

IN THE SUPREME COURT OF THE STATE OF OREGON

PAT MCCORMICK and SCOTT
DAHLMAN,

Petitioners,

v.

KATE BROWN, Secretary of State, TED
WHEELER, State Treasurer, MICHAEL
JORDAN, Director, Department of
Administrative Services, JAMES
BUCHOLZ, Director, Department of
Revenue, DEBRA GUZMAN, Local
Representative,

Respondents.

Supreme Court Case No. S_____

**PETITION TO REVIEW ESTIMATE OF
FINANCIAL IMPACT FOR BALLOT MEASURE 92 (2014)**

(Oral Argument Requested)

Estimate of Financial Impact filed with
Secretary of State
Ballot Title Certified May 9, 2014
Chief Petitioners: Scott Bates and Aurora Paulsen

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ATTORNEY FOR PETITIONERS

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ATTORNEY FOR RESPONDENTS

1.

Petitioners Pat McCormick and Scott Dahlman are electors of the state, persons dissatisfied with the estimate of financial impact that is the subject of this action, and are adversely affected by Respondents' actions. Petitioners have standing pursuant to ORS 250.131(1) as persons alleging that the estimate or statement described in ORS 250.125 was prepared, filed or certified in violation of the procedures specified in ORS 250.125 or ORS 250.127.

2.

Respondents are members of the Financial Estimate Committee convened pursuant to ORS 250.125 et seq. ("the Committee").

3.

The full text of the estimate of financial impact filed with the Secretary of State is as follows:

Measure 92

Estimate of Financial Impact Statement

The measure requires the State Department of Agriculture and/or the Oregon Health Authority to prescribe, enact, and enforce rules necessary to ensure that food manufacturers and retailers properly label raw and packaged food that is entirely or partially produced with genetic engineering. The measure is expected to result in direct expenditures by State agencies for initial one time start-up costs estimated at between \$550,000 and \$600,000. Costs associated with ongoing enforcement have variable assumptions about the level of administrative oversight. Therefore, the financial impact is indeterminate.

There is no anticipated effect on local government.

4.

A copy of the estimate of Financial Impact Statement as it appears on the

Secretary of State's website is appended to the Declaration of John DiLorenzo, Jr. as Exhibit 1.

5.

The estimate was prepared, filed or certified in violation of the procedures specified in ORS 250.125. In particular, Measure 92 is a state measure which involves expenditure public monies by the state which has caused the committee to prepare an estimate pursuant to ORS 250.125(1). ORS 250.125(4) provides:

For a state measure for which an estimate is required to be prepared under subsection (1) of this section, the financial estimate committee **shall consult** with the Legislative Revenue Officer to determine if the measure has potentially significant indirect economic or fiscal effects. If the committee determines that the indirect economic or fiscal effects of the measure are significant and can be estimated, the Legislative Revenue Officer shall prepare on behalf of the committee an impartial estimate of the indirect economic or fiscal effects of the measure. The Legislative Revenue Officer shall use the best available economic models and data to produce the estimate. The financial estimate committee shall incorporate relevant parts of the estimate prepared by the Legislative Revenue Officer into the estimate prepared by the committee under subsection (1) of this section. [Emphasis added.]

6.

The committee failed to consult with the Legislative Revenue Officer to determine if the measure has potentially significant indirect economic or fiscal effects. On August 6, 2014, Paul D. Warner, the Legislative Revenue Officer, confirmed that the Legislative Revenue Office ("LRO") was asked by the committee during its July 28 public meeting to develop revenue estimates for Measure 91 (the marijuana initiative). However, LRO was not consulted on any other 2014 ballot measure. This includes Measure 92. *See* DiLorenzo Declaration, Exhibit 2.

7.

Petitioner requests that the court review the procedures under which the estimate was prepared, filed and certified, hear arguments and determine whether the procedures required under ORS 250.125 and ORS 250.127 were satisfied pursuant to ORS 250.131(2).

8.

Assuming the court determines that the procedures described above were not satisfied, Petitioners request that the court order the preparation of the second estimate or statement to be prepared, filed and certified pursuant to ORS 250.131(3).

