5-17-1970

Report on Pollution Control Bonds (State Measure No. 4); Report on Metropolitan Service District (Placed on thr Ballot by Multnomah County Commissioners as Measure No.7)

City Club of Portland (Portland, Or.)
REPORT ON POLLUTION CONTROL BONDS  
(State Measure No. 4)

Purpose: Authorizes bonds up to one percent of true cash value of taxable property in state to provide funds to municipal corporations, cities, counties and agencies of state, or combinations thereof, to construct facilities for control of pollution on land, in air and water of state, such facilities to be at least 70 percent self-supporting and self-liquidating from revenues, gifts, federal grants, user charges, assessments and fees. Supersedes conflicting charter requirements.

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

I. INTRODUCTION

Your Committee was appointed to make recommendation upon the proposed constitutional amendment to appear on the May Primary Ballot as State Measure No. 4 "Pollution Control Bonds." Measure No. 4 must be viewed with Chapters 503 and 656, Laws of 1969 (House Bill 1174 and House Bill 2060), enabling and supplemental statutes to the above-cited proposed constitutional amendment. If passed, it will permit the State to sell general obligation bonds for the purpose of financing the "planning, acquisition, construction, alteration or improvement of facilities for the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of the State." The Measure is aimed at liquid, gaseous and solid wastes and is intended to assist all public agencies or municipal corporations or combinations thereof. The State bonds would presumably bear a lower interest rate than those of local governments. The Measure is to provide for the immediate construction of approved projects without the necessity of waiting for future legislation and to preserve for Oregon the right to federal aid, present or future.

The only facilities which can be built under this amendment are those which "conservatively appear" to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, federal grants, user charges, assessments and other fees. Local governments may provide that their share of the cost shall be paid only by users of the facilities. State funds will not pay for operation and maintenance of these facilities.

A complete copy of Measure No. 4 and pertinent House Bills are attached hereto, marked Exhibit "A." References and persons interviewed are shown in Exhibit "B."

II. HISTORY AND BACKGROUND

A. National

In the past year a shifting of national domestic priorities placed pollution control and environmental protection near the top of the list. Pollution control is, of course, not strictly a product of the 1970s. In 1899 the U.S. Congress passed the Refuse Act, which made unlawful the throwing of any refuse into navigable waters without a permit. This was followed by the Public Health Service Act of 1912, authorizing research into the relationship between water pollution and disease, and the Oil Pollution Act of 1924. The Federal Air Pollution Control Program began with Public Law 84-159, passed in 1955, which authorized a research program in the Public Health Service and the rendering of technical assistance to city and state agencies concerned with air pollution abatement. Federal involvement in the field of solid waste disposal dates from the passage of the Solid Waste Act of 1965 which authorizes federal research, training programs and grant support for demonstration projects and planning of state and local programs.

The above legislation, and all federal anti-pollution efforts up to 1956, had been directed to research or punitive sanctions. The 1956 Federal Water Pollution
Control Act, a major departure from this policy, recognized for the first time the federal government's responsibility to assist local governments financially in their efforts to clean up interstate waters. The current federal water pollution control program is based on the Clean Water Restoration Act of 1966, which authorized a massive construction aid program of $3.4 billion over a four-year period. To date no similar programs have developed for air pollution or for solid wastes.

The present national financial needs for water pollution control have been estimated by the Federal Water Pollution Control Administration (FWPCA) as follows:

a. $10 billion for municipal sewage treatment works
b. $48 billion for separation of municipal storm water and sewage
c. $4 billion for industrial facilities
d. $23 billion for sewage collection systems

The FWPCA estimates that the cost of solving immediate water pollution problems is about $85 billion. No estimates have been made on the cost of solving present air pollution and solid waste problems. Other factors, such as an expanding population and economy and the future need for recycling and reusing water and waste products, are not included in these cost estimates.

B. Oregon

Many consider Oregon one of the leaders in the nation in pollution control activities. The Environmental Quality Commission (formerly the Oregon State Sanitary Authority) has since 1938 exercised a broad mandate from the Legislature in setting standards and controlling pollution within the state. Until recent years the Environmental Quality Commission (EQC) has had to rely upon persuasion or threat of punitive action in its antipollution efforts. The concept that each polluter must pay to clean up his own problem had been widely accepted. As federal construction aid grants became available to Oregon communities, the Legislature began to authorize expenditures from the general fund to supplement or match the federal grants. For fiscal year 1970, federal grants under the 1966 Clean Water Restoration Act amounted to $800 million nationally. Of this sum, Oregon received approximately $8 million, and the State Legislature authorized for the 1969-1971 biennium an additional $1.5 million. The staff of the Department of Environmental Quality has estimated that immediate water pollution control needs in the State of Oregon are approximately $175 million. This figure would cover the construction cost of sewage treatment plants, interceptor sewers and collector sewers. No estimates have been made concerning the need in the State of Oregon for air pollution control, thermal pollution control or solid waste disposal.

C. Measure No. 4

If all public agencies delayed their pollution control projects until funding by a federal grant was received, the solution to Oregon pollution problems would be many years away. Even with the federal grants of $8 million or more per year to Oregon, the demand for funds far out-strips the supply. In respect for this fact, the last session of the Legislature passed HJR 14 referring this proposed constitutional amendment for pollution control bonds to the voters as Ballot Measure No. 4. If passed, it will permit the State to sell general obligation bonds for the purpose of financing the "planning, acquisition, construction, alteration or improvement of facilities for the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of the State." The amendment is not only aimed at new waste treatment construction, but allows for retroactive funding of previously constructed projects. This feature was included in fairness to those local governments which have proceeded with their own funds; it would permit the State to refinance outstanding local bonds or make a grant when appropriate.

Chapter 503 (Laws of 1969) is the "implementing act" providing the mechanics for carrying into effect Measure No. 4 once it is passed. Chapter 656 (Laws of 1969) provides that for the 1969-1971 biennium none of the local governments' contribution to the project can be provided by the FWPCA. This section was written to spread the rather limited state and federal funds over a large number of projects rather than allowing the two sources to match each other on a limited number of projects.
The amount of the bonds to be issued by the State would be limited to one percent of the true cash value of all taxable property. This limitation would currently be about $180,000,000 in bonds, but for this biennium is limited to $50,000,000.\(^{(1)}\)

Although the constitutional amendment covers all types of waste treatment or avoidance, the Legislature for the present biennium has limited the bonding benefits to sewage treatment works because it felt that water pollution is Oregon's most pressing problem, that liquid waste treatment technology is most advanced, and that many water pollution control projects are already on the drawing boards. It is anticipated that future legislatures will provide authority for bonding treatment facilities for other forms of waste.

From a practical standpoint the effect of this measure will be to provide local governments with several alternative methods of financing water pollution control projects. Using as an example a city which is building a $1 million sewage treatment plant, some of these alternatives are as follows:

a. The city receives a federal grant of $300,000 and obtains the other $700,000 from local funds, a local bond issue, or by borrowing from the state (Measure No. 4). The $700,000 loan from the state must be repaid over the years from local revenues, gifts, fees, etc.

b. The city borrows $1 million from the state (Measure No. 4) and repays $700,000 plus interest over the years from local revenues, gifts, fees, etc.

c. In the unlikely possibility that federal grant funds are increased to the point that 50 percent federal grants are available to all Oregon projects rather than the present 30 percent (Chapter 656, Section 3), the following alternative would be available in lieu of item "a" above: the city receives a federal grant of $500,000 and borrows $500,000 from the state (Measure No. 4). The city must repay $250,000 of the state loan plus interest over the years from local revenues, gifts, fees, etc. Thus Chapter 656 changes the funding formula from 30 percent federal or state and 70 percent local to 50 percent federal, 25 percent state and 25 percent local.

