

9-24-1976

City Club of Portland Bulletin vol. 57, no. 17 (1976-9-24)

City Club of Portland (Portland, Or.)

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Recommended Citation

City Club of Portland (Portland, Or.), "City Club of Portland Bulletin vol. 57, no. 17 (1976-9-24)" (1976). *City Club of Portland*. 307.

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City Club of Portland

BULLETIN

Portland, Oregon

Vol. 57, No. 17

Benson Hotel, Mayfair Room

12:00 Noon

Friday, September 24, 1976

THE SPEAKER:

LLOYD E. ANDERSON

Executive Director, Port of Portland

THE TOPIC:

THE PORT IN PERSPECTIVE

The taxpayers of Multnomah, Clackamas and Washington Counties have a huge investment in the Port of Portland. This multi-million dollar business encompasses three airports, two industrial parks, five marine terminals and some 8,000 acres of land. There are over 20,000 jobs connected to port operations. The business of the Port is managed by the Executive Director, Lloyd Anderson, a commission of nine unpaid members and a staff of 600.

Anderson was appointed to his post in 1974. Prior to that he was Commissioner of Public Works for the City of Portland from 1969 to 1974. Earlier public experience includes the Multnomah County Planning Commission and the Oregon State Department of Economic Development.

Also to be presented for discussion and action

REPORT

ON

STATE MEASURE NO. 1

**VALIDATES INADVERTENTLY SUPERSEDED
STATUTORY AMENDMENTS**

*The Committee: Leonard Bennett, Mary Ann Leighton, A. M. Whitaker, Chairman.
For the Majority.*

Irving Enna, John T. Perta. For the Minority.

— Printed herewith —

PROPOSED FOR MEMBERSHIP

If no objections are received by the Executive Secretary prior to October 8, 1976, the following applicants will be accepted for membership:

Maxine Selling, Social Worker, Metropolitan Family Service. Proposed by James E. Bryson and Mrs. William O. Hall.

Darlene Taylor/O'Hara, Management Assistant & Counselor, MEDCO. Proposed by Harvey L. Rice.

Cynthia L. Hoyt, Account Executive, KPAM Radio. Proposed by Arne Westerman.

Henry Brands, President, Coast Cutlery Co. Proposed by Robert W. McMénamin.

Francesca Ariniello, Volunteer. Proposed by Dr. Paul Trautman.

How long has it been since you sponsored someone for membership in the City Club?

REPORT APPROVED

By a unanimous vote, members attending the meeting of September 17 adopted the report of the committee on State Measure No. 4. The committee recommended a "NO" vote on this measure which would repeal the emergency succession provision of the State Constitution.

The presentation was made by Ann Dahlen in the absence of committee chairman Gerald H. Robinson. Other committee members were Barbara McFarland and Patrick J. Simpson.

VOLUNTEERS WANTED

The Standing Committee on Environment and Energy has resumed activity, under the chairmanship of Dr. John Allen.

The next meeting is scheduled for Wednesday, October 6, at noon at the City Club office. Since the committee is in the process of being reconstituted, volunteers are welcome. If you are interested, please call the City Club office, 228-7231.

RADIO BROADCASTS

If you are unable to attend this week's meeting, you can still hear the program at one of these times: Friday, 2:00, KOAP-FM (91.5 Meg); Sunday, 3:30, KLIQ (1290 KC); Tuesday, 7:00, KBPS (1450 KC).

ADDRESS CHANGES WANTED

Members are urged to keep the City Club staff posted on any changes in home or business phone or address, as well as occupation. Phone 228-7231.

COMING UP:

David R. Brower, founder and President of Friends of the Earth, will be the speaker on October 1. Also to be presented on that date will be the report on State Measure No. 3.

The meeting of October 8 is being held exclusively for ballot measure reports.

On October 15, Norma Paulus and Blaine Whipple will share the platform in their contest for Secretary of State.

CITY CLUB OF PORTLAND BULLETIN

Published each Friday by the

CITY CLUB OF PORTLAND

730 Southwest First Portland, Oregon 97204

Phone 228-7231

MARILYN L. DAY, *Editor
and Executive Secretary*

Second class Postage Paid at Portland, Ore.
Subscription rates \$6.00 per year included in
annual dues.