POINTS AND AUTHORITIES

The committee charged with preparing the estimate of financial impact for Ballot Measure 92 failed to comply with one of the procedures required under ORS 250.125. Because the measure involves an expenditure of public monies by the state, the committee did prepare an estimate of direct expenditure pursuant to ORS 250.125(a). However, the committee failed to comply with the directive of ORS 250.125(4) which requires the committee to consult with the Legislative Revenue Officer to determine if the measure has potentially significant indirect economic or fiscal effects. The lack of compliance with this section is evidenced by the email from Paul D. Warner to counsel for the petitioners attached to the declaration of John DiLorenzo, Jr. as Exhibit 2.

ORS 250.125(4) is written in directory terms. That subsection was added to ORS 250.125 in 2005 by way of the -4 amendments to Senate Bill 27 (2005).

The legislative history of SB 27 informs the requirement for consultation and provides the legislative rationale for doing so.

On June 29, 2005, State Treasurer Randall Edwards explained to the House Committee on Elections and Rules, the purpose of the -4 Amendment, which he proposed:

Before you also have some -4 amendments. These amendments will allow the Price-Tag Committee to include the fiscal statements information that any significant indirect economic or fiscal measure of the effects of a measure such as impact on employment would be also described. I want to remind you this is the same type of information that you get on legislation and I think this is another important piece for us to try to give as much information as possible to the voter and something that the legislative revenue office who we worked with in crafting this language would dovetail exactly with what you as a legislator decide on a bill and see the same information so we would like that opportunity to have that information presented to us and also potentially to the voters. That is a real thumbnail sketch of this bill. It is something again I think is really important as we go forward to try to get voters the best information as possible as much and complete information as possible as you decide and they decide on a ballot measure and the importance of that to the state and to themselves. Elizabeth, would you like to add to that.

(Counters 008-061)

Later in the hearing Elizabeth Harchenko, the Director of the Department of Revenue (beginning at Counter 061) also commented on the –A4 amendments:

The -4 Amendments as the Treasurer indicated would require the committee to consult with legislative revenue office on indirect economic or fiscal effects if they should be significant and there are some other language improvements.

These statements were echoed in the formal written testimony submitted by each, which is attached as Exhibits 4 and 5 of the DiLorenzo Declaration.

On July 10, 2005, Senate Bill 27 had its third reading on the floor of the House. The following colloquy occurred between Representative Richardson, Speaker Pro Tem, and Representative Farr who carried the legislation:

Speaker Pro Tem: The question now arises upon third reading and final passage of Senate Bill 27B. Representative Farr.

Rep. Farr: Thank you Mr. Speaker. Senate Bill 27 approved unanimously by the House Committee on Elections and Rules improves the way the state calculates the cost of measures placed on the ballot by referendum or by initiative petition. Under current law, a four-member committee commonly known as the Price-Tag Committee determines for each qualifying ballot measure the direct impact of the measure on revenues and expenditures to state and local governments. * * * The House Elections and Rules Committee made a major improvement to Senate Bill 27 by adding a section directing the Price-Tag Committee to measure the indirect costs of ballot measures as well as direct impacts on government revenues and expenditures. An example of a direct cost would be how much it would cost a state agency to implement or administer a ballot measure approved by voters. An example of an indirect cost would be increased or decreased income tax revenue if a ballot measure would have the effect of causing either employment gains or job losses. These indirect costs would be determined by the committee in consultation with the legislative revenue office where a variety of economic impact analysis tools can be employed for this purpose. In essence, the House amendments to Senate Bill 27 will give voters the same economic and fiscal impact information necessary for them to make informed decisions on ballot measures as we as legislators are provided through the revenue and fiscal impact statements attached to the Bills we vote on. * * *

On July 13, 2005, the Senate concurred in the House amendments to Senate Bill 27. Senator Brown provided an explanation to the Senate commenting on the House amendments as follows. The following is a colloquy between Senator Margaret Carter, President Pro Tem, and Senator Brown:

President Pro Tem: Senator Brown moves that the Senate concur in the House amendments and re-pass Senate Bill 27, to your motion ma'am.