In your Committee's review of this ballot measure it discovered several items which it felt should be discussed in consideration of the measure. All of these considerations would appear to be within the powers of the EQC to control and should not influence approval or disapproval of the constitutional amendment.

a. Under the present program of construction grants the EQC establishes a priority for all submitted projects, and funds these projects in priority order until the limited funds are expended. If Measure No. 4 is approved, the funds available will be considerably increased and many lower priority projects may be funded. Without proper control the full authorization of the bond issue could be expended for lower priority projects, leaving future high priority projects without funds.

b. If funding were limited only to new projects, those cities which have dragged their feet in solving their problems would be favored over those that had proceeded on their own. At the same time, the EQC must insure that retroactive funding of previously constructed projects does not deplete the limited state bond authorization at the expense of present and future pollution control needs.

c. For fiscal year 1970-1971 the debt service (bond principal and interest) and administrative costs of Measure No. 4 are anticipated to be between $500,000 and $1 million and this sum must be derived from the State General Fund. In the future the total allocation from the State General Fund for debt service may be as high as $4,500,000 per year if the full bonding capacity is sold. The Legislature and EQC must be prepared to allocate resources of this magnitude to the program. Money is not presently allocated for either of these requirements.

d. Measure No. 4 requires a local government to demonstrate that its project is 70 percent self-supporting (i.e. operation and maintenance expenses) from revenues, gifts, federal grants, assessments, fees, etc., to qualify for this program. Since state funds cannot be furnished for operation and mainte-

\(^{(1)}\) Chap. 503, Sec. 2, Laws of 1969.
nance purposes, the EQC must ensure that local governments have the means to provide 100 percent of these costs.

c. Fund allocation to particular projects under Measure No. 4 is based on percentage of project cost and not a set dollar amount. The EQC must establish responsibility for project cost overrun that will not deplete limited state funds.

III. ARGUMENTS AGAINST THE MEASURE

1. There is a lack of definition of the term "all taxable property in the state" upon which the one percent bonding limitation is based. If this is interpreted to mean real property, the present bonding limitation would be approximately $180 million. If it is interpreted to mean personal as well as real property, the bonding limitation is indeterminable at the present.

2. In the opinion of some experts in the field of municipal bonding, a marked increase in the amount of outstanding State of Oregon General Obligation Bonds may have an unfavorable impact on the future borrowing capacity of the State. In this regard an attitude of fiscal responsibility and prudence should prevail, as there is apparently no predetermined bonding limit within which the State must operate. The impact on the State's credit of an additional approximately $180 million bond authorization must be viewed in comparison with present and future total bond authorizations.

   a. The current total of State of Oregon general obligation bonds outstanding is approximately $680 million.
   b. Ballot measures before Oregon voters at the May and November 1970 elections contain additional authorizations for State general obligation bonds totaling approximately $550 million, including the $180 million of Measure No. 4. The authorization and sale of all of these bonds would place the State's total bond indebtedness at approximately 7 percent of taxable real property in the State.
   c. A flood of State general obligation bonds on the market would have the effect of reducing the funds available to other State and local bond issues in Oregon. Psychological factors in the bond market tend to limit the flow of funds to a particular state or region during any given period.

3. Measure No. 4 will allow government officials to obtain funds for pollution control projects without referring the question to local voters, thus removing control of these projects from local citizens to local and state officials.

4. The concept of providing federal or state grants to local governments for pollution control projects is in conflict with the principle of requiring the "polluter" to be totally responsible for the solution of his problems.

5. Measure No. 4, as a constitutional amendment, supersedes all conflicting constitutional provisions and any conflicting provisions of a County or City Charter or Act of Incorporation. In the case of local charters, this aspect arbitrarily strikes conflicting provisions without respect for their validity or local importance.

IV. ARGUMENTS IN FAVOR OF THE MEASURE

1. Measure No. 4 provides a means for immediate construction of necessary facilities, with the cost spread over a number of years.

2. Measure No. 4 is broad in scope and includes air, water and land waste control. It encourages any state agency or local governmental unit to initiate pollution control facilities. The only prerequisite is the requirement that the facilities be at least 70 percent self-supporting and self-liquidating.

3. Local governments are given the option of issuing bonds themselves or applying to the federal or state government for construction funds. A small community can thus use the credit of the State for an approved project and keep its interest rates at a minimum.

4. The maximum amount of bonds to be issued at any time is one percent of the taxable property in the State of Oregon. Therefore, as the value of property increases in Oregon, the amount available for pollution control will likewise
increase to take care of increased need. The one percent limit is the amount outstanding at any time, and as older bonds are retired new bonds may be issued.

5. The EQC, a single agency, will have control over requests for state and federal funds and will apply uniform standards and rules to the projects and their priorities.

6. Measure No. 4 is only an enabling amendment. The actual control over the program will remain in the Legislature which can modify it to meet changing federal laws, or other variables.

7. Although the measure provides for control by the Legislature through appropriation of funds and pledging of state credit, nonetheless, the responsibility for initiating and operating these projects remains with the local government. No state funds are made available for the operation nor will there be a state “super-body” owning and operating sewage or other waste control facilities.

8. An increased availability of funds will enable local governments better to plan for the long-range improvement of waste treatment facilities.

V. DISCUSSION

The arguments against the measure in general are based on the financial impact which the program will have on the State and the apparent removal of control from local citizens. Your Committee feels that these arguments have enough substance that they should be discussed further. The term “taxable property” is not expressly limited to real property alone. Personal property used in business is already assessed and this amount could be easily determined; however, the Legislature retains positive control over the amount of bonds sold, irrespective of the authorization. The effect of a particular bond issue on the total credit of the State is difficult to determine. The arguments advanced against further bonding are valid and will require constant vigilance by the State’s fiscal officers to protect Oregon’s presently high credit rating.

In certain instances, Measure No. 4 does allow local officials to construct waste treatment facilities without reference to the voters. This is an enabling act and, if the local government wishes, it may submit the issue to the voters.

The federal government has established a precedent in making federal grants for waste treatment projects. At the present time, most local government agencies are hesitant to proceed on any waste treatment projects without a clear determination of the availability of a federal or state grant.

The arguments in favor of the measure are self-explanatory. While several of the arguments against the measure are valid, your Committee was unanimously persuaded by the positive arguments.

VI. CONCLUSION

Passage of State Measure No. 4 and the issuance of the authorized bonds will be a major step forward and will place Oregon in the forefront of pollution control.

VII. RECOMMENDATION

Your Committee unanimously recommends that the City Club favor a “Yes” vote on State Measure No. 4 in the election on May 26, 1970.

Respectfully submitted,
David A. Boys
William P. Hutchison, Jr.
Frank G. Lamb
Vernon L. Rifer, and
Walter H. Evans, Jr., Chairman

Approved by the Research Board April 30, 1970 for transmittal to the Board of Governors.

Received by the Board of Governors May 4, 1970 and ordered printed and circulated to the membership for consideration and action.
House Joint Resolution 14

Referred to Electorate of Oregon by 1969 Legislature to be voted on at the Primary Election, May 26, 1970.

MEASURE NO. 4

Balot Title: POLLUTION CONTROL BONDS

Purpose: Authorizes bonds up to one percent of true cash value of taxable property in state to provide funds to municipal corporations, cities, counties and agencies of state, or combinations thereof, to construct facilities for control of pollution on land, in air and water of state, such facilities to be at least 70 percent self-supporting and self-liquidating from revenues, gifts, federal grants, user charges, assessments and fees. Supersedes conflicting charter requirements.