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**REPORT
ON
STATE MEASURE NO. 1
VALIDATES INADVERTENTLY SUPERSEDED
STATUTORY AMENDMENTS**

Purpose: This proposed constitutional amendment provides that if two or more legislative acts at the same session amend the same statute, both amendments shall be given effect unless they conflict in purpose. In case of a conflict, the last signed by the Governor controls. Under present constitutional requirements, passage of a second amendment of the same statute which inadvertently fails to incorporate the earlier amendment nullifies the first amendment.

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION & BACKGROUND

State Measure No. 1 would amend Article IV of the Constitution of the State of Oregon:

Section 22. No act shall ever be revised, or amended by mere reference to its title, but the act revised, or section amended shall be set forth, and published at full length.

HOWEVER, IF, AT ANY SESSION OF THE LEGISLATIVE ASSEMBLY, THERE ARE ENACTED TWO OR MORE ACTS AMENDING THE SAME SECTION, EACH OF THE ACTS SHALL BE GIVEN EFFECT TO THE EXTENT THAT THE AMENDMENTS DO NOT CONFLICT IN PURPOSE. IF THE AMENDMENTS CONFLICT IN PURPOSE, THE ACT LAST SIGNED BY THE GOVERNOR SHALL CONTROL. (New language in upper case)

State Measure No. 1 was referred to the people of Oregon by the legislature through Senate Joint Resolution 28.

The present constitutional provision has been interpreted by the Oregon Supreme Court in *State v. Lightner*, 77 OR 587 (1920) and the Attorney General, (see, for example, 26 Ops. Att’y Gen. 161 and Ops. Att’y Gen. 78) to mean that the latest bill passed by the legislature and signed by the Governor is controlling and unless the latest bill repeats every amendment made to the same sections of ORS by earlier bills, the amendments in those earlier bills are lost.

The following background on this proposed amendment is excerpted and revised from testimony of the Office of Legislative Counsel before the House Judiciary Committee, 1975 Session.

During the 1973 session, the legislature enacted 841 bills and 59 resolutions and memorials. In November 1973, the President of the Senate, Senator Jason Boe, asked for an attorney general’s opinion on the question of whether the legislature could enact a “revisor’s” bill to resolve conflicts problems in the legislative process. The Attorney General responded in the affirmative (26 Ops. Att’y Gen. 682).

The Legislative Counsel’s Office was instructed to draft bills resolving the conflicts which remained after the 1973 session. These bills were enacted as Chapter 36 and Chapter 37 during the 1974 special session. Special Session Laws 1974, Chapter 37 contained a total of 30 sections reflecting 26 conflicts which were not resolved during the

1973 session. Chapter 37 pertained to the resolution of conflicts in ORS Chapter 449 and dealt with conflicts in three sections of that chapter.

The legislature presently deals with conflicts with the assistance of the Conflicts Clerk, an employee of the Legislative Counsel Committee who compiles an extensive list of potential conflicts by recording, on a daily basis, all of the ORS sections amended or repealed by the bill numbers. As the bills progress through the process, amendments are also reviewed by the Conflicts Clerk.

Whenever two or more bills amend the same section of ORS, a notice is sent to the appropriate desk, and the appropriate committees which have the bills. No amendment to resolve the conflict need be made until one of the bills is passed by the legislature. From that point on, all bills amending the same section(s) of ORS in the bill earlier enacted must reflect the earlier amendment(s) or the amendment(s) in the earlier bill(s) are lost. The present system of dealing with conflicts thus involves a notice system maintained by the Conflicts Clerk and the combined efforts of the members of the legislature, particularly committee chairmen, the desk staff, committee staff, and the Legislative Counsel's office.

II. EFFECT OF THE PROPOSED AMENDMENT

ORS 174.050 is of particular import since the language in this provision is the basis for the proposed constitutional amendment.