Brown: Thank you, Madam President, colleagues you might recall that Senate Bill 27 revises the fiscal impact estimate state statute to give the so-called Price-Tag Committee the ability to provide voters with the most accurate and complete estimate of the direct fiscal impact of the ballot measure on state and local governments. It is important that voters be given the best estimate of the fiscal impact of a measure so they can make an informed decision in weighing the cost versus the benefits of the measure in deciding whether to vote for it. The intent of the fiscal impact statutes is to provide voters with the same type of fiscal information that we as legislators have available to us as we deliberate bills. The House amendments allow the Price-Tag Committee to include in the fiscal estimate statement information about any significant indirect economic or fiscal effects of a measure such as the impact on employment. The information would be generated by the legislative revenue office using the same models used to prepare information for the legislature. The House amendments are important components to providing voters the best available and most complete information about the financial impact ballot measures have on our state and we should concur. Thank you, Madame President.

ORS 250.125(4) requires consultation with the Legislative Revenue Officer to determine if the measure has potentially significant indirect economic effects.

Petitioners' request that this Court order the committee to do so is not a mere academic exercise. There currently exist a number of studies from expert sources which have examined the economic effects on job, employment and the cost of goods for similar measures and proposals -- one legislative proposal in New York State, I-522, recently rejected by the voters in Washington State and Measure 37 recently rejected by the voters in California. The regulatory sections of these rejected measures were substantially similar to Measure 92. The studies can therefore, at minimum, inform the Legislative Revenue Officer of the economic impacts which Oregon might sustain as a result of the passage of 92. A brief review of some of these studies is as follows:

1. Costs of Labeling Genetically Modified Food Products in N.Y. State *May 2014*

By William Lesser, Susan E. Lynch Professor in Science and Business, Dyson School of Applied Economics and Management, Cornell University

- Study estimates direct and indirect economic impacts of proposed mandatory labeling in New York State. Estimated midpoint of annual costs to four-person household is \$800, including increased ingredient costs for non-GM or organic ingredients, “Identity Preservation” costs for recordkeeping and handling, and consumer impact of additional state regulatory costs.
- The study looks at further indirect impacts of mandatory labeling, including economic impacts to farmer and agricultural sectors: “Additional costs to the State include the potential loss of net farmer income from producing GM corn and soybeans, which while very real for State farmers is minor compared to direct consumer costs. There are additionally regulatory costs which are borne by the State.”
- Study further concludes mandatory labeling will increase costs for both GM and non-GM products, as well as reducing consumer choice: “Consumer studies along with experiences from Europe tell us that many shoppers will avoid/pay less for labeled GM foods, in which case many of those over time will be disappear, reducing choice and raising food costs due to the higher ingredient costs of non-GM inputs.”

2. Proposition 37 – California Food Labeling Initiative: Economic Implications for Farmers and the Food Industry if the Proposed Initiative were Adopted

September 2012

By Julian M. Alston and Daniel A. Summer. Professors in the Department of Agricultural and Resource Economics of the University of California, Davis

- Study outlines significant costs for California’s food and agricultural industries, as well as significant consumer costs.
- “Proposition 37 would cause food manufacturers and retailers to change the methods used to produce many of the foods Californians eat, and would make those foods more expensive. Among consumers, the burden would be greater on the poor who spend a larger share of their income on food.”
- “*Proposition 37 would impose about \$1.2 billion in additional costs on California food processors to meet segregation, monitoring and certification costs.*”
- Study also outlines significant environmental and safety costs: “The implications for the environment and farm worker safety are negative. Compared with

GE production, to achieve comparable pest control, acres that switch to non-GE production would be expected to use 50–100 percent more herbicide and 10–30 percent more pesticide with potential for a heavier environmental burden (GE insect-resistant corn provides area-wide insect suppression that benefits non-GE producers; the total national insecticide saving from the use of IR maize was almost 80 percent in 2009).”

3. Initiative 522: Costly, Flawed and Ill-Conceived

September 2013

Washington Research Council

Study estimated impacts of Washington-only mandatory labeling requirement would increase grocery costs for a four-person household to be over \$450 per year.

“We estimate that the initial start-up costs to comply with I-522’s Washington-only regulations for farmers and food manufacturers would be \$264 million. (For reference, we estimate that retail expenditures on groceries in Washington in 2012 were \$16.4 billion.) On an ongoing basis, food manufacturers would either have to create special labels for the portions of their products sold in Washington state, or remake those products with higher-priced non-GE or organic ingredients to avoid the mandate to apply special labels. Those costs would be passed on to Washington consumers through higher food prices. This would increase grocery bills for most Washington families by hundreds of dollars per year.”