Be It Resolved by the Legislative Assembly of the State of Oregon:

Paragraph 1. The Constitution of the State of Oregon is amended by creating a new article to be known as Article XI-H and to read:

ARTICLE XI-H

Section 1. In the manner provided by law and notwithstanding the limitations contained in sections 7 and 8, Article XI of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed, at any one time, one percent of the true cash value of all taxable property in the state:

(1) To provide funds to be advanced, by contract, grant, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, for the purpose of planning, acquisition, construction, alteration or improvement of facilities for the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of this state; and

(2) To provide funds for the acquisition, by purchase, loan or otherwise, of bonds, notes or other obligations of any municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, issued or made for the purposes of subsection (1) of this section.

Section 2. The facilities for which funds are advanced and for which bonds, notes or other obligations are issued or made and acquired pursuant to this Article shall be only such facilities as conservatively appear to the agency designated by law to make the determination to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

Section 3. Notwithstanding the limitations contained in section 10, Article XI of this Constitution, municipal corporations, cities, counties and agencies of the State of Oregon, or combinations thereof, may receive funds referred to in section 1 of this Article, by contract, grant, loan or otherwise and may also receive such funds through disposition to the state, by sale, loan or otherwise, of bonds, notes or other obligations issued or made for the purposes set forth in section 1 of this Article.

Section 4. Ad valorem taxes shall be levied annually upon all taxable property within the State of Oregon in sufficient amount to provide, together with the revenues, gifts, grants from the Federal Government, user charges, assessments and other fees referred to in section 2 of this Article for the payment of indebtedness incurred by the state and the interest thereon. The Legislative Assembly may provide other revenues to supplement or replace such tax levies.

Section 5. Bonds issued pursuant to section 1 of this Article shall be the direct obligations of the state and shall be in such form, run for such periods of time, and bear such rates of interest, as shall be provided by law. Such bonds may be refunded with bonds of like obligation.

Paragraph 2. The following shall be the ballot title for the amendment proposed by paragraph 1 of this resolution pursuant to ORS 254.060: "POLLUTION CONTROL BONDS: Authorizes bonds up to one percent of true cash value of taxable property in state to provide funds to municipal corporations, cities, counties and agencies of state, or combinations thereof, to construct facilities for control of pollution on land, in air and water of state, such facilities to be at least 70 percent self-supporting and self-liquidating from revenues, gifts, federal grants, user charges, assessments and fees. Supersedes conflicting charter requirements."

Paragraph 3. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held throughout the state on the same day as the next regular state-wide primary election.
AN ACT

Relating to pollution control funds; and appropriating money.

Be It Enacted by the People of the State of Oregon:

Section 1. As used in this Act, "Sanitary Authority" means the Sanitary Authority of the State of Oregon created under ORS 449.016.

Section 2. In order to provide funds for the purposes specified in the amendment to the Oregon Constitution proposed by House Joint Resolution 14 (1969 Regular Session), the Sanitary Authority, with the approval of the State Treasurer, is authorized to issue and sell such general obligation bonds of the State of Oregon, of the kind and character and within the limits prescribed by the proposed constitutional amendment as, in the judgment of the Sanitary Authority, shall be necessary. The bonds shall be authorized by resolution duly adopted by a majority of the members of the Sanitary Authority at a regular or special meeting of the Sanitary Authority. The principal amount of the bonds outstanding at any one time, issued under authority of this section, shall not exceed $50 million par value.

Section 3. (1) At the request of the Sanitary Authority, the Attorney General shall prepare a form of direct, general obligation, interest-bearing coupon bonds of the State of Oregon to be sold in order to provide funds for carrying out the purposes of the constitutional amendment proposed by House Joint Resolution 14 (1969 Regular Session) and this Act. The bonds shall be numbered and shall be payable at such times and in such amounts as shall be fixed by the Sanitary Authority. However, none of the bonds shall mature sooner than six months nor later than 30 years from issued date. The bonds shall bear interest, payable semiannually, at such rates as the Sanitary Authority, with the approval of the State Treasurer, deems advisable.

(2) In the discretion of the Sanitary Authority, the bonds may be issued as provided by ORS 286.040. The bonds may be refunded either prior to or at their maturity dates. In the event of redemption or refunding prior to maturity date, the Sanitary Authority is not required to redeem or refund bonds in the order in which they were originally issued. Refunding bonds may be sold in the same manner as other bonds are sold under this Act. The issuance of refunding bonds, their maturity dates and other details, the rights of their holders and the duties of the Governor, Secretary of State, State Treasurer and of the Sanitary Authority with respect thereto, shall be governed by the other provisions of this Act in so far as applicable. Refunding bonds may be issued to refund bonds originally issued or to refund bonds previously issued for refunding purposes.

Section 4. (1) All bonds issued under this Act, including refunding bonds and the coupons appurtenant thereto, shall be direct, general obligations of the State of Oregon, in negotiable form, and shall embody an absolute promise to pay the amounts thereof in any coin or currency which, at the time of payment, is legal tender for the payment of public and private debts within the United States of America. The bonds shall be executed with a facsimile signature of the Governor and the Secretary of State and the manual signature of the State Treasurer. The bonds shall bear coupons evidencing interest to become due for each installment thereof upon which shall be printed the facsimile signatures of all said officers.

(2) Not less than 20 days before the payment of the principal or interest falls due on any of the bonds, the Sanitary Authority shall prepare and submit to the State Treasurer, for verification, a claim duty approved by the Sanitary Authority for the amount necessary to meet the payment thereof. Upon such verification, the Sanitary Authority shall present the claim in like manner as other claims against the state are presented. The claim shall be paid out of moneys provided by law for its payment.

(3) All bonds and interest coupons that are paid by the State Treasurer shall be deposited by him in due course with the Secretary of State. After two years from the date upon which the paid bonds and interest coupons are so deposited, they may be destroyed. The Secretary of State shall prepare a list of the bonds and coupons destroyed and shall file this list with the State Treasurer with certificate thereon, duly signed by him and stating that the bonds and coupons described therein were destroyed by him on the date of said certificate.

(4) The principal of and the interest upon all bonds issued under authority of this Act, when due, shall be paid at the office of the State Treasurer; but, with the approval of the State Treasurer, the Sanitary Authority may designate a fiscal agency of the State of Oregon in the City and State of New York or such other fiscal agency of the State of Oregon as may be designated by law, as the place of payment of the bonds and of the interest thereon.

(5) Interest and costs incurred in issuance of the bonds, including engineering, legal and accounting and other financial advisory services shall be paid upon approval by the State
Treasurer from the funds derived from the sale of the bonds and the capitalization of interest in the incurrence of such costs is hereby authorized.

Section 5. With the approval of the State Treasurer, the Sanitary Authority shall provide such method as it deems necessary for the advertisement of each issue of the bonds mentioned in this Act before they are sold. As approved by the State Treasurer, the Sanitary Authority shall require such deposit, with bids, as it deems advisable and generally shall conduct the sale and issuance of the bonds under such rules and regulations as the Sanitary Authority may adopt.

Section 6. The money realized from the sale of each issue of bonds shall be credited to a special fund in the State Treasury, separate and distinct from the General Fund, to be designated the Pollution Control Fund; which fund is hereby appropriated for the purpose of carrying out the provisions of this Act. It shall not be used for any other purpose, except that this money, with the approval of the State Treasurer, may be invested as provided by ORS 293.701 to 293.776, and the earnings from such investments inure to the Pollution Control Sinking Fund.

Section 7. (1) The Sanitary Authority shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The Sanitary Authority is hereby authorized to use the Pollution Control Fund for one or more of the following:

(a) To advance funds, by contract, grant, loan or otherwise, for eligible projects as defined in ORS 449.455;

(b) To acquire, by purchase, loan or otherwise, bonds, notes or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (c) of subsection (1) of this section.

(2) The facilities referred to in subsection (1) of this section shall be only such as conservatively appear to the Sanitary Authority to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(3) The Sanitary Authority may sell or pledge any bonds, notes or other obligations acquired by the Sanitary Authority under paragraph (b) of subsection (1) of this section.