174.050. *Effect of conflicting amendments.* If at any session of the Legislative Assembly there are enacted two or more Acts amending the same section of the statutes, each of the Acts shall be given effect to the extent that the amendments do not conflict in purpose. Otherwise, the Act last filed in the office of the Secretary of State shall control.

This statute was enacted by the Legislative Assembly in 1951 and was apparently an attempt to enable all enactment of the legislature to be given effect, in spite of technical conflicts, and the earlier *Lightner* decision. A subsequent attorney general's opinion, however, states, "The intended effect of ORS 174.050 is clearly in conflict with Article IV, section 22 . . . and the constitutional provision must thus prevail." (35 Ops. Att'y Gen. 785). The approval of the proposed constitutional amendment would reinstate the effect of ORS 174.050 and give the Legislative Counsel Committee and staff the responsibility for editing new publications of ORS by including all amendments which do not conflict in purpose.

While the number of conflicts remaining unresolved after the 1973 session was unusually high, the problem has existed in varying degrees since the *Lightner* decision in 1920. The conflict problem will doubtless continue to exist, since the Session Laws have increased substantially in size over the years. As an illustration, the 1973 Session Laws were 600 pages longer than the 1971 Session Laws.

A common method of deciding the fate of conflicting amendments to the same section is for the legislature, usually through the Speaker or the President's office, to request the Governor to sign one measure before another, thus preserving the "preferred" amendment. The Governor thus has substantial opportunity to control the law by determining the order in which bills are signed into law.

III. ARGUMENTS IN FAVOR OF THE MEASURE

State Measure No. 1 would:

1. Protect the intent of the legislature by preventing one act passed from nullifying a previously passed measure involving the same section of the law but on unrelated provisions;

2. Remove constraints on the legislature in that bills amending a section could all become effective although not included in the last effective bill amending the section, to the extent that the other amendments do not conflict in purpose;

3. Effect a substantial reduction in printing expenditure and therefore a saving to the taxpayer;

4. Provide that when conflicts do arise, only the items in conflict are involved and not unrelated items;

5. Allow the intent of the legislature to be considered by the courts when an unresolved conflict in purpose arises.

IV. ARGUMENTS AGAINST THE MEASURE

1. State Measure No. 1 would sacrifice certainty and create an exposure to litigation each time a conflict in purpose occurs;

2. The proposal would encourage less care in formulating legislation;

3. The proposed amendment is unnecessary. Use of computers simplifies the problem of tracking amendments and cross-referencing them in order to comply with present law;

4. More precise and consistent assignment to committees by the legislature's presiding officers would lessen the problem without requiring a constitutional amendment.

V. MAJORITY DISCUSSION AND CONCLUSION

After adjournment of the 1973 session it was discovered that 26 amendments had been unintentionally superseded. The 1975 legislature set out to correct this problem and State Measure No. 1 is its solution. The 1973 session, however, apparently was an unusual one in this respect. Generally, about 800 bills are enacted into law in one session, with fewer than ten unintentionally superseding amendments passed earlier in the session.

The majority of your Committee feels that the present system has the very important advantage of precision. When the session ends, it is simple to determine which bills have become law and which have not. There is no room for argument. It is asserted that the proposed revision would make it less likely for the will of the legislature to be inadvertently rescinded unless and to the extent there were a "conflict of purpose" between amendments to a section. The extent to which it would be accomplished is not clear and it appears that the "conflict in purpose" language in the proposal most likely will result in extensive litigation in most cases where such a "conflict" may arise or be asserted.

The two types of conflict possible can be illustrated as follows:**

Example 1

First amendment— A B C

Second amendment— . . . D E F

Example 2

A B C

. . . C2 D E F

1. The illustration on the left is of two amendments to a section of the law involving entirely separate portions of the section. Under the present system, even though there is no conflict between the amendments, the second, or "D E F" would be effective and the "A B C" would be lost if it had not been incorporated in the second amendment. Under the proposed system, both amendments would become law.