4. White Paper on Washington State Initiative I-522 Labeling of Foods Containing Genetically Modified Ingredients

October 2013

Washington State Academy of Sciences

See Section 4: Policy and Trade and Section 5: Regulation and Enforcement

- “Mandatory labeling, especially at a state versus federal level, is likely to affect trade and impose higher costs on firms producing and selling products in WA. These costs are likely to be passed on to the consumer resulting in higher food prices. Importantly, these costs will be borne by firms and consumers for both GM and non-GM foods as labeling foods as non-GM will require oversight costs.”
- “Responsibility and costs for monitoring and compliance of I-522 would accrue to both the public and private firms; the estimates have a wide range, and could vary from a few hundred thousand to millions of dollars annually.”

5. The Genetically Engineered Foods Mandatory Labeling Initiative Overview of Anticipated Impacts and Estimated Costs to Consumers

July 2012

Northbridge Environmental Management Consultants

- Study estimated consumer cost impacts of proposed mandatory labeling in California:
- Mid-point of groceries cost increases for four-person household was estimated at \$350-\$400 per year per family.
- Additional cost scenarios were studied:

“Finally, we computed costs on a state-wide basis, aggregating consumer costs across all households. The total annual consumer cost to pay for the changes made to the food supply by the Initiative range from \$4.5 to \$5.2 billion. Given the conservative nature of our substitution cost assumptions, we believe it is more likely that true costs will fall toward the upper ends of the ranges provided.”

Petitioners request that this court acknowledge this is a “proper petition” and embark upon a review of the procedures and hear argument concerning the same.

Marbet v. Keisling, 314 Or. 223, 231 (1992).

CONCLUSION

Based upon the foregoing, Petitioners respectfully request that this Court declare that the committee charged with preparing an estimate of financial impact failed to comply with the procedures required in ORS 250.125(4) and order the committee to do so forthwith.

Respectfully submitted this 11 day of August, 2014.

DAVIS WRIGHT TREMAINE LLP

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ATTORNEY FOR PETITIONERS

CERTIFICATE OF FILING AND SERVICE

I hereby certify that, on August 11, 2014, I directed the **PETITION TO REVIEW ESTIMATE OF FINANCIAL IMPACT** to be electronically filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, OR 97301-2563, by using the court's electronic filing system.

I further certify that, on August 11, 2014, I served one copy of the foregoing **PETITION TO REVIEW ESTIMATE OF FINANCIAL IMPACT** by causing a copy thereof to be hand-delivered to the Attorney General and Secretary of State as follows:

Ellen F. Rosenblum, OSB No. 753239
Attorney General of the State of Oregon
Office of the Solicitor General
1162 Court Street NE
Salem, OR 97301-4096

Kate Brown, OSB No. 851634
Secretary of State of the State of Oregon
Office of the Secretary of State
136 Capitol Street Building
Salem, OR 97310-0722

and, on August 11, 2014, by causing a copy thereof to be mailed to the Committee Members as follows:

Kate Brown, Secretary of State
136 State Capitol
Salem OR 97310-0722

Ted Wheeler, State Treasurer
900 Court ST NE
Salem OR 97301

James Bucholz, Director of Revenue
955 Center Street NE
Salem, OR 97301-2555

Michael Jordan, Director of DAS
155 Cottage St. NE, U20
Salem 97301-3972

Deb Guzman, Local Representative
(CFO of Tualatin Valley Fire & Rescue)
11945 S.W. 70th
Tigard, Oregon 97223

DAVIS WRIGHT TREMAINE LLP

By /s/ John A. DiLorenzo, Jr.
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ATTORNEY FOR PETITIONERS

IN THE SUPREME COURT OF THE STATE OF OREGON

PAT MCCORMICK and SCOTT
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WHEELER, State Treasurer, MICHAEL
JORDAN, Director, Department of
Administrative Services, JAMES
BUCHOLZ, Director, Department of
Revenue, DEBRA GUZMAN, Local
Representative,

Respondents.