Section 8. (1) The Sanitary Authority shall maintain, with the State Treasurer, a Pollution Control Sinking Fund, separate and distinct from the General Fund. The Pollution Control Sinking Fund shall provide for the payment of the principal and interest upon bonds issued under authority of the amendment to the Oregon Constitution proposed by House Joint Resolution 14 (1969 Regular Session) and this Act. Moneys of the sinking fund are hereby appropriated for such purpose. With the approval of the Sanitary Authority, the moneys in the Pollution Control Sinking Fund may be invested as provided by ORS 293.701 to 293.776, and earnings from such investment shall be credited to the Pollution Control Sinking Fund.

(2) The Pollution Control Sinking Fund shall consist of all moneys received from ad valorem taxes levied pursuant to this Act, all moneys that the Legislative Assembly may provide in lieu of such taxes, all earnings on the Pollution Control Fund, Pollution Control Sinking Fund, and all other revenues derived from contracts, bonds, notes or other obligations, acquired, by the Sanitary Authority by purchase, loan or otherwise, as provided by the amendment to the Oregon Constitution proposed by House Joint Resolution 14 (1969 Regular Session) and by this Act.

(3) The Pollution Control Sinking Fund shall not be used for any purpose other than that for which the fund was created. Should a balance remain therein after the purposes for which the fund was created have been fulfilled or after a reserve sufficient to meet all existing obligations and liabilities of the fund has been set aside, the surplus remaining may be transferred to the Pollution Control Fund at the direction of the Sanitary Authority.

Section 9. Each year the State Tax Commission shall determine the amount of revenues and other funds that are available and the amount of taxes, if any, that should be levied in addition thereto to meet the requirements of this Act for the ensuing fiscal year. Such additional amount of tax is hereby levied and shall be apportioned, certified to, and collected by the several counties of the state in the manner required by law for the apportionment, certification and collection of other ad valorem property taxes for state purposes. This tax shall be collected by the several county treasurers and remitted in full to the State Treasurer in the manner and the times prescribed by law, and shall be credited by the State Treasurer to the Pollution Control Sinking Fund.

Section 10. The Sanitary Authority may accept assistance, grants, and gifts, in the form of money, land, services or any other thing of value from the United States or any of its agencies, or from other persons subject to the terms and conditions thereof, regardless of any laws of this state in conflict with regulations of the Federal Government or restrictions and conditions of such other persons with respect thereto, for any of the purposes contemplated by the amendment to the Oregon Constitution proposed by House Joint Resolution 14 (1969 Regular Session) and by this Act. Unless enjoined by the terms and conditions of any such gift or grant, the Sanitary Authority may convert the same or any of them into money through sale or other disposal thereof.

Section 11. This Act shall not be operative unless the Constitution of the State of Oregon is amended by vote of the people at a special election held throughout the state on the same date as the next regular state-wide primary election.
AN ACT

Relating to the financial administration of the Environmental Quality Commission; creating new provisions; amending ORS 449.475; appropriating money; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

Section 1. There is appropriated to the Environmental Quality Commission for the biennium beginning July 1, 1969, out of the General Fund, the sum of $3,112,349 for the following purposes:

1. Administrative and related expenses $1,612,349
   Sewage Treatment Works Construction Account $1,500,000

Section 2. Notwithstanding the provisions of any law appropriating fees, moneys or other revenues collected or received by the Environmental Quality Commission, the sum of $273,250 is established as the maximum limit for the payment of expenses for the biennium beginning July 1, 1969, from funds received from the Federal Government for air and water pollution control purposes.

Section 3. In making grants from the appropriation to the Sewage Treatment Works Construction Account contained in subsection (2) of section 1 of this 1969 Act or in advancing funds from the Pollution Control Fund established by chapter ..., Oregon Laws 1969 (Enrolled House Bill 1174) during the biennium beginning July 1, 1969, the Sanitary Authority shall:

1. Make grants or advance funds only for eligible projects as defined in ORS 449.455 having a total project cost not exceeding $50 million; and
2. Require as a condition of such grant or advancement of funds that the contribution to the project by the recipient shall be 70 percent of the project cost less any gifts or grants received from or payable through sources other than the Federal Water Pollution Control Administration or its successor unless federal grants or loan repayment agreements through the Federal Water Pollution Control Administration or its successor equal to 50 percent of the cost of all projects shall be available in which case the contribution required from the recipient of such grant or fund advancement shall be reduced to 25 percent of the project cost less any gifts or grants received from or payable through sources other than the Federal Water Pollution Control Administration or its successor.

Section 4. ORS 449.475 is amended to read:

449.475. [(1) The Sanitary Authority may make payments of 25 percent of the estimated reasonable cost of the project where water quality standards have been established for the waters into which the project discharges and where such action will result in a federal grant of not less than 50 percent of the estimated reasonable cost of the project.]

[(2) (1) The Sanitary Authority may, in the name of the State of Oregon, enter into contracts with municipalities, and any such municipality may enter into a contract with the Sanitary Authority, concerning eligible projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

(a) An estimate of the reasonable cost of the project as determined by the Sanitary Authority.
(b) An agreement by the municipality:
   (A) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to ORS 449.016 to 449.150, 449.205 to 449.250, 449.305 to 449.340, 449.390 to 449.400, 449.410 to 449.440, 449.455 to 449.485, 449.505 to 449.565, 449.580, 449.760 to 449.830 and 449.850 to 449.920.
   (B) To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the Sanitary Authority;
   (C) To operate and maintain the sewage treatment works in accordance with applicable provisions of ORS chapter 449, and rules and regulations of the Sanitary Authority;
   (D) To secure approval of the Sanitary Authority before applying for federal assistance for pollution abatement, in order to maximize the amounts of such assistance received or to be received for all projects in Oregon; and
   (E) To provide for the payment of the municipality's share of the cost of the project.

[(3)] (2) The Sanitary Authority may adopt rules and regulations necessary for the making and enforcing of contracts hereunder and establishing procedures to be followed in applying for state grants herein authorized as shall be necessary for the effective administration of ORS 449.455 to 449.485.
The fact that your Committee was unable to locate any organized opposition to this measure would indicate a high degree of acceptance of the fact that the required new construction will involve substantial expense.

City officials assert that passage of Measure No. 51 would open the way for the necessary financing to meet the July 1972 deadline for the secondary treatment plant at the Columbia Boulevard facility. Although it does not itself provide the capital for the Columbia Boulevard facility expansion, it does provide funds for paying off borrowed capital. City officials feel that passage of the measure would also make available funds for the following purposes:

(1) Accelerated pollution research
(2) Updating sewer repair
(3) Action to relieve overloaded systems
(4) Expansion of the capacity of the Tryon Creek plant in 1972.

It should be pointed out that the City's proposed program, as financed by passage of this measure would be greatly facilitated by passage of State Measure No. 4 which, by the sale of pollution control bonds by the State, provides funds for construction of sewerage facilities available to municipalities on the basis of 70 percent loan and 30 percent grant. City officials say that they would prefer to pursue financing provided by State Measure No. 4 to avoid the complications, uncertainty and delay of a city bond issue and to take advantage of a probable lower interest rate. If the State measure fails, other means of financing, probably a city bond issue, would have to be sought. It should also be noted that money obtained from the State under State Measure No. 4 may not be repaid through funds raised by property taxes, but must be repaid through sewer user charges or other means.

Several persons interviewed brought up the point that City Measure No. 51 would give the City Council a "free hand" in establishing sewer user charges without any limitation by law. Your Committee does not feel this presents a significant possibility for abuse. The City Council already has such power in regard to setting water rates and has not abused this power. Nor does it appear likely the City Council would arbitrarily establish sewer user charges which would be at such a high rate as to provoke large-scale public resistance. Citizens are also protected through their right as voters to replace incumbents and, in the last resort, through the right of recall.

