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The entire program will be devoted to presentation, discussion and action on the following ballot measure reports on Friday, October 20, 1972:

REPORTS
ON

AMENDS COUNTY PURCHASE AND LEASE LIMITATIONS
(State Measure No. 3)
The Committee: Henry S. Blauer, Philip F. Brown, Harold L. Haynes, Martin L. Jacobs, Steven T. Karp, and Bruce Samson, Chairman, for the Majority: Warren C. Deras, for the Minority.

* * *

CONSTITUTIONAL AMENDMENT AUTHORIZING MINIMUM JURY SIZE OF SIX MEMBERS
(State Measure No. 5)

* * *

CONSTITUTIONAL AMENDMENT BROADENING ELIGIBILITY FOR VETERANS’ LOANS
(State Measure No. 6)
The Committee: Stephen S. McConnell, Dennis F. Todd, and William M. Keller, Chairman, for a “Yes” vote; John Brady Marks, Gordon V. Walker and E. John Rumpakis, for a “No” vote.

* * *

REPEALS GOVERNORS’ RETIREMENT ACT
(State Measure No. 7)
CITY CLUB PROGRAMS
BROADCAST THREE WAYS

The City Club luncheon program speakers and discussion are broadcast, in full, over three different stations at three different times:

KOAP-FM (91.5 meg)
Each Friday (approximately 12:40-1:30)

KOIN-FM (101.1 meg)
Each Friday at approximately 10:00 p.m.

KBPS (1450 KC)
Each Tuesday at 7:00 p.m.

ELECTED TO MEMBERSHIP

John S. Belanger, Western Area Safety Manager: Consolidated Freightways. Sponsored by William M. Keller.

Frederick A. Charles, Vice President, Cypress Cable TV of Oregon, Inc. Sponsored by Clifford N. Carlsen, Jr.


PROPOSED FOR MEMBERSHIP
AND APPROVED BY THE
BOARD OF GOVERNORS

If no objections are received by the Executive Secretary prior to November 3, 1972, the following applicants will be accepted for membership:


MEMBERSHIP UPHOLDS
COMMITTEE RECOMMENDATIONS
ON MEASURES NO. 1 AND NO. 11

Two ballot measure reports of City Club Committees were presented to the membership on Friday, October 13th prior to the speaker’s presentation, and in both instances the recommendation of the Committee was upheld.

Robert Jett, chairman of the City Club Committee reporting on State Measure No. 1, “Eliminates Location Requirements for State Institutions”, moved to accept the Committee’s “Yes” vote on the state issue, referred to the voters by the 1971 Oregon Legislature. There was no opposition to the motion and it carried unanimously.

Multnomah County Measure No. 11, “County Utility Tax Ordinance for Library” elicited a number of pro and con arguments following presentation by Chairman Dean Janney, whose Committee had recommended a “No” vote. The chair called for a standing vote and the “No” vote prevailed by a margin of four votes.
REPORT
ON
AMENDS COUNTY PURCHASE AND LEASE LIMITATIONS
(State Measure No. 3)

Purpose: Amends constitutional limit on indebtedness of counties to permit counties to enter into purchase or lease agreements up to ten years if the amount payable annually on all such agreements does not exceed 1/100 of 1% of the taxable value of all property in county or $5,000, whichever is greater; also permits long-term service agreements with the state.

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

I. INTRODUCTION

Your Committee was appointed to study and report on the proposed Constitutional Amendment placed on the State Ballot for the general election to be held November 7, 1972, by the 1971 Legislature, by passage of Senate Joint Resolution 28. It appears as State Ballot Measure No. 3.

II. TEXT OF AMENDMENT

The measure would amend Section 10, Article XI of the Constitution of the State of Oregon as follows (new material italicized):

Sec. 10. No county shall create any debt or liabilities which shall singly or in the aggregate, with previous debts or liabilities, exceed the sum of $5,000; provided, however, counties may incur bonded indebtedness in excess of such $5,000 limitation to carry out purposes authorized by statute, such bonded indebtedness not to exceed limits fixed by statute. This section does not apply to agreements, entered into by a county pursuant to law:

(1) To purchase or lease real or personal property for a public purpose, if the duration of the agreements are for a period not exceeding 10 years and if the amount payable annually on the debts created by the agreements, in the aggregate, is no more than one hundredth of one percent (.001) of taxable value in the county, or $5,000, whichever amount is greater; or

(2) To contract with an agency of the State of Oregon for services to be rendered by such agency for the county.