Supreme Court Case No. S _____

**DECLARATION OF JOHN
DILORENZO, JR. IN SUPPORT OF
PETITION TO REVIEW ESTIMATE
OF FINANCIAL IMPACT
FOR BALLOT MEASURE 92 (2014)**

I, John DiLorenzo, Jr. declare as follows:

1. I am counsel for the petitioners in the above-referenced case.
2. Exhibit 1 is the estimate of financial impact statement relating to Measure 92 found on the Secretary of State's website on August 6, 2014.
3. Exhibit 2 is an email exchange between Paul D. Warner, Legislative Revenue Officer and me, regarding the lack of consultation by the Respondents with the Legislative Revenue Office.
4. I examined the archive files of the Senate Rules Committee, the House Committee on Elections and Rules, and audio tapes of committee hearings and floor debate by members of the House of Representative and Senate in 2005 relating to Senate Bill 27. Exhibit 3 is a transcript of statements made by various legislators and witnesses relating to Senate Bill 27 and the –A4 amendments which created ORS 250.125(4).
5. Exhibit 4 is the formal written testimony submitted by State Treasurer

Randall Edwards in support of Senate Bill 27.

6. Exhibit 5 is the formal written testimony submitted by Elizabeth Harchenko, Director of the Department of Revenue relating to Senate Bill 27 –A.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Respectfully submitted this 11 day of August, 2014.

DAVIS WRIGHT TREMAINE LLP

By /s/ John A. DiLorenzo, Jr.
John A. DiLorenzo, Jr.

ATTORNEY FOR PETITIONERS

Measure 92

**Estimate of Financial Impact
Statement**

The measure requires the State Department of Agriculture and/or the Oregon Health Authority to prescribe, enact, and enforce rules necessary to ensure that food manufacturers and retailers properly label raw and packaged food that is entirely or partially produced with genetic engineering. The measure is expected to result in direct expenditures by State agencies for initial one time start-up costs estimated at between \$550,000 and \$600,000. Costs associated with ongoing enforcement have variable assumptions about the level of administrative oversight. Therefore, the financial impact is indeterminate.

There is no anticipated effect on local government.

DiLorenzo, John

From: Warner Paul D <paul.d.warner@state.or.us>
Sent: Wednesday, August 06, 2014 11:38 AM
To: DiLorenzo, John
Subject: RE: Financial Estimate Committee Consultation

John

This e-mail confirms our earlier conversation—LRO was asked by the financial impact committee during the July 28 public meeting to develop revenue estimates for Measure 91 (the marijuana initiative). LRO was not consulted on any other 2014 ballot measure.

Paul

From: DiLorenzo, John [<mailto:john.dilorenzo@dwt.com>]
Sent: Wednesday, August 06, 2014 9:19 AM
To: Warner Paul D
Subject: Financial Estimate Committee Consultation

Good morning Paul,

This is to confirm our conversation as of last week and this morning. I understand that the financial estimate committee consulted with the Legislative Revenue Office regarding the marijuana measure but did not consult with LRO regarding any other measure including M92. I would appreciate you confirming my understanding. Thanks.

John DiLorenzo, Jr.

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LEGISLATIVE HISTORY RE SB 27 (2005)

The following is an excerpt of Testimony of State Treasurer Randall Edwards in Support of SB 27 before the House Elections and Rules Committee on June 29, 2005 (contained within counter 008-061)

Treasurer Edwards: "I get a complete and accurate example or information to the voter before they voted. Before you also have some -4 amendments. These amendments will allow the Price-Tag Committee to include the fiscal statements information that any significant indirect economic or fiscal measure of the effects of a measure such as impact on employment would be also described. I want to remind you this is the same type of information that you get on legislation and I think this is another important piece for us to try to give as much information as possible to the voter and something that the legislative revenue office who we worked with in crafting this language would dovetail exactly with what you as a legislator decide on a bill and see the same information so we would like that opportunity to have that information presented to us and also potentially to the voters. That is a real thumbnail sketch of this bill. It is something again I think is really important as we go forward to try to get voters the best information as possible as much and complete information as possible as you decide and they decide on a ballot measure and the importance of that to the state and to themselves. Elizabeth, would you like to add to that."