Sewer user charges based upon some measured use appear to your Committee to be a feasible manner for obtaining funds needed for maintenance and expansion of the City's sewer system. Water charges are currently based upon use.

The fact remains that if the City is to meet its moral and legal obligations properly to treat sewage entering its system, large sums of money above those currently available will be required.

The proposed minimum sewer user rate, estimated by City officials at approximately $3.50 a month, is in line with other charges being made by other major cities on the West Coast and, considering the job to be done, compares well with sewer user rates being charged by other sanitary districts in Oregon. While this would more than double the current minimum sewer user rate, your Committee feels it is not unrealistic. A consulting firm is currently making studies to develop an equitable formula for determining user charges.

As a result of interviews and its research, your Committee feels that passage of City Measure No. 51 should not be considered a final panacea for meeting the City's financial needs in regard to expansion and modernization of its sewer system. In the opinion of your Committee, it is entirely possible that, at a future date, it could be necessary for the City to seek additional financing through other means to provide for major capital expenditures.
VII. CONCLUSIONS

1. Portland's present sewage treatment is inadequate. It results in pumping some 70 million gallons of partially treated sewage into the Columbia River every day. Construction of secondary facilities at the Columbia Boulevard plant is essential and can be postponed no longer. Although this will not eliminate the overflow problem, it would upgrade treatment facilities to meet legal requirements during normal periods.

2. The City of Portland is in need of funds exceeding those currently available for financing expansion and maintenance of the City's sewer system.

3. The method of financing proposed by the Council is reasonable and provides sufficient leeway to take advantage of the most economic funding available.

4. Allowing the City Council to establish sewer user rates independently of water charges is a feasible way in which to obtain additional funds to assist the City in providing the degree of sewage treatment necessary to protect public health and the environment.

5. Necessary planning for expansion of Portland's sewerage facilities seem to be going ahead in an effective and reasonable manner.

6. The alternatives are much less desirable. The law requires that if the City does not provide for new treatment facilities, the State can impose a bond issue on the City, and payment of that bond issue would be by direct property tax. Such a tax would not be related to use and would result in imposition of a tax upon property not served by the sewerage system. Additional provision would have to be made to pay cost of increased operating expenses.

VIII. RECOMMENDATION

Your Committee unanimously recommends that the City Club of Portland support the passage of City Measure No. 51 and urges a "Yes" vote thereon.

Respectfully submitted,
Dr. John Eliot Allen
Kent E. Clark
Owen P. Cramer
Dr. Howard Dean, and
Frank E. Day, Chairman

Approved by the Research Board May 7, 1970 for transmittal to the Board of Governors.

Received by the Board of Governors May 11, 1970 and ordered printed and distributed to the membership for consideration and action.
REPORT
ON
METROPOLITAN SERVICE DISTRICT
(Placed on the ballot by Multnomah County Commissioners as Measure No. 7)

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

I. ASSIGNMENT

This Committee was established to study and report on the Metropolitan Service District Act of 1969 (ORS Chapter 268) and to recommend a position upon the measure placed upon the ballot of the Portland metropolitan area pursuant to that Act.

II. SCOPE OF RESEARCH AND INVESTIGATION

This Committee studied the following material and interviewed the following persons:

A. Material Reviewed:
   2. Multnomah County Commissioners Order Fixing the Date of Election on the Establishment of a Metropolitan Service District.
   3. Map of proposed Metropolitan Service District.
   7. Letter of Orval Etter, dated March 23, 1970 to Mr. Shoemaker in response to specific legal questions posed by the Committee.
   8. Memorandum of Richard A. Braman, Senior Deputy City Attorney, dated September 11, 1969, to Multnomah County Commissioners.
   10. CRAG Sewerage Plan.

B. Persons Interviewed:
   2. Richard Braman, Senior Deputy City Attorney for City of Portland.
   4. Dr. Ronald Cease, Chairman, Portland Metropolitan Area Local Government Boundary Commission.
   5. Mrs. Ronald Cease, Chairman, Tri-County Metro Committee, League of Women Voters.
   6. Homer Chandler, Director, Columbia Region Association of Governments.
   7. The late Hon. Stanley Earl, Portland City Commissioner.
   9. Orval Etter, Legal Counsel, Portland Metropolitan Study Commission.
   10. Gary Graham, Staff, Portland Metropolitan Study Commission.
   11. Mrs. W. O. Hagenstein, Chairman, Metropolitan District Committee, Portland Metropolitan Study Commission.
13. John McIntyre, Director of Public Works, Clackamas County.
15. Kenneth Ming, Director of Public Works, Washington County.
16. Hon. James R. Moore, Chairman, Committee for Urban Progress; Mayor of Beaverton.
17. John Mosser, former Chairman State Sanitary Authority.
18. Robert Nordlander, Director of Public Works, Multnomah County.

III. BACKGROUND AND HISTORY

The Act and the proposed measure are a direct result of the work of the Metropolitan Study Commission (MSC), working in conjunction with the Columbia Region Association of Governments (CRAG). MSC was formed in 1963 for the purpose of studying the needs of the Portland metropolitan area and recommending metropolitan solutions of both a governmental and operational nature to these needs. The Act represents somewhat of a retreat from MSC's first choice of dealing with the problems common to the metropolitan area. This first choice has been termed a "metropolitan city," which if enacted would have provided a metropolitan government with responsibility for matters of a regional nature and neighborhood governments with responsibility for local problems not common to the metropolitan area as a whole. This proposal did not succeed in gaining approval of the Senate in the 1967 Legislature and for various reasons, it was abandoned by MSC and CRAG as not being politically feasible. Since the most pressing problems that require metropolitan solutions are of a public works nature it was determined by the Study Commission to postpone attempts to establish a true metropolitan government (other than consolidation of Portland and Multnomah County), and instead seek a means whereby governmental units within the metropolitan area would work together to deal with "metropolitan aspects" of some of the more pressing physical needs of the area. The Metropolitan Service District Act (Senate Bill 494) was the result of these efforts and was adopted by the 1969 Legislature after a considerable amount of amendment from its form as proposed by MSC and CRAG.

Upon adoption of the Act by the Legislature, the Multnomah County Commission placed upon the ballot Measure No. 7 to establish a Metropolitan Service District in the Portland metropolitan area conforming to the requirements of the Act.

The measure would establish a Metropolitan Service District along the boundaries illustrated in this report and would require the major governmental units within the District to establish a governing body of the Service District as provided in the Act. No funding is provided by the present ballot measure; this must come later.

IV. DESCRIPTION OF THE ACT

1. The Service District will have power to provide the metropolitan aspects of sewerage, solid and liquid waste disposal, control of surface water, and public transportation.
2. The boundaries of the proposed District (see map) were developed by Multnomah County in consultation with representatives of Washington and Clackamas Counties, with particular concern toward serving the sewerage needs of the
metropolitan area within the three counties. In Washington County the boundaries approximately coincide with the boundaries of the recently-adopted Unified Sewerage Agency. In Clackamas and East Multnomah Counties the boundaries represent a judgment as to the present practical limits of the "metropolitan" area and an attempt to encompass enough of the Johnson Creek drainage basin to deal adequately with the perennial flood condition of Johnson Creek.

3. The District may assume Metropolitan aspects of other services by way of initiative, by referral to the voters of recommendations of the governing body of the District, and by state legislation.

4. By agreement with affected local governments the District may assume "local" aspects of those public services for which the District has metropolitan responsibilities.

5. The District has authority on its own initiative, and without the concurrence of the Metropolitan Transit Authority, to transfer to itself the Tri-Met transit system. If this action is taken the boundaries of the District shall for purposes of mass transit be extended to encompass all the territory of the transit district (all of Multnomah, Washington and Clackamas counties), and the Service District shall have all the powers and duties of Tri-Met which are consistent with the Service District Act.

