

## Presentation to FPDR Board Meeting

September 26, 2023

Good afternoon, I want to thank you for giving me the opportunity to speak at the FPDR Board Meeting today. I was not sure how long I would be given to speak so I have made a summary of the issues I feel are germane to the way our disability process is handled. I will try to explain how we have arrived at the place we now find ourselves and what should be done now. We are the only city in the state of Oregon which does not have a Disability Pension as part of their employee benefits ...

I come before you today because our firefighters and police officers that become disabled while performing their duties are not receiving the full benefits they are entitled to. However, before I speak to these compelling issues, I would like to share a brief profile of my own experience with the City of Portland. I was hired as a firefighter on December 20, 1968. I served in a variety of positions over my career with the Portland Fire Bureau. These included fire inspector, fire lieutenant, fire and arson investigator, station captain, battalion chief, and finally after working 35 years and having two operations on my back, I received a disability retirement in June of 2002. During this time I was not only pleased to serve the needs of our city, but was also active in union activities with Local 43 of the International Association of Firefighters.

As part of many other duties I served a term as one of the trustees on the Pension Board during a very challenging time. We undertook the challenging and lengthy project of creating an entirely new pension structure that would hopefully match or exceed those provided by the Public Employees Retirement System [PERS]. We hired a recommended actuary by the name of Bob McCrory to lead us in the year long process of creating a new pension in 1989. This was a very long and involved effort but finally resulted in a Teir 2 PLAN that was endorsed by both the fire and police unions as well as by Mayor Bud Clark. In fact, the firefighters and police officers then working were given the opportunity to accept the "New Plan" or stay with the old plan.

Some who had been injured while doing their job previously chose to stay with the "old plan". That plan provided for 60% of a firefighters pay as a disability pension. For those who chose the "new Plan" they found that a line of duty injury that was career ending would result in a 2% per year worked with the number of years maxing out at 30. And this would all be based upon a member's rank at the time of leaving. Many of us felt that this was a benefit that would provide financial security for the rest of our lives. We never expected that PERS would negotiate with the Internal Revenue Service as a result of the Hauser Case in 2006 and end up with a "tax Protected" Disability Pension ...

The issue before us today is that our firefighters and police officers who do the same kind of work and suffer a career ending injury deserve the same benefit. There are many justifications for this. The existing Oregon Administrative Rules of our state are very explicit in its rule that "all firefighters and police officers in the State of Oregon shall have a Service Pension and a Disability Pension". This law is current and there are no exceptions made. The City of Portland is not in compliance with the existing law that all the other public fire and police agencies in our state are in conformity with.

There are also provisions in our U.S. Constitution that specify "equal pay for equal work". There is nothing equal about one group of public employees who have suffered a career ending disability not

paying a Federal and State Income Tax on their pension while another group in the same profession with disabling injuries must pay taxes on their pension. This is discrimination and that is something our country is very careful to avoid. It is even more flagrant when both groups of employees work for the same employer.

Another issue is that the voters approved the new Pension Plan overwhelmingly in 1990 and it became part of the City Charter. What was passed by the voters in our City should not be changed or revised without going back to the voters. When the Director of FPDR removed the words "Disability Pension" from the City Charter he exceeded his authority.

The "City" , in the values it endorses as part of all its "Strategic Plans" lists, among other values "We are committed to equity and integrity in all areas of our operation". If this is something they truly believe in they need to bring this issue back before the voters at the next election.

The Fire and Police Unions need to be consulted on this issue as well as the citizens. This benefit is very important to all of our firefighters and police officers as well as their families. It is time to do the right thing ...

Respectfully Submitted,

Det Stevens, retired firefighter

A handwritten signature in blue ink, appearing to read "Det Stevens", written over the typed name.

**City of Portland Bureau of Fire and Police Disability and Retirement  
Agenda for Regular Meeting – Board of Trustees**

City Council Chambers – City Hall  
1221 SW Fourth Avenue, 2<sup>nd</sup> Floor, Portland, Oregon 97204  
Tuesday, September 22, 2015 – 1:00 p.m.