Later in the hearing Elizabeth Harchenko, the Director of the Department of Revenue (beginning at Counter 061) also comments on the -A4 amendments:

Harchenko: "The -4 Amendments as the Treasurer indicated would require the committee to consult with legislative revenue office on indirect economic or fiscal effects if they

should be significant and there are some other language improvements.”

On July 10, 2005, Senate Bill 27 had its third reading on the floor of the House. The following colloquy occurred between Representative Richardson, Speaker Pro Tem, and Representative Farr who carried the legislation:

“Speaker: The third reading of Senate Bill. The Clerk will read the Bill.

Clerk: Senate Bill 27 related to access to the financial impact of state measures.

Speaker: The question now arises upon third reading and final passage of Senate Bill 27B. Representative Farr.

Rep. Farr: Thank you Mr. Speaker. Senate Bill 27 approved unanimously by the House Committee on Elections and Rules improves the way the state calculates the cost of measures placed on the ballot by referendum or by initiative petition. Under current law, a four-member committee commonly known as the Price-Tag Committee determines for each qualifying ballot measure the direct impact of the measure on revenues and expenditures to state and local governments. In practice, the language of the current law has proven to be unnecessarily restrictive. As a result, the Price-Tag Committee has been unable to fully convey the true cost to Oregonians of numerous ballot measures in recent years, some of which have had or would have had if they had passed, major fiscal and economic impact. The version of Senate Bill 27 passed by the Senate made several relatively modest improvements to the scope of the committee’s cost assessment mandate, including allowing for estimates if precise costs cannot be determined allowing costs to be expressed as a range of dollar amounts and under limited circumstances allowing costs to be estimated if a measure does not pass. The

Senate Bill also appropriately added a local government representative to the Price-Tag Committee. The House Elections and Rules Committee made a major improvement to Senate Bill 27 by adding a section directing the Price-Tag Committee to measure the indirect costs of ballot measures as well as direct impacts on government revenues and expenditures. An example of a direct cost would be how much it would cost a state agency to implement or administer a ballot measure approved by voters. An example of an indirect cost would be increased or decreased income tax revenue if a ballot measure would have the effect of causing either employment gains or job losses. These indirect costs would be determined by the committee in consultation with the legislative revenue office where a variety of economic impact analysis tools can be employed for this purpose. In essence, the House amendments to Senate Bill 27 will give voters the same economic and fiscal impact information necessary for them to make informed decisions on ballot measures as we as legislators are provided through the revenue and fiscal impact statements attached to the Bills we vote on. This made a great deal of sense for all of the members of the Election and Rules Committee and also had the unequivocal endorsement of the current members of the Price-Tag Committee who appeared before our committee in support of Senate Bill 27. With the initiative process playing an increasingly greater role in determining public policy in Oregon, it is important for voters to fully understand the fiscal and economic impact of the decisions they are being asked to make. That is what Senate Bill 27 does and it deserves our strong support.

Speaker: Discussion? Seeing none, Representative Farr, do you wish to close?

Farr: No thank you, Mr. Speaker.

Speaker: Those of the opinion the Bill should pass, will vote aye; those opposed no. The Clerk will open the voting system."

On July 13, 2005, the Senate concurred in the House amendments to Senate Bill 27. Senator Brown provided an explanation to the Senate commenting on the House amendments as follows. The following is a colloquy between Senator Margaret Carter, President Pro Tem, and Senator Brown:

President Pro Tem: Senator Brown, would you please make a motion?

Brown: Thank you, Madame President. I move that the Senate concur in the House amendments and re-pass Senate Bill 27.

President Pro Tem: Senator Brown moves that the Senate concur in the House amendments and re-pass Senate Bill 27, to your motion ma'am.

Brown: Thank you, Madam President, colleagues you might recall that Senate Bill 27 revises the fiscal impact estimate state statute to give the so-called Price-Tag Committee the ability to provide voters with the most accurate and complete estimate of the direct fiscal impact of the ballot measure on state and local governments. It is important that voters be given the best estimate of the fiscal impact of a measure so they can make an informed decision in weighing the cost versus the benefits of the measure in deciding whether to vote for it. The intent of the fiscal impact statutes is to provide voters with the same type of fiscal information that we as legislators have available to us as we deliberate bills. The House amendments allow the Price-Tag Committee to include in the fiscal estimate statement information about any significant indirect economic or fiscal effects of a measure such as the impact on employment. The information would be generated by the legislative revenue office using the same models used to prepare information for the legislature. The House amendments are important components to providing voters the best available and

most complete information about the financial impact
ballot measures have on our state and we should concur.
Thank you, Madame President.