6. The governing body of the District will consist of seven members as follows:
   (a) A representative from the Portland City Council.
   (b) One representative from each of the County Commissions of Multnomah, Washington and Clackamas Counties.
   (c) A representative of all Washington County cities within the District.
   (d) A representative of all Clackamas County cities within the District.
   (e) A representative of all Multnomah County cities within the District, other than Portland.

7. The number, qualifications, and manner of selecting the governing body may be changed by the voters of the District either by initiative or by approving a proposition referred to them by the governing body of the District.

8. Under the Act, the District may finance its operations and the construction of improvements in the following ways:
   (a) By levying ad valorem taxes not to exceed one-half percent per year of true cash value of property within the District. In addition, special ad valorem taxes may be levied to retire District bonds. Taxes need not be levied equally throughout the District but may be levied differently on property within the District on the basis of services received from the District.
   (b) By assessing property in accordance with benefits received by that property from the District.
   (c) By charging service and user fees.
   (d) By accepting financial grants from public and private sources.
   (e) By issuing general obligation and revenue bonds, to be repaid from taxes, assessments and fees.
   (f) By borrowing from counties and cities with territory within the District, to be repaid from taxes, assessments and fees.

9. The District has fairly broad powers to contract with others to conduct District operations and to assume by contract the functions performed by other agencies within the District.

10. The District has police power to adopt ordinances, rules and regulations.

11. The District has powers of annexation and condemnation.

12. Grandfather clauses are provided in the Act to protect the rights of existing employees of an operating public transportation system taken over by the District, and to protect employees of a public corporation, city or county whose functions are assumed by the District.
V. ARGUMENTS FOR THE MEASURE

Arguments advanced to your Committee in support of the measure have included:

1. Problems of sewerage, solid and liquid waste disposal, control of surface water, and transit are metropolitan in scope and should be resolved by the metropolitan area as a whole. This provides economies in scale and better assures that the needs of the whole metropolitan area will be met.

2. If the District proves capable in the above areas, it can assume and efficiently manage additional functions such as water, streets, street lighting, parks, zoning, police and fire protection.

3. The District will be more responsive to state and federal standards and controls concerning the environment than is a proliferation of local governments and service districts.

4. The District can force all communities to bring such facilities as sewage plants up to acceptable standards.

5. The District is empowered to finance facilities by those who are benefitted and would presumably do so.

6. The District will permit metropolitan-wide planning for those areas for which it has responsibility.

7. The District provides a means to put metropolitan transit under a governing body more representative of the people in the District than is Tri-Met.

8. The makeup of the governing board will be substantially the same as CRAG, which has a proven record of accomplishment.

9. By mutual agreement, small special service districts may be replaced in due course by the Metropolitan District.

10. Under the existing political circumstances the District is the best practical step towards a metropolitan government for the area.

VI. ARGUMENTS AGAINST THE MEASURE

Arguments advanced to your Committee in opposition to the measure have included:

1. The makeup of the governing body is unfair. This is particularly so to the citizens of Portland, who are not represented in proportion to their numbers within the District.

2. It is unwise for a governmental body such as the District to have as its members those whose primary responsibilities are to another governmental agency. Not only does this create the possibility for logrolling but the governing body is insulated from voter control.

3. The Service District replaces no existing governmental units but adds another layer of government to those in existence.

4. If the Service District will have responsibility for certain functions, while cities, counties and other special service districts will have responsibilities for other functions, it will be more difficult than at present to assign priorities among competing needs. As a result, the citizens’ tax dollar may be spent not where it is most needed but where the greatest power to spend it reaches.

5. The Service District’s taxing authority is limited to the ad valorem tax, a form of taxation that is already overused in Oregon and one which many feel operates unfairly.

6. Since ad valorem taxes are not required to be levied in accordance with benefits received, the cost of facilities and services may be unfairly distributed throughout the District. This power, held by a governing body which is not proportionate to population, could result in the use of tax dollars from residents of Portland to subsidize suburban improvements.

7. The responsibilities entrusted to the District are to meet crises which are on the way to resolution and would probably be resolved without the District. There is little in the area of sewage that needs to be done that will not be done without the District, solid waste problems could be resolved and flood control of Johnson Creek provided by agreement among the affected areas within the District.
8. For the District to have no zoning powers severely limits its power to plan. For example, the District cannot properly plan long-range sewage needs if it does not have the power to control the use of land served by the sewage interceptors and treatment plants so developed.

9. The division of metropolitan and local functions of single services creates problems of overlapping governments and conflicting controls.

10. The Act does not provide a metropolitan government which is really needed. Only within a true metropolitan government will there be overall responsibility in the region for such things as planning, zoning, public works, police and fire protection, recreation, water, etc.

11. The District, by appearing to lead toward a metropolitan solution but having certain built-in defects as noted above, may actually retard the development of a metropolitan government in the region.

VII. DISCUSSION

The Metropolitan Service District Act is an experimental measure laboriously worked out under trying political circumstances. The Act apparently reflects a detente reached between the proponents of the Service District Act and proponents of the Transit District Act (H.B. 1808) to the effect that each would allow the other's bill to proceed without interference. During its course through the legislature many of the original concepts of the Metropolitan Service District Act were compromised. Fortunately, however, the Act retains means within itself to correct most deficiencies, if the voters within the District so desire.

A Majority of your Committee is persuaded that the Act should be given a chance to prove itself in the Portland metropolitan area. The Act has significant defects. In the opinion of a Majority of your Committee, however, these are not controlling.

Perhaps the greatest virtue of the Act is a provision which permits voters within the District, by a simple majority, to authorize the District to assume additional metropolitan services and to change the structure of the governing body of the District. This avoids one of the principal present stumbling blocks to metropolitan government. The Oregon Constitution protects the right of each home rule municipality and home rule county to protect itself from being replaced by any proposed metropolitan government. Since the District replaces no existing governmental units, it is not subject to these provisions of the constitution. As the District is granted additional metropolitan responsibilities by its voters, this will not have the effect of eliminating local governments and local service districts. These will continue to be responsible for local aspects and services—unless and until such local governmental units, by agreement, relinquish these powers to the District. Thus the District offers the potential of gradual responsible growth and the possibility of becoming the metropolitan government of the region. This will depend directly on the District's record of performance.

The foregoing relates to the District's potential. To realize that potential, it is essential that the District be equipped to take significant action in the areas in which it has original responsibility. These will be discussed in order:

1. Sewerage. During the gestation period of the Service District Act it appeared that sewerage would be the District's primary job. During and since that time, however, significant advances have been made in the Tri-County area and many now believe that no really significant contribution to the sewerage problem will be made by the District in the next few years. The District can, of course, help implement present long-range plans developed by the City of Portland, Washington County and CRAG, but this implementation probably would proceed regardless. In response to the insistence of the Environmental Quality Commission, there is on the Portland ballot, Measure No. 51 which will fund substantial improvement of the Columbia treatment plant, Portland's principal facility, to upgrade this plant from a primary to a secondary treatment facility. In Washington County, following a moratorium on building imposed by the Environmental Quality Commission, Washington County voters in February, 1970 created the

(1) Article XI, Section 2 and 2a; Article VI, Section 10.
Unified Sewerage Agency and in April 1970, authorized the sale of a $36 million bond issue to fund improvements proposed by that Agency. The Unified Sewerage Agency is a county service district which will assume the functions of the various local sewer districts in the metropolitan area of Washington County—excluding the City of Hillsboro. In Clackamas County and East Multnomah County progress is less dramatic, but still apparent, in the development and amalgamation of various local sewer districts.

