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## Ballot Measure 5: Vote on Taxes

City Club of Portland (Portland, Or.)

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# CITY CLUB OF PORTLAND REPORT

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## Ballot Measure 5: Vote on Taxes

Your Committee Found:

Even if government deserves some criticism for being non-responsive and inefficient, Measure 5 is not the solution. First, the uncertainty of the measure's effects would create too high a risk to the state's economy. Second, the measure would result in an unwarranted fundamental shift away from a representative form of government. Frequent elections on all tax and fee increases are not likely to make governments more responsive or efficient. The primary role of elections in creating a more responsive government should be the selection of responsive representatives. Your committee recommends a "No" vote on Measure 5.



The City Club membership will vote on this report on Friday, October 21, 1994. Until the membership vote, the City Club of Portland does not have an official position on this report. The outcome of this vote will be reported in the City Club Bulletin dated October 28, 1994 (Vol. 76, No. 22).

# I. INTRODUCTION

Ballot Measure 5 will appear on the ballot as follows:

- Caption:** Amends Constitution: Bars New or Increased Taxes Without Voter Approval.
- Question:** Shall Oregon Constitution bar new or increased state and local taxes, certain fees and certain charges without prior voter approval?
- Summary:** Amends Oregon Constitution. Bars new or increased state, local taxes without prior voter approval. Tax increase includes extending an expiring tax, reducing or eliminating exemptions, credits, deductions, exclusions. "Tax" includes all fees, charges, except fines, forfeitures, tuition, utility and port district user fees, "local improvements," "incurred charges," earnings from investments or asset sales, two other exceptions. Permits two tax elections annually. Automatic annual six percent tax base increases still allowed without vote. Legislature may override by three-fourths vote in emergency. Enforceable by private lawsuit.

(The language of the caption, question, and summary was prepared by the Attorney General of Oregon.)

# II. DESCRIPTION OF MEASURE

Measure 5, if adopted in the November 1994 election, will require Oregon's state and local governments to submit any new tax or fee or any increases in an existing tax or fee to the voters for approval. If passed the measure will take effect on December 8, 1994.

While a limited list of revenues (such as university tuition) are excluded from the definition of taxes, increases in most governmental fees and taxes will require voter approval. Local governments retain the authority to increase tax bases within the six percent limit contained in Article XI, Section 11 of the Oregon Constitution, and in case of an emergency, a tax measure can be passed by the legislature with a three-fourths majority of both houses if signed by the governor. The legislation has to specify the emergency, and the authorized tax remains in effect for only twelve months. The measure provides that all fees and charges are taxes unless specifically excluded by the measure. It does allow increases in taxes without approval by the voters if they are caused by changes in federal tax law, increases in income, increases in real market property values or other changes in the circumstances of individual taxpayers. Increases in taxes or fees can be submitted to voters only twice a year. The measure does not limit the number of increases which can be presented to the voters in a single election, and they may be presented individually or in bundles. The fiscal impact of Measure 5 in the Voter's Pamphlet is an estimate of the cost of the additional elections required by Measure 5.

### III. BACKGROUND

Currently the Oregon Constitution regulates the imposition of taxes in three articles. Article I, Section 32, provides: "No tax or duty shall be imposed without the consent of the people or their representatives in the Legislative Assembly; and all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax." Article IX, covers a variety of specific revenue measures. Article XI, Section 11, provides for local government tax bases and the six percent growth of tax bases allowed without a vote. Sections 11b through 11f contain property tax limitations adopted as 1990 Ballot Measure 5.

In 1990, the states of Colorado and Oklahoma adopted constitutional amendments similar to Measure 5 in that they require a vote for increased or new taxes. Neither amendment is as broad as Measure 5 because neither addresses changes in governmental fees.

A county ordinance, similar to Measure 5, was passed in Josephine County in Oregon in November 1986. This was followed by another ballot measure passed in 1993 which restricts the County's ability to expend funds for capital improvements without a vote. Josephine County voted on 8 fee proposals in 1990, 10 in 1991, 2 in 1992, and 1 in 1994. 13 of 21 proposals have been approved by the voters.

In order to avoid possible confusion, the earlier measure is always referred to in this report as 1990 Ballot Measure 5. The measure before the voters in 1994 is referred to as Measure 5.

Measure 5 was placed on the ballot through initiative petition. The organizers and supporters of the petition include some of the organizers and supporters of the property tax limitation measure passed as 1990 ballot Measure 5.