RANDALL EDWARDS
STATE TREASURER



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FAX 503-373-7051

STATE OF OREGON
OFFICE OF THE STATE TREASURER
350 WINTER STREET NE, SUITE 100
SALEM, OREGON 97301-3896

MEASURE: SB 27
EXHIBIT: A
House Committee on Elections & Rules
DATE: 6-29-05 PAGES: 3
SUBMITTED BY: J

Testimony in Support of Senate Bill 27
State Treasurer Randall Edwards
House Elections and Rules Committee
June 29, 2005

Mr. Chair, members of the committee, for the record I am State Treasurer Randall Edwards, and I am please to be here today to testify in support of Senate Bill 27.

Senate Bill 27 revises the fiscal impact estimate statute to give the "Price Tag Committee" the ability to provide voters with the most accurate and complete estimate of the direct fiscal impact of a ballot measure on state and local governments. It is important that voters be given the best estimate of the fiscal impact of a measure so they can make an informed decision in weighing the costs versus the benefits of the measure in deciding whether to vote for it.

The fiscal impact estimate statute requires the so-called Price Tag Committee (comprised of the State Treasurer, the Secretary of State, the Director of the Department of Revenue, and the Director of the Department of Administrative Services) to "estimate the amount of direct expenditure, direct reduction of expenditure, direct reduction in state revenues, direct tax revenue or indebtedness and interest" that would be required to meet the requirements of a measure if it were enacted by the voters. The statute also requires the aggregate of the amounts listed above that would be required by a city, county or district if the measure was passed. These estimates are printed on the ballot along with the ballot title and measure summary.

Over the past several years, the committee has had difficulty giving voters information about the fiscal impact of a measure under two particular scenarios: (1) in the case where the legislature provides for an alternative to the measure in the event the measure fails, and (2) in the case where the measure directs the legislature to take action to implement the measure, but no direction is given as to what that action should be. This bill addresses these scenarios.

The best example of the first scenario, where the legislature provides for an alternative in the event the measure fails, is Measure 11, which granted the State the authority to issue up to \$200 million in general obligation bonds to help finance OHSU's Oregon Opportunity program. The legislature passed alternative legislation that was to take effect in the event Measure 11 failed that authorized the State to issue revenue bonds, a higher cost financing mechanism, in lieu of general obligation bonds.

Because the fiscal impact statute directs the committee to estimate only the impact of the *passage* of the measure, it was nearly impossible for the committee to tell voters that if the measure failed, \$200 million in bonds would be sold anyway, but it would be at a higher cost. This is the type of fiscal information voters should have in making an informed decision about the cost of a measure. To remedy this, in the situation where the legislature has passed alternative legislation that is take effect if the measure fails, SB 27 allows for the statement to contain not only the direct fiscal impact of a measure if it passes, but also if it fails.

The bill would also close a loophole by permitting the committee to provide its best estimate of the cost of a measure where it is clear that there will be a cost associated with the measure, but where the measure directs the legislature take some action in the future to implement the measure without giving instructions as to what those actions might be. A recent example of this scenario is Measure 27, which required labels on all genetically engineered food sold in Oregon. Without speaking to the policy of this measure, it was clear to members of the committee that there would definitely be a cost associated with the implementation of the measure if it were to pass.

The Department of Agriculture provided the committee with fiscal impact estimates that it calculated based on a set of assumptions. However, because the measure gave no direction as to how it was to be implemented other than saying that the legislature must act to implement it, the committee provided no fiscal information at all. Instead the statement merely said that the financial impact could not be determined because the legislature must act to carryout the measure. In such a situation it is preferable to provide the voters with at least an estimate based on a set of reasonable assumptions, rather than no useful information. Doing so would not only provide the voters with useful information, but it would also remove any incentive for proponents of an initiative that would have a direct fiscal impact on the State or local governments from avoiding a cost estimate by simply delegating the implementation with no guidance.