Remaining to be done is a unified approach to a needed sewerage treatment plant near the confluence of the Tualatin and Willamette Rivers. For some years there has been a dispute between Washington and Clackamas Counties regarding the best location for such a plant. The Metropolitan Service District could resolve this dispute in a manner most appropriate for the metropolitan area as a whole.

A unified approach to sewerage planning, which is within the District’s power, could be a great help—even without express zoning authority. The District, for example, may be able to correct present inadequate local planning and guide future local planning. As another example, the District could provide land use planning, in effect, through its decisions on the locations of sewer trunk lines.

2. Solid and Liquid Waste. The disposal of solid and liquid waste is probably the most acute need which must be met. The metropolitan area has insufficient dumping grounds for solid waste, unsatisfactory controls to require use of dumping grounds and to prohibit random dumping, and a record of abuses such as the dumping of sludge and oil deposits in sewer lines by private parties, often at night. Obviously needed are policing measures and dumping grounds more convenient to different parts of the metropolitan area. Even more important are sophisticated and expensive means of disposal (such as intensive heat incinerators, separation and salvage equipment, metal baling, and other waste compression equipment). The metropolitan area, working as a whole, will be in a position to finance and develop such disposal systems; individual cities and counties will not be.

3. Control of Surface Water. A major problem is Johnson Creek, which is subject to perennial flooding. Necessary channel improvement of Johnson Creek involves three cities (Gresham, Portland, Milwaukie) and two counties (Clackamas and Multnomah). Federal improvement of Johnson Creek was authorized in 1966 but has not yet commenced. This authorization expires if not completed by June, 1971. The jurisdictional disputes involved could be resolved by the Metropolitan Service District so that this project could proceed.

In the next several years Portland must deal with the problem caused by the coincidence of many of its storm and sanitary sewers. Both storm and sanitary needs are served by single sewerage lines in many parts of the City. Treatment plants are not built to accommodate storm runoff, and should not be. When heavy storms occur, the sewer lines are overloaded, and the result is that raw sewage along with storm runoff backs up into basements at one end and is dumped into the Willamette River without treatment at the other end. It is estimated that to separate these today would cost $150-200 million.

4. Transit. With the establishment of the Metropolitan Transit Authority (Tri-Met) in Multnomah, Washington and Clackamas Counties, the need for an area-wide public transit system may be on the way to solution. However, Tri-Met is running into a great deal of opposition, particularly because of the imposition of what many people regard as an arbitrary and unfair payroll tax on employers and because of the totally unrepresentative governing body appointed by the Governor of the State. Under the Metropolitan Service District Act, the District could take over Tri-Met and exercise all powers granted to Tri-Met under its enabling legislation insofar as these are consistent with the Metropolitan Service District Act. The meaning of this concept is not clear, and a number of questions will have to be resolved if Tri-Met becomes a part of the Metropolitan Service District. However, it is clear that the governing body of Tri-Met would thereupon be replaced by the governing body of the Service District, which at least to a certain extent is representative of the people within the District. Further, the power of the District to assess property in proportion to benefits received and to classify for ad valorem tax purposes with respect to the benefits received might provide a means of financing the capital needs of Tri-Met in a manner which would more equitably relate taxes paid to the services provided by Tri-Met to different parts of the Metropolitan region.
Problem Areas

1. Makeup of Governing Body. The makeup of the governing body clearly does violence to the "one man—one vote" concept. The Oregon Attorney General has rendered an opinion that the United States Supreme Court edict against non-proportional representation does not apply to the District. However, this does not solve the problem. The citizens of the City of Portland are under-represented on the governing body. The other members of the governing body could "gang up" on the City of Portland and assess against property within the City an unfair share of the expenses of the District borne by the ad valorem property tax. A majority of your Committee does not believe that this will occur. Under the Act improvements may be financed by those who benefit directly from them through special assessments and, for ad valorem tax purposes, through classification of property in accordance with the benefits received. It would be unwise to load the financial scales too heavily against the City of Portland, since this would cause such outrage that the effectiveness of the District would be severely undermined. Further, financing by ad valorem taxes is politically dangerous, and might invite restrictions on ad valorem taxing powers such as was recently witnessed in the 1 ½ percent property tax limitation initiative proposal.

2. Selection of the Governing Body. The manner of selection of the governing body is subject to question, since its members are not elected directly by the people but are chosen from among those sitting on existing governmental bodies. These people will be running for re-election, not on the record of their performance on behalf of the Metropolitan Service District, but on their performance on behalf of their area of primary political responsibility (city council, county commission, etc.). While there is some degree of voter control in such an arrangement, it is not direct. It is hoped that the governing body of the District will realize this in due course and refer to the voters—or that the voters may propose by initiative—a change in the law to require that the governing body of the District be selected through some system of direct election, presumably by subdistricts. While your Committee recognizes this as a defect, in the opinion of the Majority, the defect is not controlling.

3. Assignment of Priorities. Your Committee is concerned with the possibility inherent in the initial grant of powers to the District that the financing of sewers, solid and liquid waste disposal systems, control of surface water and possibly mass transit, will be considered apart from other capital needs of the area such as water, parks, streets and highways, lights, etc. To a limited extent CRAG can assign priorities, since its approval is necessary in order for federal funding of local projects to take place. But this is an indirect and not entirely satisfactory control. Again, however, political realities may make it impossible at this time for a single governmental unit to assume all or even most of the public works functions of the area on a metropolitan-wide basis. The Metropolitan Service District, with its power to assume additional responsibilities, is the best of suggested immediate alternatives. The most obvious alternative is that such functions be assumed by the dominant city (Portland) by way of agreements with outlying areas. However, experience shows that such agreements are hard to come by and are often resented by the other party. Even more difficult to effect are agreements among more than two governmental units; witness the Johnson Creek problem. The other and better alternative is a complete metropolitan government. Your Committee is advised, but not fully persuaded, that this is politically unrealistic at this time, particularly because of the home rule guarantees of the Oregon Constitution discussed above. It is to be hoped that the Metropolitan Service District will prove itself capable of handling its initial responsibilities in such a manner that it will assume additional functions by consent of the voters in the District and, by this annexation of responsibilities, will in time overcome the problem of fragmentation of services.

4. Metropolitan vs. Local Aspects. Your Committee recognizes that the distinction between "metropolitan" and "local" aspects of any particular service is hard to define. Imprecise standards are often found in legislation, particularly legislation which is experimental in nature. If problems develop in the application of this standard, which cannot be resolved by disputing parties, resort may be had to the courts to establish guidelines. To have tried to spell out all possible distinctions
between metropolitan and local concepts in the Act would have been fruitless. The concept of separating them is laudable. Local aspects are of local concern and require a great deal of energy and expense for resolution. For the Metropolitan Service District to assume the responsibility for all local aspects of sewerage, for example, would require a large staff and substantial additional expense. This would be unwarranted, since control of such local aspects is not of particular concern to the metropolitan area as a whole. The District will have a certain leverage in encouraging local improvements consistent with metropolitan developments by making available substantial metropolitan improvements to those who are willing to underwrite local improvements. For example, if the District constructs a sewer trunk line along a highway (assessing the cost among those potentially benefited), landowners will be encouraged to go to the additional expense of constructing lateral sewers and hooking into the system. In addition, local improvements may be encouraged by the Environmental Quality Commission through its sanctions, so well demonstrated recently in imposing a building moratorium in Washington County. Hopefully there will develop between the Service District and the local cities and counties within the District a spirit of cooperation which will permit harmonious relations in these regards.