**ADMINISTRATION**

*The following consent item(s) are considered to be routine and will be acted upon by the Board in one motion, without discussion, unless a Board member, staff member or the public requests an item be held for discussion.*

- 1 Approval of Minutes – July 28, 2015 Meeting

**INTRODUCTION OF VISITORS**

**PUBLIC COMMENT PERIOD**

*A sign up sheet for members of the public wishing to make public comments will be available at the meeting. The public comment period will not exceed 30 minutes. Therefore, the Board may limit individual comments to three minutes per person. In addition, a sign up sheet will be available prior to the meeting to allow public members the opportunity to sign up for an agenda item which they wish to provide comment on. When discussion on a specific agenda item is to begin, the public member will be allowed three minutes to provide comments, unless additional time is allowed by the Board.*

**ACTION ITEMS**

- 1 Resolution No. 501 - Administrative Rule Amendments to Sections 5.3, 5.7, 5.8 and 5.9
  - o Issue: Amendments to Sections 5.3, 5.7, 5.8 and 5.9 to “clean up” and clarify rules.
  - o Expected Outcome: Board adopts amendments as proposed by staff.
- 2 Resolution No. 502 - Administrative Rule Amendments to Section 5.7.14
  - o Issue: Amendments to Section 5.7.14 expanding interim disability overpayment recovery period.
  - o Expected Outcome: Board adopts amendments as proposed by staff.
- 3 Resolution No. 503 - Administrative Rule Amendments to Section 5.2
  - o Issue: Amendments to Section 5.2 to change the Fire trustee election process to vote-by-mail process and clarify existing rules.
  - o Expected Outcome: Board adopts amendments as proposed by staff.
- 4 Resolution No. 504 - Administrative Rule Amendments to Sections 5.4 and 5.5
  - o Issue: Amendments to Sections 5.4 and 5.5 to comply with the Supreme Court decision on the definition of spouse.
  - o Expected Outcome: Board adopts amendments as proposed by staff.

**INFORMATION ITEMS**

*The following information items do not require action by the Board and are solely for informational purposes unless a Board member, staff member or the public requests an item be held for discussion.*

- 1 State of FPDR
- 2 FPDR Updates
- 3 Future Meeting Agenda Items
- 4 FPDR Summary of Expenditures

*Copies of materials supplied to the Board before the meeting, except confidential items and those referred to Executive Session, are available for review by the public on the FPDR website at [www.portlandoregon.gov/fpdr](http://www.portlandoregon.gov/fpdr) or at the FPDR offices located at: 1800 SW First Avenue, Suite 450, Portland, Oregon 97201*

**NOTE:** *If you have a disability that requires any special materials services or assistance call (503) 823-6823 at least 48 hours before the meeting.*

*\*denotes items will be in Executive Session pursuant to ORS 192.660(2)(f) and not open to the public  
#denotes items will be in Executive Session pursuant to ORS 192.660(2)(h) and not open to the public*



## City of Portland, Oregon



### BUREAU OF FIRE AND POLICE DISABILITY AND RETIREMENT

1800 SW First Ave., Suite 450, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166

Samuel Hutchison, Director

[fpdr@portlandoregon.gov](mailto:fpdr@portlandoregon.gov)

### Presentation to Board

September 22, 2015

### Proposed Rule Amendments Clean Up

#### Objective

Obtain Board approval to update and clean up the wording in specific Administrative Rules.

#### Section 5.3.12 – NON-MILITARY LEAVE OF ABSENCE

##### Proposed Change

All Members granted a non-military leave of absence without pay by the Council of the City of Portland, Oregon, or the Commissioner in Charge of the bureau in which the Member is employed, shall have preserved under the Plan during such leave the following rights:

- (E) Right to benefits or pensions for injury, sickness or death occurring during said leave of absence if such disability is directly attributable to a former injury in line of duty or occupational disability for which the Member has received benefits or which the ~~Board~~ *Director* may otherwise recognize as pre-existing, provided such injury, sickness or death has not been caused by an aggravation of the pre-existing injury or sickness during said leave of absence.

#### Section 5.7.03 – APPLICATION FOR BENEFITS

The present rule requires the fire or police chief's signature on the disability claim form (DILD). As a practice, we rarely require a chief's signature as long as we have the signature of the Member's supervisor. This rule change matches our practice.

##### Proposed Change

- (G) All applications for service-connected injury/illness or occupational disability benefits shall contain a report of a superior officer *and/or* the signature of the chief of the bureau affected and a report of the Member's Attending Physician.

## Section 5.7.04 – CLAIM APPROVAL OR DENIAL

### Firefighter Cancer Presumption Claims

In order to comply with Section 656.802 (5)(a) – (h) and (6) of the Oregon Revised Statutes, Laws pertaining to Workers' Compensation and Safe Employment in Oregon, the Portland City Council, in August 2009, passed Ordinance No. 183128 amending Chapter 5 of the City Charter. Under the amendment, FPDR extended to eligible firefighters the firefighter cancer presumptions provided under Oregon Workers' Compensation Law.