In addition to addressing these two particular circumstances, the bill also contains a statement that the estimate shall be impartial, simple, and understandable, and that the estimate may be stated in a range of dollar amounts, which is useful when dealing with estimates as opposed to hard numbers. A local government representative is added to the committee since the committee is required to estimate the fiscal impact on local governments as well as on State government; and it allows the committee to prepare and file a statement explaining the financial effect of the measure not to exceed 500 words to be printed in the voter's pamphlet. This will give the committee the opportunity to discuss fiscal information the committee believes is necessary in understanding the fiscal impact of a measure, but it is not required to be printed on the ballot.

You also have before you -A4 amendments. These amendments will allow the Price Tag Committee to include in the fiscal estimate statement information about any significant indirect economic or fiscal effects of a measure, such as the impact on employment. This is the same type of information you as legislators have available when you are deliberating bills. The information would be generated by the Legislative Revenue Office

using the same models used to prepare information for the legislature. Given that the intent of the fiscal estimate statutes is to provide voters with the same type of information that legislators have available, this amendment is an important component to providing voters the best available and most complete information about the financial impact ballot measures have on our state.

I appreciate the opportunity to be here today, and I would be happy to answer any questions.

**Senate Bill 27-A
Fiscal Impact Statements
For Ballot Measures**

Measure Highlights

Presented to House Committee on Elections and Rules
by Elizabeth Harchenko, Director
Oregon Department of Revenue
June 29, 2005

Current Law

- Fiscal Impact Committee: Secretary of State, State Treasurer, DAS Director, Revenue Director
- Estimate for each ballot measure, for state and for local government:
 - Revenue Increase or reduction
 - Expenditure Increase or reduction
 - Imposing tax or incurring debt
- Limited information:
 - Single dollar amount
 - Only if measure passes
 - Committee cannot describe assumptions behind estimates
- Same information on ballot and in voter's pamphlet

Highlights of A-Engrossed SB 27

- Estimate financial effect if measure is defeated, when Legislature has enacted a law that will apply if measure is not enacted (Section 1(2))
- Clearer choices for ballot: (Section 1(3))
 - No financial effect
 - Financial effect less than \$100,000
 - Estimate can be expressed as a dollar range
 - Estimate can be based on most likely assumptions
- Committee may prepare a statement to be included in the voter's pamphlet (Section 1(4))
 - No more than 500 words
 - Explain assumptions behind estimates
- Add a representative from local government to the fiscal impact committee (Section 1(6))
- Other changes are language improvements for readability or to conform to new features

Highlights of 27-A4 Amendments

- Committee to consult with Legislative Revenue Office for indirect economic or fiscal effect, if significant
- Additional language/structure change for readability

CERTIFICATE OF FILING AND SERVICE

I hereby certify that, on August 11, 2014, I directed the **DECLARATION OF JOHN DILORENZO, JR. IN SUPPORT OF PETITION TO REVIEW ESTIMATE OF FINANCIAL IMPACT** to be electronically filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, OR 97301-2563, by using the court's electronic filing system.

I further certify that, on August 11, 2014, I served one copy of the foregoing **DECLARATION OF JOHN DILORENZO, JR. IN SUPPORT OF PETITION TO REVIEW ESTIMATE OF FINANCIAL IMPACT** by causing a copy thereof to be hand-delivered to the Attorney General and Secretary of State as follows:

Ellen F. Rosenblum, OSB No. 753239
Attorney General of the State of Oregon
Office of the Solicitor General
1162 Court Street NE
Salem, OR 97301-4096

Kate Brown, OSB No. 851634
Secretary of State of the State of Oregon
Office of the Secretary of State
136 Capitol Street Building
Salem, OR 97310-0722

and, on August 11, 2014, by causing a copy thereof to be mailed to the Committee Members as follows:

Kate Brown, Secretary of State
136 State Capitol
Salem OR 97310-0722

Ted Wheeler, State Treasurer
900 Court ST NE
Salem OR 97301

James Bucholz, Director of Revenue
955 Center Street NE
Salem, OR 97301-2555

Michael Jordan, Director of DAS
155 Cottage St. NE, U20
Salem 97301-3972

Deb Guzman, Local Representative
(CFO of Tualatin Valley Fire & Rescue)
11945 S.W. 70th
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