**For example:

A. limits the length of fire engines to fifty feet,

B. says they must be powered by engines of at least 400 horsepower,

C. requires that they be painted red,

C2. requires that they be painted yellow,

D. requires that they must have at least sixteen lengths of hose,

E. says they must carry a ladder which can be extended to 30 feet in length, and

F. says the driver must have completed 120 hours of training.

2. In Example 2, C and C2 are in conflict, and under the proposal a decision would be made by the Legislative Counsel, subject to challenge in the courts. Under the present system, C2, D, E and F would become law while A, B and C would be lost. If the measure were adopted, witnesses interviewed by your Committee did not agree on what would happen to A and B. The legislators interviewed felt that A and B would become law but the representative of the office of Legislative Counsel felt that they would also be lost, since that office would not presume to determine the extent to which A and B were dependent upon C and thus involved in a "conflict in purpose." Accordingly, the majority of your Committee feels that litigation is a distinct possibility in any case when Legislative Counsel would have to apply judgment as to a "conflict in purpose."

The majority feels, further, that under either system the legislature should be diligent in attempting to keep track of the effect proposed bills amending the same section of law may have on bills already under consideration or passed. It seems appropriate to quote a legislator who supported the measure, but at the hearing of the Senate Judiciary Committee remarked, "If this resolution did pass, it would go out to a vote of the people and it would be difficult to explain to them. If they do understand, it will confirm what they already suspect; that is, that the Legislature does not know what it is doing."

The majority of your Committee believes that the cost of the additional litigation anticipated if the measure is passed will significantly exceed the saving in printing (which amount the Committee was unable to estimate) and other costs made possible if superseded but non-conflicting amendments no longer had to be reviewed by a later legislature.

Your Committee attempted to explore the experience in other states but the results were inconclusive.

Your Committee was unable to determine with precision the extent of the problems which gave rise to the measure, but the majority concludes that it would be unwise to exchange the certainty of present law for the uncertainty involved in interpretation of conflicts, with attendant exposure to litigation, and the possibility of less responsible legislation. On this basis the majority believes that the problems inherent in the proposal outweigh possible advantages from its passage.

VI. MAJORITY RECOMMENDATIONS

The majority of your Committee recommends a "NO" vote on State Measure No. 1 at the November 2, 1976 general election.

Respectfully submitted,
Leonard Bennett
Mary Ann Leighton
A. M. Whitaker, *Chairman*
For the Majority

VII. MINORITY REPORT

State Measure No. 1 is a minor constitutional amendment written to streamline the legislative process and save tax dollars.

Presently the legislature endeavors to combine bills that deal with the same section of existing law. This task requires a great deal of staff time, and it is impossible to discover every conflict.

Several times in the past, important legislation has been nullified by failure to find all acts that amend the same section of existing law. In 1973, an important provision allowing tax credits for pollution control facilities on farms, factories and businesses was accidentally nullified by this procedure.

The consequence of such conflicts creates a necessity for the next session of the legislature to repass the amendments that were nullified. Ballot Measure No. 1 would permit the cure of the problem at the same legislative session at which it arises.

Passage of State Measure No. 1 would allow more flexibility in the amendment process and retain the intent of the legislative bodies.

This amendment makes good business sense. It was recommended by the legislature, drafted by the Legislative Counsel and we support it.

VIII. MINORITY RECOMMENDATION

The minority of your Committee recommends a "YES" vote on State Measure No. 1 at the November 2, 1976 general election.

Respectfully submitted,

Irving Enna

John T. Perta

For the Minority'

Approved by the Research Board September 9, 1976 for transmittal to the Board of Governors. Received by the Board of Governors September 13, 1976 and ordered published and distributed to the membership for consideration and action on September 24, 1976.

APPENDIX

PERSONS INTERVIEWED AND SOURCES CONSULTED BY THE COMMITTEE

Kathleen Beaufait, Chief Deputy Legislative Counsel

Victor Atiyeh, State Senator

Hardy Myers, State Representative

Minutes of the Senate and House Judiciary Committees pertaining to Senate Joint Resolution 28, 1975 session.

The committee attempted to determine the manner in which other states resolved their legislative conflicts by contacting the Attorneys General of New Mexico, Washington, Idaho, Colorado and Arizona. We received responses from Colorado, Idaho and Washington.