The existing FPDR Administrative rules do not mention the firefighter cancer presumptions.

### Proposed Change

(A) Disability Claim applications fall into one of the following ~~two~~ *three* categories:

- (1) Service-Connected Disability Claims: [Text – no change]
- (2) Occupational Disability Claims: [Text – no change]
- (3) *Firefighter Cancer Presumption Claims: The Director shall evaluate firefighter cancer presumption claims in accordance with ORS Section 656.802 (5)*

## Section 5.8.01 – DEFINITIONS (Nonservice-Connected Disability Benefits)

The present definition of the “Date of Disability” found in the *nonservice-connected* disability benefits part of the Administrative rules is actually the Service-Connected definition.

The proposed changes corrects the definition of “Date of Disability”.

### Proposed Change

“Date of Disability.” The term “Date of Disability” means the date that the Member’s Attending Physician establishes that the Member is first unable to perform the Member’s required duties as a result of a *nonservice-connected* injury/illness or ~~occupational disability that has been determined to arise out of and in the course of the Member’s employment in the Bureau of Police or Fire.~~

## Section 5.9.10 – POST-RETIREMENT MEDICAL BENEFITS

The existing rule uses terms not found in the Charter or elsewhere in the Administrative Rules and are not defined in either document. The change will replace the confusing terms.

### Proposed Change

- (A) *Retirement from Disability Retirement*: Medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable, if the Member's disability benefits continued until the Member reached Disability Retirement Age.
- (B) *Retirement from active sService Retirement*: For Members who are retired as of January 1, 2007, medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall not be reimbursable.
- (C) *Retirement from active sService Retirement*: For Members who are not retired before January 1, 2007, medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable.

## RESOLUTION NO. 501

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, staff recommends amendments to Sections 5.3, 5.7, 5.8 and 5.9 to “clean up” and clarify the rules; and

WHEREAS, the amendments were provided to the representatives of the Police and Fire labor organizations and their attorneys; and

WHEREAS, the amendments were also posted on the FPDR website. No objections and/or comments have been submitted; and

WHEREAS, the Board has considered and recommends the “clean up” changes to Sections 5.3, 5.7, 5.8 and 5.9 of the FPDR Administrative Rules as shown on Exhibit “A”, attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that the FPDR Administrative Rules be changed in accordance with the recommendations of the Board; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that Sections 5.3, 5.7, 5.8 and 5.9 of the FPDR Administrative Rules be amended as shown on Exhibit “A”.

ADOPTED by the Board of Trustees on the 22nd day of September, 2015.

Samuel Hutchison  
FPDR Director

## Proposed FPDR Administrative Rule Changes CLEAN UP

### 5.3.12 – NON-MILITARY LEAVE OF ABSENCE

All Members granted a non-military leave of absence without pay by the Council of the City of Portland, Oregon, or the Commissioner in Charge of the bureau in which the Member is employed, shall have preserved under the Plan during such leave the following rights:

- (E) Right to benefits or pensions for injury, sickness or death occurring during said leave of absence if such disability is directly attributable to a former injury in line of duty or occupational disability for which the Member has received benefits or which the Board may otherwise recognize as pre-existing, provided such injury, sickness or death has not been caused by an aggravation of the pre-existing injury or sickness during said leave of absence.

#### Proposed Change

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### 5.7.03 – APPLICATION FOR BENEFITS

- (G) All applications for service-connected injury/illness or occupational disability benefits shall contain a report of a superior officer, the signature of the chief of the bureau affected and a report of the Member's Attending Physician.

#### Proposed Change

- (G) All applications for service-connected injury/illness or occupational disability benefits shall contain a report of a superior officer *and/or* the signature of the chief of the bureau affected and a report of the Member's Attending Physician.

### 5.7.04 – CLAIM APPROVAL OR DENIAL

- (A) Disability Claim applications fall into one of the following two categories:
  - (1) Service-Connected Disability Claims: Except for stress or mental disorder claims, the Director shall determine the existence of a disability and whether the preponderance of the evidence indicates it arises out of and in the course of the Member's employment.

A Member shall not be eligible for the service-connected disability benefit based on an injury suffered in assaults or combats which are not connected to



the job assignment and which amount to a deviation from customary duties or incurred while engaging in, or as the result of engaging in, any recreational or social activities solely for the Member's personal pleasure.