Recent City Club studies of tax measures include:

*Review of Property Taxation in Oregon*, April 1980

*Report on Oregon's Tax System*, March 1984

*Report on Model Sales Tax*, February 1985

*Report on State Constitutional Limit on Property Taxes for Schools, Government Operations*, November 1990

*Report on Ballot Measure 7: Split Roll Property Tax*, October 1992

## IV. ARGUMENTS IN FAVOR

- Current taxes are too high. The measure will reduce the growth in government and act as a check on spending and future tax and fee increases.
- The measure is needed to prevent fee increases which are being used to circumvent 1990 Measure 5.
- The measure is needed as a check on elected officials because they cannot be trusted to protect the interests of the taxpayers.
- Taxpayers should have a right to decide directly whether fees and taxes should be increased.
- The measure will give people more direct control over their government.
- The measure will lessen the influence of lobbyists and special interests.
- The measure will result in a smaller government because public officials will strive to be more efficient when people refuse to approve tax and fee increases.
- The measure will encourage governments to allow competition by private parties in providing services paid for with user fees. Competition will result in lower prices and more efficient services.
- Voters will become more responsive citizens by voting on all tax and fee issues.

## V. ARGUMENTS AGAINST

- The measure's effects are unpredictable, and there is no way to determine that it will reduce taxes and fees or make government smaller and more efficient.
- Critical parts of the measure are ambiguous and vague, and therefore it will almost certainly require expensive and lengthy litigation to determine the measure's meaning and effect.
- The measure is likely to require voters to decide whether to approve many fee increase requests. As a practical matter it will be difficult for any voter to gather enough background information to make an informed choice on the large number of issues that will be presented.
- The measure will make it more difficult and more expensive for local and state governments to issue bonds. Some types of bonds may not be practical.
- The measure encourages the misconception that government officials are not to be trusted to serve the public good.

- The measure may violate the United States Constitution's guarantee of a republican form of government.
- The measure would result in inequitable fee increases imposed on groups who do not constitute majority voting blocks.
- The measure will cost Oregonians jobs because the loss of governmental programs and services and deteriorating infrastructure will hurt Oregon's ability to compete in regional and global economies.
- Voters may become apathetic.
- The measure would increase the amount of money spent on election campaigns for and against tax matters.
- The measure may reduce the level of essential services such as police and fire and increase competition with other services for limited general fund dollars.

## VI. DISCUSSION

While the proponents of Measure 5 argue that it will result in lower taxes and a smaller, more efficient government, the committee doubts that the measure will achieve those goals. The effects of the measure are simply too uncertain. Oregon voters have a history of approving tax increases on specific measures and then regretting the cumulative impact of those approvals. 1990 Measure 5 may have been such a reaction. Oregon's Measure 5 has attracted the attention of national anti-tax groups. Supporters of Measure 5 believe that if it is approved it could indicate that liberal voters may be willing to limit the size of government services in the future. However, given the history of voters' approval of taxes, voters may continue to approve particular tax increases and fee increases for some programs and services even if Measure 5 passes.

The operation of voter approvals of fee increases can have unpredictable results. Josephine County enacted a similar measure in 1986. When the Josephine County landfill fees were not increased, their relative cheapness attracted more dumping than anticipated. The result was that the life of the landfill was drastically reduced, requiring a new dump site at additional cost.

The committee's interviews with state and local government officials have persuaded the committee that state and local governments have responded to the 1990 Measure 5 by making serious efforts to improve the efficiency of government services. Staffs have been reduced and services have been privatized or let out to bid. Both proponents and opponents of Measure 5 agree there is a public perception that governments reacted to 1990 Measure 5 by increasing use fees in place of property taxes. Opponents argue that the perception is inaccurate and point out that though some user fees have been increased, often that was done to shift tax burdens from the general public to particular groups who benefit by the services (such as sewer fee increases). The committee was unable to verify the extent to which a shift from taxes to fees has

taken place. The committee believes that by depriving the governments of the flexibility to restructure revenue sources without an election, Measure 5 would hamper ongoing constructive efforts to make government more efficient and properly allocate costs between service users and the general public. A likely result would be a shift back toward increased property taxes instead of fees. Measure 5 could also make it more difficult to achieve comprehensive reform of Oregon's tax structure.

The committee interviewed individuals knowledgeable about state and local financing and concluded that there is a real risk that the ability of state and local governments to raise money through bonds would be negatively impacted by the passage of Measure 5. It seems likely that bond financing will become more expensive for local governments and revenue bonds are likely to be impractical. Bond investors are less likely to be willing to invest money when the local governments are restricted in their ability to raise revenue to pay the bonds. Supporters of the measure have consistently denied that this will be a problem. However, the weight of the evidence examined by the committee suggests that it will.