III. SCOPE OF RESEARCH AND BIBLIOGRAPHY

The Committee set out to find and interview individuals with the greatest knowledge and interest in this measure. Finding proponents proved far easier than finding statewide, organized opposition. Persons interviewed by the Committee as a whole or by individual Committee members were:

Loren Kramer, Director, Department of Administrative Services and Budget Director, Multnomah County
Jerry Orick, Association of Oregon Counties, Salem
Robert Racovillat, Xerox Corporation, Portland
Walter B. Samuelson, Xerox Corporation, Portland
The present $5,000 county debt limitation originated in the Constitution approved November 9, 1857 by the vote of the people of the Oregon Territory. Despite various modifications of the provision, including an amendment adopted in 1958 to authorize counties to incur bonded indebtedness, the dollar amount of the limitation has remained unchanged for 115 years. The Oregon Supreme Court has described such limitations on obligations extending beyond the current fiscal year as being "for the benefit and protection of the taxpayer, by requiring authorities to conduct [governmental] affairs substantially within the current revenues," thus preventing the "present and future resources [of a governmental unit] from being encumbered and pledged for any debt in any sum greater than the amount mentioned in the limitation." This provision has also been judicially interpreted to apply to lease agreements and purchase contracts extending beyond the current fiscal year.

Similar proposed amendments to the Constitution were rejected by the people of Oregon in 1968 and 1970. In each case the City Club supported the proposed amendment. The 1968 proposal would have permitted ten year contracts for the purchase or lease of property without limitation. The 1970 proposal differed from the present one only in that it contained a flat limit of $50,000 for all counties in place of the present proposed limitation based on taxable value in each county.

The current proposal would permit Multnomah County to incur annual obligations up to $544,781, per year for a period of ten years—for a total of $5,477,810, based on the 1972-73 assessed values. Only Wheeler County would be affected by the $5,000 per year minimum, or $50,000 for ten years.

The present proposal was introduced in the Oregon Legislature at the request of the Association of Oregon Counties which is its principal supporter.

1Brewster v. Deschutes County et al, 137 Or 100, 1 P2d 607 (1931)
V. ARGUMENTS IN FAVOR OF THE MEASURE

1. This measure does not permit a county to increase its annual budget beyond the existing 6 percent limitation; therefore, passage of this measure will not of itself increase taxes.

2. This measure permits counties to make economic decisions relating to renting and purchasing on a long-term basis in accordance with modern business practices, thereby permitting counties to operate more efficiently.

3. Passage of this measure will permit counties to make more realistic commitments with the State of Oregon for services that the State is uniquely able to provide, such as mapping services.

4. Other municipal corporations, such as cities, fire districts, etc., which do not have such a limitation, are able to operate on a sound fiscal basis and have not been found to suffer from overextending themselves for future obligations.

V. ARGUMENT AGAINST THE MEASURE

There is a potential for abuse inherent in the measure in that counties may obligate themselves for current expenses through long-term financing.

VII. MAJORITY DISCUSSION AND CONCLUSIONS

Measure No. 3 would not permit counties to increase taxes beyond existing legal limits. The principal purpose of the measure is to permit the counties more flexibility and efficiency in administering existing tax revenues, which is desirable. Through proper management, passage of this measure should permit the counties to provide comparable public services for fewer tax dollars, not more.

It is apparent from our Committee's interviews with county officials, landlords and property managers that the existing law puts counties at a definite disadvantage, ultimately creating a financial burden on county taxpayers.

The present limitation penalizes counties in that, for example, landlords who do rent property to the county generally include all of the improvement costs in the first year's rent; thereafter, the rent is rarely reduced from that level. With a long-term lease, the improvements would be amortized over the period of the lease and not included in the first year and then carried over in each succeeding year. Many landlords will not rent real property to the county because of the one-year limitation. The same is true in purchasing or leasing large items of personal property, such as computers. Also, many sellers of real property, for tax reasons, would rather sell on an installment basis than on a lump sum basis. Thus, the existing constitutional provision eliminates counties from a substantial segment of the real property market. The present proposal would alleviate these problems with respect to purchase and lease.

Weighed against these advantages is the possibility that imprudent county commissioners may incur long-term debts which would extend beyond the useful life of the property-equipment purchased. This means that counties would be committing tax dollars to resources whose benefits to the counties have already been depleted, because the productiveness of the resource has been used up or rendered obsolete by new technologies.