Stress or Mental Disorder Claims: The Director shall determine if each of the following elements exists:

- (a) the employment conditions producing the stress or mental disorder exist in a real and objective sense;
  - (b) the employment conditions producing the stress or mental disorder are conditions other than conditions generally inherent in police and fire employment or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment;
  - (c) there is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community;
  - (d) there is clear and convincing evidence that the stress or mental disorder arose out of and in the course of employment as an Active Member; and
  - (e) the Member's employment conditions are the primary cause the stress or mental disorder.
- (2) Occupational Disability Claims: The Director shall presume a Member is eligible for an occupational disability enumerated in 5-306(d) of the City Charter unless the Director determines, by a preponderance of the evidence, the occupational disability was not contracted as a result of service as a police officer or fire fighter.

#### Proposed Change

(A) Disability Claim applications fall into one of the following ~~two~~ *three* categories:

- (1) Service-Connected Disability Claims: Except for stress or mental disorder claims, the Director shall determine the existence of a disability and whether the preponderance of the evidence indicates it arises out of and in the course of the Member's employment.

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**5.8.01 – DEFINITIONS (Nonservice-Connected Disability Benefits)**

"Date of Disability." The term "Date of Disability" means the date that the Member's Attending Physician establishes that the Member is first unable to perform the Member's required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member's employment in the Bureau of Police or Fire.

Proposed Change

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#### **5.9.10 – POST-RETIREMENT MEDICAL BENEFITS**

- (A) Disability Retirement: Medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable, if the Member's disability benefits continued until the Member reached Disability Retirement Age.
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- (C) Service Retirement: For Members who are not retired before January 1, 2007, medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable.

#### **Proposed Change**

- (A) ***Retirement from Disability Retirement***: Medical and hospital expenses arising from an approved service-connected injury/illness or occupational disability shall be reimbursable, if the Member's disability benefits continued until the Member reached Disability Retirement Age.
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## Proposed FPDR Administrative Rule Changes CLEAN UP

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**Proposed Change**

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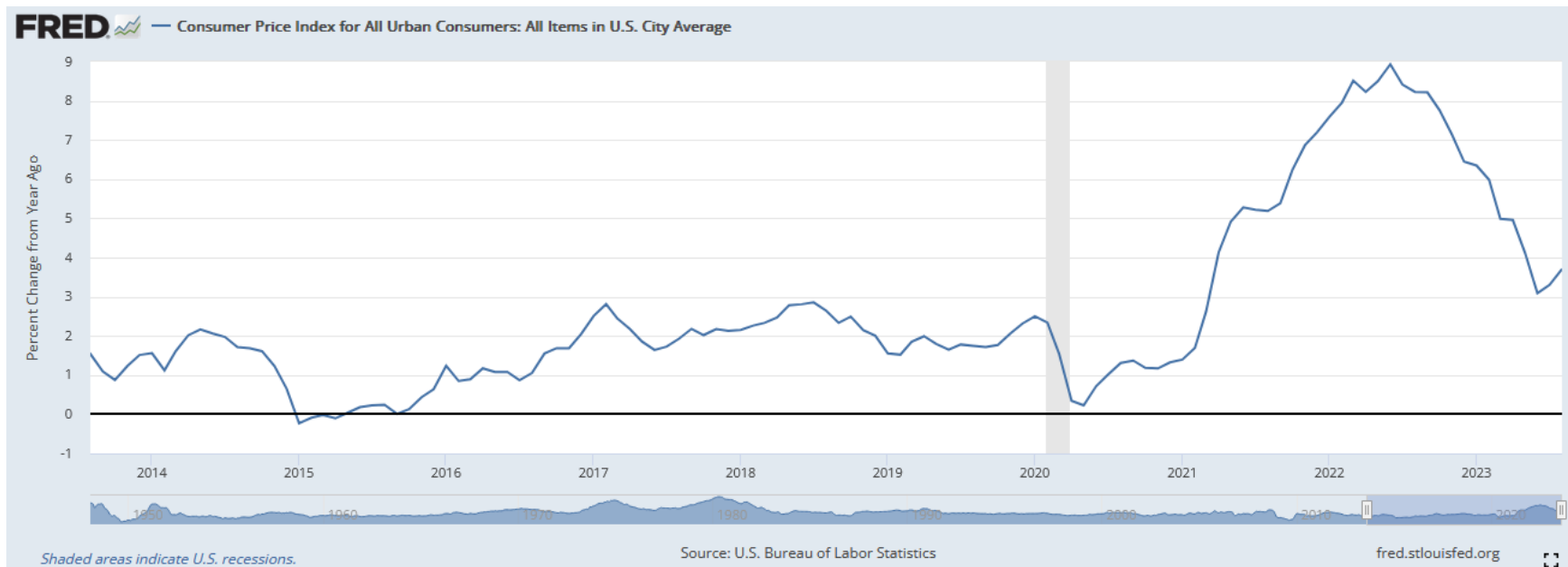