Opponents of Measure 5 have suggested that it violates Article IV, Section 4 of the U.S. Constitution which provides that "The United States shall guarantee to every state in this union a republican form of government." The opponents contend that depriving state and local legislative bodies of the power to raise taxes is such a departure from our customary representative form of government that Oregon would no longer have a republican form of government. While the committee has some doubts about this argument (the Oklahoma Supreme Court considered this contention with respect to a similar amendment to the Oklahoma State Constitution and rejected it), regardless of Measure 5's constitutionality, the committee believes that Oregon should not lightly discard a long established form of government in which elected representatives have the power to impose fees and taxes. Though the supporters of Measure 5 assert that elected representatives cannot be trusted, the committee believes that a wholesale lack of faith in the representative form of government is unwarranted. The country has thrived for over 200 years under a government of elected representatives who had the power to impose taxes. If the voters are dissatisfied with the taxes and fees being currently imposed by their elected representatives, the committee believes the appropriate voter response is to elect new representatives rather than deprive elected officials of the power to manage government revenues.

Opponents of the measure point out critical ambiguities in the measure that make its effects uncertain. For example, "user fees paid voluntarily for specific services that are not monopolized by government" are exempt from the restrictions of the act. Determining what is or what is not a monopolized government service will undoubtedly occupy the courts and legions of lawyers for years. Such ambiguities will result in a considerable expenditure of time and public money for legal fees, but more importantly they would also create uncertainties about what can and cannot be done by government.

The committee believes those uncertainties will hamper government's ability to respond to changing situations and needs in the community.

If Measure 5 passes, the voters will be faced with making an unprecedented number of judgments on very complex revenue issues. Voters will have to vote on everything from fees for the use of the camping facilities at state parks through systems development charges imposed on developers of subdivisions. In many circumstances, determining a fair amount for such fees involves difficult policy choices and complex technical issues. If the voters are to make intelligent choices regarding fees for government services, they will have to literally spend days analyzing the issues. It will be almost impossible for the voter to obtain enough information to determine whether or not a particular fee increase would be fair and appropriate. Virtually no one has the time or inclination to make such an effort and as a result voters will be forced into voting simply based on whether or not they want to support a particular program and whether or not a particular fee will impact them individually. Consequently, it will be much more difficult for governments to tailor their fee systems to fairly allocate costs of government between the public and those who must pay fees for services.

Though the effects of the measure are uncertain, if it does prevent governments from raising fees and taxes, the impact on the state is likely to be very negative. State and local governments' revenue needs are continually increasing as population grows and the accompanying development occurs. There is a common misconception that as new development occurs, property tax revenues automatically rise because of increased property values and population increases. In fact, local governments have a tax base, which is a dollar amount that does not change when inflation or new development increases the value of real estate. When new development enhances the value of property within a jurisdiction, the tax rates are adjusted so that the tax burden for other taxpayers is reduced, but the local government does not receive additional money. As new development occurs the local governments must provide more services to the newly developed area, but are given no additional funds to do so. The metropolitan area's population is expected to grow significantly in the next 20 years. Traditionally, local governments have met a substantial part of the need for increased revenue by increasing user fees for government services and through bond measures. If deprived of the ability to increase fees to reflect increased costs and population, governments will be forced to reduce essential services to the public despite the growth of demand for such services.

State and local government revenue requirements are also growing as the federal government continues to mandate local programs without providing funds to pay for them. For example, the Clean Water Act and the Americans with Disabilities Act will cost state and local governments many millions of dollars. Those funds must come from state and local budgets. If taxes and fees cannot be raised then the money will come from cutting basic governmental services such as police or fire, or by delaying needed construction or maintenance of infrastructure such as roads and sewer lines.



## VII. CONCLUSION

Even if government deserves some criticism for being non-responsive and inefficient, Measure 5 is not the solution. First, the uncertainty of the measure's effects would create too high a risk to the state's economy. Second, the measure would result in an unwarranted fundamental shift away from a representative form of government. Frequent elections on all tax and fee increases are not likely to make governments more responsive or efficient. The primary role of elections in creating or maintaining a responsive government should be the selection of responsive representatives.

## VIII. RECOMMENDATION

Your Committee recommends a NO vote on the measure.

Respectfully submitted,

Paul Fellner  
Douglas MacCourt  
John Stark  
Dee Wolfe  
Michael Lilly, Chair

Research Advisors  
Peter Behr  
Renee Rothauge

### **Acknowledgements**

The committee wishes to acknowledge the assistance of its chief research advisor Peter Behr and City Club interim research director Nancy Kurkinen and thanks them for their help and suggestions.

## IX. APPENDIX

### Persons Interviewed

Steve Buckstein, Cascade Policy Institute  
Gary Carlson, Associated Oregon Industries  
Rebecca Marshall Chao, Regional Financial Advisors, Inc.  
Charlie Hales, Portland City Council  
Bonnie Hayes, Chair, Washington County Commission  
Gretchen Kafoury, Portland City Council  
Mike Kohlhoff, Wilsonville City Attorney  
Pat McCormick, Conkling & McCormick  
Lon Peters, Cascade Policy Institute  
Jim Scherzinger, State of Oregon Legislative Revenue Office  
James Shannon, Attorney/State of Oregon Municipal Debt Advisory Committee  
Bill Sizemore, Oregon Taxpayers United

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