>		<u>298,721</u>		<u>298,721</u>		<u>298,721</u>		<u>298,721</u>		
Total	\$ 620,880,057	\$ 620,880,057	0.00%	\$ 617,848,642	-0.49%	\$ 605,975,064	-1.92%	\$ 588,157,053	-2.94%	\$ 588,246,064	0.02%	-5.26%
Assets												
Actuarial Asset Value (3-year smoothing)	\$ 407,027,843	\$ 407,027,843		\$ 407,027,843		\$ 407,027,843		\$ 407,027,843		\$ 407,027,843		
Present Value of Future Employee Contributions	<u>23,066,745</u>	<u>N/A</u>		<u>N/A</u>		<u>N/A</u>		<u>N/A</u>		<u>N/A</u>		
Total	\$ 430,094,588	\$ 407,027,843		\$ 407,027,843		\$ 407,027,843		\$ 407,027,843		\$ 407,027,843		
Actuarial Accrued Liability using the Entry Age Normal Cost Method	N/A	\$ 534,980,946		\$ 534,002,470		\$ 526,084,815		\$ 526,061,727		\$ 526,092,327		
Unfunded Accrued Liability	\$ 32,323,984	\$ 127,953,103		\$ 126,974,627		\$ 119,056,972		\$ 119,033,884		\$ 119,064,484		
Funded Status	N/A	76.08%		76.22%		77.37%		77.37%		77.37%		
Present Value of Future Normal Costs	\$ 158,461,485	N/A		N/A		N/A		N/A		N/A		
Present Value of Future Salary	\$ 286,405,565	N/A		N/A		N/A		N/A		N/A		
Normal Contribution Percent	55.328%	N/A		N/A		N/A		N/A		N/A		
Covered Salary	\$ 36,817,961	\$ 36,817,961		\$ 36,817,961		\$ 36,817,961		\$ 36,817,961		\$ 36,817,961		
Employer Normal Contribution as of Beginning of Year												
Total Normal Cost	N/A	\$ 11,983,699		\$ 11,783,119		\$ 11,352,505		\$ 9,088,772		\$ 9,094,037		
Less Employee Contributions	<u>N/A</u>	<u>(2,985,147)</u>		<u>(2,985,147)</u>		<u>(2,985,147)</u>		<u>(2,985,147)</u>		<u>(3,353,326)</u>		
Total	N/A	\$ 8,998,552		\$ 8,797,972		\$ 8,367,358		\$ 6,103,625		\$ 5,740,711		
Annual City Contributions for Plan Year Ending 9/30/2011												
End of Year Employer Normal Contribution	\$ 20,370,641	\$ 9,684,692		\$ 9,468,817		\$ 9,005,369		\$ 6,569,026		\$ 6,178,440		
End of Year Amortization Payment for Unfunded Accrued Liability	<u>2,701,132</u>	<u>8,081,656</u>		<u>8,019,855</u>		<u>7,519,767</u>		<u>7,518,309</u>		<u>7,520,241</u>		
Grand Total	\$ 23,071,773	\$ 17,766,348	-23.00%	\$ 17,488,672	-1.56%	\$ 16,525,136	-5.51%	\$ 14,087,335	-14.75%	\$ 13,698,682	-2.76%	-40.63%
Total Salary*	\$ 40,788,947	\$ 40,788,947		\$ 40,788,947		\$ 40,788,947		\$ 40,788,947		\$ 40,788,947		
Normal Contribution / Cost as a % of Total Salary	49.94%	23.74%		23.21%		22.08%		16.11%		15.15%		
Total Contribution as a % of Total Salary	56.56%	43.56%		42.88%		40.51%		34.54%		33.58%		
Change in Total Contribution as a % of Total Salary			-13.01%		-0.68%		-2.36%		-5.98%		-0.95%	-22.98%

* Includes salary of active members participating in the DROP Plan

Costs/ (Savings) as Reported by the City of St. Louis relative to proposed changes to the Firemen's Retirement System