5. Limited Taxing Authority. The Service District's only taxing authority is to levy an ad valorem property tax. This form of taxation has become extremely unpopular in the State and much effort is being made to devise new ways to finance necessary governmental functions. It is unfortunate that a new governmental entity such as the District is so limited. It seems not unlikely that this limitation will make it difficult for the District to obtain voter approval of a tax base and authorization for the sale of general obligation bonds to be repaid from ad valorem taxes. Interestingly, if the proposed constitutional revision is adopted by the voters, the District will be empowered to levy its first year's taxes without voter approval. However, to establish the tax base and to levy taxes for the second year of the District's existence, voter approval will be required. This possibility of levying initial taxes without a vote would at least provide the District a chance to gain general voter acceptance of the manner in which it is proceeding so that when the proposed tax base is referred to the voters, approval may be more easily obtained.

It is also unfortunate that the only means to acquire the authority to tax in a different manner must come by legislation. As your Committee interprets the Act, this is not among the things that may come by initiative or referendum within the District. It is hoped that the State Legislature will correct this defect.

6. Legal Problems. A number of legal difficulties have been raised, particularly by the City of Portland, but also by others. Most of these have been answered by the Attorney General's office in an opinion dated February 2, 1970. Some questions remain. Among the principal legal questions which may be troublesome in the future are the following:

(a) Since the District has only limited taxing powers (ad valorem tax alone), what will result from the District assuming the functions of Tri-Met—with its much broader taxing power? Can the District assess an employer's tax to finance transit improvements or would the assessment of such a tax be inconsistent with the Metropolitan Service District Act?

(b) With differing boundaries for differing purposes, what of the voting rights of voters within the boundaries for transit purposes but not for other purposes? Could such voters vote upon a matter referred to District voters on such a question as the makeup of the governing body? Would cities within the greater boundaries be entitled to have a voice in the selection of members of the governing body or would only those cities within the initial boundaries have such a right?

(c) The District will have authority under its ad valorem taxing power to classify property on the basis of services received from the District and to prescribe different tax rates for the different classes of property. It is not clear whether such classification may be by area, function of property or in some other manner.

Your Committee believes that questions such as these will arise under any new piece of legislation. The questions are capable of resolution, by Court decision if necessary, or by legislative amendment if desirable.
VIII. MAJORITY CONCLUSION

Despite the imperfections in the Act, and the questions which remain unresolved under the Act, your Committee is persuaded that the Service District presents real possibilities of substantial improvements in meeting some of the pressing needs of the metropolitan area and offers the possibility of expanding to meet additional needs as the District becomes competent to do so and is accepted by the other governments in the region. If the people in the Portland Metropolitan area really want improved services and greater economy for the whole region, they will work together without undue regard for their local concerns. A Majority of your Committee believes that the Metropolitan Service District offers a reasonable vehicle to achieve this, although admittedly experimental and a compromise. It is the opinion of the Majority of your Committee that the experiment should be made and the Metropolitan Service District established in the Portland metropolitan area.

IX. MAJORITY RECOMMENDATION

The Majority of your Committee recommends that the City Club of Portland go on record in favor of the Portland Metropolitan Service District, and urges a "Yes" vote on Ballot Measure No. 7.

Respectfully submitted,
John Ellis Cooper
Allen D. Cover
Stephen B. Herrell
Philip Dean Janney
Boyd MacNaughton, Jr.
George C. Sheldon
Michael H. Schmeer, and
Robert C. Shoemaker, Jr., Chairman
For the Majority

X. MINORITY OPINION

The difference between the Minority report and that of the Majority is not due to a great difference of opinion on what is good and what is bad in the Metropolitan Service District Act. Both groups believe that a Metropolitan Service District is desirable, that the services detailed in the Act are appropriate areas for a start, and that the areas of activity should be broadened as the District shows itself capable in handling the initial services. Both groups agree that the problems of sewage treatment and disposal, one of the prime driving forces for authorization of the Act in the Legislature, would proceed to satisfactory solutions if the Act were not adopted. Both groups believe that the inadequate representation of the City of Portland is not good and that the limitations on the means of raising money is undesirable.

The Minority disagrees with the Majority in that it believes that the matters of representation and methods of taxing are of utmost importance, rather than problems which can be worked out.

This is more than an academic point. It is logical to expect—and it has happened time after time—that an elected official will give the interests of his constituents heavier weight than the interests of others to whom he is not responsible. This is historical fact, it is logical, and it is natural. In this case, the City of Portland is put at a very serious disadvantage in the decisions of the governing body. This is particularly critical since one of the big arguments for the Service District is that it is "the best practical step toward a Metropolitan Government for the area." If the Service District is established and if it does in fact become a metropolitan government for the area, the lesser representation for the City of Portland could be disastrous.

The Minority of your Committee thinks it is terribly important to keep in mind that the greatest crisis in the metropolitan area is the crisis of the central city core: the fast-increasing demand for services there coincides with the erosion of the tax base. The Minority feels that the crisis that confronts police departments, fire departments, school boards, traffic bureaus, juvenile authorities, and almost any local government unit that can be named, exist in the City of Portland, not in West Linn or Beaverton or Gresham. The problems that arise in Albina or in Lair Hill...
Park, in Skid Road north of Burnside or in Roosevelt High School, have no counterpart in the suburbs to which so many of Portland’s residents—or at least the more affluent ones who could afford it—have fled. It is not news that the core city is in serious trouble, and that it needs all the help it can get from the residents in the suburbs who in most instances earn their living and make use of the services that the city offers, without contributing to the payment for them. To disfranchise those residents of Portland who remain and who pay higher and higher taxes in order to keep Portland alive, seems to your Minority to be a step in exactly the wrong direction. Yet this is what must be expected because of the way in which the Service District’s governing body was set up.

And it is not only the set-up of the governing board. Look at the tax provisions: the only tax that the Service District can levy is a property tax, the tax that is the most regressive and the most haphazard in its impact. It is well known that not all functions of the Service District can be financed through user fees, that some ad valorem taxes will have to be levied. Land in or near downtown Portland is more valuable than in the suburbs; in relation to their income, the residents of Portland’s dilapidated districts will feel the weight of these increased taxes more heavily than the residents of Cedar Hills or Lake Oswego. Is that what this fledgling metropolitan government is intended to achieve? The Minority of your Committee does not think so.

The Minority agrees with the Majority that sewer construction will not be affected much by the existence of the Service District. The Minority—and the Majority—look beyond that, to Tri-Met, and to the Park Bureau, the Civic Auditorium, the Planning Commission, and to the water supply and street lighting and the many other services that the Service District could take under its wing.

What will happen? This can be seen in the transportation operation with Tri-Met. Tri-Met cannot rely entirely on user fees or bus fares. It is taxing the residents of the entire metropolitan area by a payroll tax that at least relates tax to earnings, and thus to ability to pay. But if Tri-Met is absorbed by the Service District, will not the payroll tax have to be dropped in favor of the much more regressive property tax? If this happens, affluent owners of low-value land in the suburbs will pay less, and the low income groups living in the City’s north or lower east side will pay more. The Minority thinks that this would be a step in the wrong direction.

The Minority of your Committee does not believe that the governing board of the Service District, constituted as it is, can be expected to push for a change in legislation that would remedy these faults. And while the population of the City of Portland is large, it is only 44 percent of that of the District, not a majority for utilizing the referendum or initiative to obtain corrective action. Finally, it is doubtful that the Legislature would be willing to make important changes in the crucial matter of representation so soon after the District is established. The Minority of your Committee believes this important matter should be settled in the original organization of the Service District.

XI. MINORITY CONCLUSION

The Minority of your Committee is seriously concerned that, as it is now proposed, the Metropolitan Service District Act will redirect our public resources away from the central city where they are needed most.

XII. MINORITY RECOMMENDATION

For this reason, the Minority of your Committee opposes the proposed Metropolitan Service District as constituted by this Act and recommends a "No" vote on Ballot Measure No. 7.

Respectfully submitted,
Guenter Mattersdorff, and
Ray C. Chewning
For the Minority

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