# Portland FPDR Benefit Policy & Funding Policy

Kevin Machiz, CFA, FRM  
[Kevin.machiz@gmail.com](mailto:Kevin.machiz@gmail.com)

# Benefit Policy: Cost of Living Adjustments

- ▶ The Charter gives the Board the sole discretion over Cost of Living Adjustments (COLAs), but caps them at 2%
- ▶ Actual inflation has exceeded 2% recently



# For Consideration

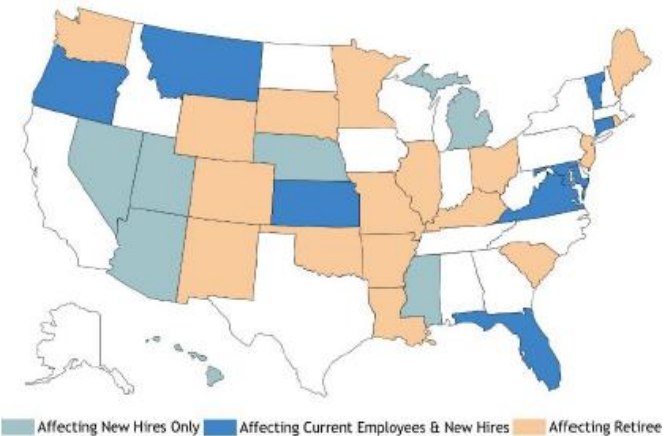
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- ▶ The City should request its actuary provide an analysis of two types of concurrent potential changes to benefit policy and funding policy
  1. The costs of replacing the Charter's 2% cap on COLAs with actual Consumer Price Index (CPI) inflation, conditioned on exceeding a specified Funded Ratio
    - ▶ If funded ratio falls below the specified threshold, the existing 2% cap would remain in place
    - ▶ If funded ratio exceeds the specified threshold, the Board would be able to grant a COLA up to actual CPI inflation
  2. The cost savings of a Comprehensive Actuarial Funding Policy

# NASRA on COLAs

- ▶ Social Security comes with a COLA, but about one quarter of employees of state & local governments participate in public pensions in lieu of Social Security, which makes COLAs particularly important
- ▶ COLA implementation has considerable variation across public plans
  - ▶ Automatic vs. Ad-hoc
  - ▶ Simple vs. Compound
  - ▶ Inflation-based (full/partial/no sensitivity)
  - ▶ Performance-based
    - ▶ Reserve account
  - ▶ Delayed-onset
  - ▶ Limited Benefit Basis (e.g. COLA on first \$13,000 of benefits)
  - ▶ Self-funded annuity options (participant can elect COLA in exchange for a lower benefit level)
- ▶ COLA changes have been an active area of legislative change over 2009-2022:

|              | Linked to inflation | Linked to investment or funding condition | Fixed percentage or other factor | Total      |
|--------------|---------------------|---|----------------------------------|------------|
| Automatic    | 47                  | 14  | 11                               | 72         |
| Ad-hoc       | 5                   | 0   | 23                               | 28         |
| <b>Total</b> | <b>52</b>           | <b>14</b>                                 | <b>34</b>                        | <b>100</b> |