		Current	Proposed	Annual Employer Contribution Current	Contribution Proposed	Difference Cost/(Savings)
Changing Actuarial Cost Method		Frozen Initial Liability	Entry Age Normal	56.56% \$ 23,071,773	43.56% \$ 17,766,348	-13.00% (\$5,305,425)
	Plan Provision	Current	Proposed			
Scenario 1	Normal Retirement Eligibility	20 years of service	Age 55 and 20 years of service	42.88% \$ 17,488,672	-0.68% (\$277,676)	
	Termination of Employment with at least 20 YOS but not Age 55	Not Applicable	Deferred Pension payable at 55, or Early Retirement actuarially reduced from age 55			
Scenario 2	Scenario 1 provisions and					
	Refund of Employee Contributions	Employee Contributions refunded at retirement	Employee Contributions made after June 1, 2012 are not refunded at retirement	40.51% \$16,525,136	-2.37% (\$963,536)	
Scenario 3	Scenarios 1 & 2 plus Modification of Disability provisions	COLA = 3% per year to age 60, then 5% after 60 up to 25% max	Lesser of CPI annual increase or 3% up to 25% max	34.54% \$14,087,335	-5.97% (\$2,437,801)	
		Duty Disability = 75% of Comp	Duty Disability = 75% of Comp if work in any occupation is prevented 25% of comp plus 2.75% of comp for each year of service over 10 years up to 25 years. Tuition reimbursement available for up to 5 years			
		Non Duty Disability = If 20 YOS - service retirement granted Greater of 90% of accrued pension benefit, or 25% of compensation	Non Duty Disability= If 20 YOS - members are assumed to elect greater of disability benefit or service retirement with applicable reductions Greater of 90% of accrued pension benefit, or 25% of compensation			
Scenario 4	Scenarios 1, 2 & 3 plus Employee Contribution Increase	Employees contribute 8% of pay	Employees contribute 9% of pay after June 1, 2012	33.58% \$13,698,682	-0.96% (\$388,653)	
Total Employer Contribution as % of pay				56.56%	33.58%	-22.98%
Total Employer Contribution in \$'s				\$ 23,071,773	\$13,698,682	(\$9,373,091)

St. Louis Firemen's Retirement System

Oct 1	Market Value		Actuarial Value		Liabilities	Funded Ratio		Covered Payroll	
						MV	AV		
2011	\$	392,102,253	\$	404,101,569	\$	430,755,378	91%	94%	\$ 37,157,256
2010		397,928,543		407,027,843		439,351,827	91%	93%	40,788,947
2009		381,307,952		449,655,366		487,312,779	78%	92%	42,052,210
2008		421,475,703		485,138,953		523,035,764	81%	93%	41,648,953
2007		525,113,202		495,116,340		533,235,588	98%	93%	37,690,439
2006		425,034,568		410,775,345		440,486,134	96%	93%	35,726,289
2005		415,163,177		391,181,701		429,764,156	97%	91%	35,433,943
2004		390,207,929		369,893,135		408,660,044	95%	91%	33,847,826
2003		368,782,441		391,020,699		429,972,716	86%	91%	34,648,486
2002		355,880,039		427,199,947		466,310,235	76%	92%	34,520,010
2001		425,131,055		456,143,883		470,607,738	90%	97%	32,626,002
Employer Contributions									
		ARC*		Actual^		% Contributed			
Ending Sept 30									
2012	\$	21,176,763		N/A					
2011		23,071,773	\$	23,071,773		100.0%			
2010		17,854,546		17,854,546		100.0%			
2009		12,193,989		12,193,989		100.0%			
2008		7,484,524		7,484,524		100.0%			
2007		14,285,300		63,689,991		445.8%			
2006		18,179,873		4,110,402		22.6%			
2005		17,768,649		4,110,402		23.1%			
2004		13,765,477		2,055,201		14.9%			
2003		8,913,102		1,884,356		21.1%			
2002		3,365,007		3,365,007		100.0%			
2001		3,544,385		3,544,385		100.0%			

*Per 10/01/11 Actuarial Valuation page B-2, Statutory Annual Required Contribution

^Per System Financial Reports

St. Louis Firemen's Retirement System

Date Established:	1960	Social Security Coverage:	No
Membership:		Employer Contribution Rate:	56.99%
Total Active:	670	<i>Plan Year Ending 09/30/12</i>	
Non-DROP	605		
DROP	65		
Total Inactive:	1016	Employee Contribution Rate:	8%
Retired	376	<i>Contributions Refunded at Retirement</i>	
Disabled	329		
Widows/Children	311		
Employees Covered:	Anyone employed by the City of St. Louis for the purposes of fighting fires		
Normal Retirement Eligibility:	20 years of service		
Normal Retirement Benefit:	40% of final two-year compensation at 20 years of service, plus 2.0% of compensation for each of the next 5 years plus 5.0% of compensation for each addtl year of service over 25 years Maximum of 30 years (75% of compensation)		
COLA Provisions:	Less than 25 years: 1.5% per year to age 60, 5% per year after to 25% max 25 to less than 30 years: 2.25% per year to age 60, 5% per year after to 25% max 30 years or more: 3% per year to age 60, 5% per year after 60 to 25% max		
Duty Disability:	75% of compensation if totally and permanently incapacitated for duty as result of accident or exposure during actual performance of duty		
Non-Duty Disability:	Provides normal retirement allowance <u>if 20 or more years of service</u> Service of at <u>least 5 years but less than 20 years:</u> Largest of 90% of monthly service retirement allowance based on actual service, or One-fourth of the final two-year average monthly compensation In addition, monthly benefit of 10% of final two-year compensation for each unmarried dependent child under age 18 but not in excess of 3 children		
Disability COLA:	3.0% annually to age 60, and 5% after age 60 with 25% max		
Investment ROR Assumption:	7.625%		

Members may participate in a Deferred Retirement Option Plan once meeting normal retirement eligibility.

The System performed an experience study for the period of 10/01/05 to 09/30/10. Modifications made to the 09/30/11 valuation were: Wage inflation (from 4.00% to 3.35%), removal of shift differential load (2.5%), decrease overall normal retirement rates and extend rates through 35 years of service to reflect experience, decrease expected turnover, update mortality tables from 1994 GAMT to RP 2000, decrease disability rates

*After the actuarial assumption changes, the total contribution for plan year ending 09/30/12
as a % of total salary decreased from 61.933% (\$23,588,089) to 56.992% (\$21,176,763)*

Actuarial Cost Methods

Frozen Initial Liability cost method and Entry Age Normal cost method

The Firemen's Retirement System of the City of St. Louis currently utilizes the Frozen Initial Liability cost method as required in statute. The proposal before the Board of Aldermen as well as a proposal offered in statute in 2011 modified the actuarial cost method from Frozen Initial Liability to Entry Age Normal. Below is a summary of information provided by System actuarial professionals relative to the two cost methods.

Frozen Initial Liability (FIL) cost method includes an aggregate normal cost (which includes a component of experience gains/losses) plus the amortization of unfunded actuarial liabilities due to the unfunded liability at the adoption of a plan, plan changes and assumptions changes.

FIL spreads the funding of a system over the average future working lifetime of the active membership. A byproduct of this shorter time period is that experienced gains and losses are recognized more rapidly. This faster recognition can produce more contribution volatility.

Entry Age Normal (EAN) cost method includes the normal cost (which represents the value of benefits earned during the current year) plus an amortization of the unfunded actuarial accrued liability (associated with benefits earned in prior years). The amortization of the unfunded liabilities recognizes changes due to plan experience, plan changes and assumption changes.

EAN spreads funding of a system over a defined period, such as 30 years as a level percent of payroll. Contributions are produced under EAN that are expressed as a level percent of pay to reduce volatility.

It was noted in the summary, over the long run, both methods would finance the overall costs of a system.

Of the 90 defined benefit pension plans reporting to the JCPER:

Cost Method	% of plans utilizing
Entry Age Normal cost method	58%
Frozen Initial Liability cost method	8%
Aggregate cost method	23%
Projected Unit Credit cost method	11%