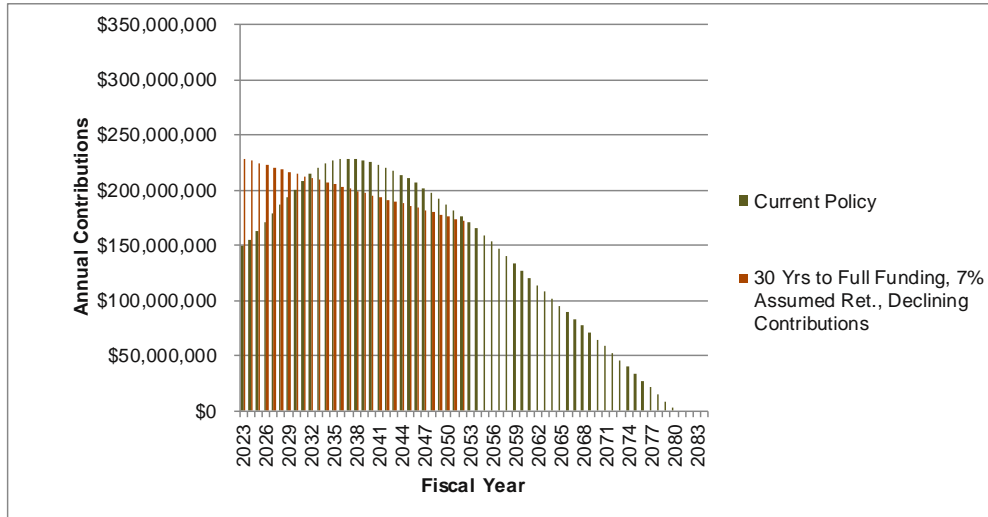


# Many States Tied COLAs to Funding

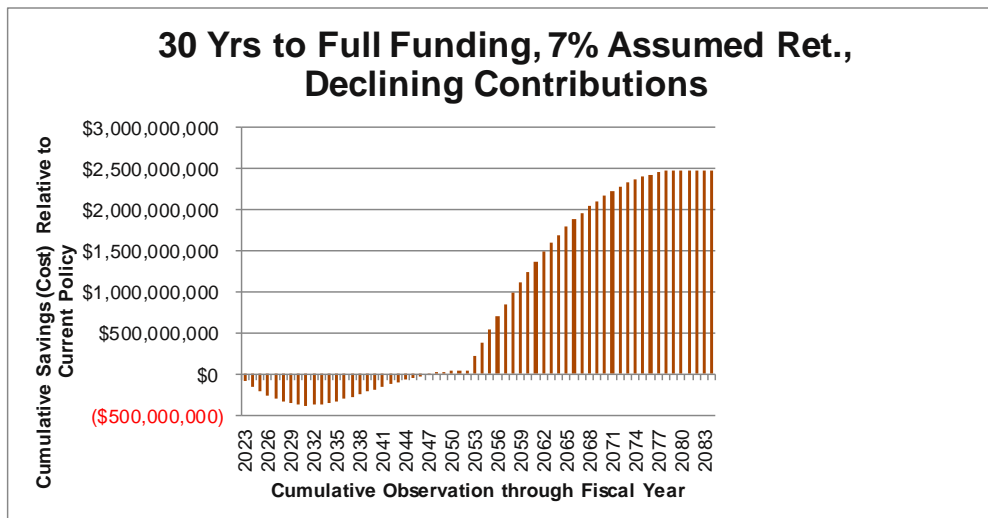
| State      | COLA Tied to:      | State        | COLA Tied to: |
|------------|--------------------|--------------|---------------|
| Arizona    | Funded Ratio (FR)  | New Mexico   | FR            |
| Colorado   | Contributions      | Ohio         | FR Projection |
| Georgia    | FR & Returns       | Oklahoma     | FR            |
| Kentucky   | FR                 | Rhode Island | FR            |
| Louisiana  | FR & Contributions | South Dakota | FR            |
| Minnesota* | FR                 | Tennessee    | Cost and UAL  |
| Montana    | FR                 | Texas        | FR Projection |
| New Jersey | FR                 | Wyoming      | FR            |

- ▶ About one third of states have automatically tied COLAs to funding

# Current Funding Policy (Green) vs. Illustrative Alternative (Red)



- ▶ This alternative is expected to reduce costs by \$2.5 billion over the plan's life
- ▶ Annual costs are lower than the Current Policy by year 10
- ▶ Cumulative costs never reach \$400 million
- ▶ This alternative policy reaches breakeven by year 22



# Should FPDR Get Off Pay-As-You-Go?

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- ▶ Improve transparency of compensation in the Portland Police Bureau and Portland Fire & Rescue Bureau
  - ▶ Mitigate a lack of transparency that can hide costs by passing them off to future generations of Portland taxpayers
- ▶ Intergenerational Equity
  - ▶ The costs of employee benefits are paid for by taxpayers who employed them
- ▶ Paying the bills sooner is expected to reduce the cumulative long-term costs of those bills.
- ▶ Mitigates risks of any potential deterioration in the city's finances