The Majority of your Committee concludes that the advantages of Measure No. 3 outweigh its disadvantages.
VIII. MAJORITY RECOMMENDATION

The Majority of your Committee recommends that the City Club go on record in favor of the proposed constitutional amendment and urges a vote of “Yes” on State Measure No. 3.

Respectfully submitted,
Henry S. Blauer
Philip F. Brown
Harold L. Haynes
Martin L. Jacobs
Steven T. Karp
Bruce Samson, Chairman
FOR THE MAJORITY

IX. MINORITY STATEMENT

Our political system by its nature impels politicians to provide maximum government services at minimum tax cost to the electorate. One consequence of this system—a consequence against which the Oregon Constitution guards with numerous provisions—tends to be deficit spending, by which I mean the provision of present services at the expense of future taxpayers. The Majority concedes that such abuse of the present proposal in the hands of “imprudent county commissioners” is possible.

In weighing this disadvantage against the obvious benefits of the present proposal, the fact must be recognized that this measure could have been written to permit long-term agreements by counties only when proportionate benefits are to be received during the entire term for which payments are to be made. This fact leads me to favor rejection of the measure. It seems odd that the voters should be forced, by sloppy draftsmanship accepted by the Legislature, to adopt a measure in 1972 when an unobjectionable measure providing the same benefits could be enacted in 1974.

Perhaps my views on the present subject are prejudiced by the fact that I recently came to Oregon from a state which was operating on a 15 percent deficit and am familiar with the disastrous effects of deficit financing on politics and government. Similarly, it is possible that Oregonians have been sheltered too long by their Constitution to appreciate the desirability of the present Constitutional restrictions on deficit spending. The weakening of these restrictions by the present proposal is unnecessary and should be rejected.

X. MINORITY RECOMMENDATION

The Minority recommends the City Club go on record in favor of a “No” vote on State Measure No. 3.

Respectfully submitted,
Warren C. Deras
FOR THE MINORITY

Approved September 28, 1972 by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 2, 1972 and ordered printed and distributed to the membership for discussion and action.
REPORT ON CONSTITUTIONAL AMENDMENT AUTHORIZING MINIMUM JURY SIZE OF SIX MEMBERS
(State Measure No. 5)

Purpose: This measure adds the following language to Article VII (Amended), Oregon Constitution: "Provision may be made by law for juries consisting of less than 12 but not less than six jurors."

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

I. INTRODUCTION

State Ballot Measure No. 5 was referred to the voters by the 1971 Oregon Legislature (SJR 17). If approved at the general election, it would amend Article VII (Amended) of the Oregon Constitution (Judicial Department) by adding a new Section 9 which would read as follows: "Provision may be made by law for juries consisting of less than the 12 but not less than six jurors." Historically, juries in both civil and criminal cases in Oregon have consisted of 12 members, except that six-member juries are used pursuant to statute in the District Courts and Justice Courts. More recently they have been used in the Circuit Courts but only where both parties to the case so stipulate. This measure would permit the Legislature to provide by law for the use of juries of less than 12 for all purposes, at least in civil cases.¹

Scope of Research

A. Written Material. The Committee reviewed the following written material:
1. An Act Relating to the Administration of Justice, Including but Not Limited to the District Courts; Oregon Laws 1971, Chapter 623
2. Constitution of Oregon
3. David J. Gibbons, "The New Mini Juries: Panacea or Pandora's Box?", 58 American Bar Association Journal, p. 594 (June, 1972)
5. Senate Joint Resolution 17, Adopted June 4th, 1971
6. "Six Man Jury Composite" report proposed by Terrance Hall, Law Clerk, Yamhill County Circuit Court
7. Standards Relating to Trial by Jury (Approved Draft 1968), American Bar Association Project on Minimum Standards for Criminal Justice

¹There is considerable doubt as to whether this measure affects juries in criminal cases, as noted elsewhere in this report.
Persons Interviewed

The following persons were interviewed by the Committee as a whole or by individual members:

1. Robert Christ, Clerk of the United States District Court for the District of Oregon
2. Hugh B. Collins, Attorney
3. Walter J. Cosgrave, Attorney
4. Hon. George Eivers, Oregon State Senator
5. Hon. Alfred T. Goodwin, Judge, U.S. Court of Appeals for the Ninth Circuit
6. Burl L. Green, Attorney
7. Michael Hall, Court Administrator, Multnomah County, Oregon
8. Terrance Hall, Law Clerk, Yamhill County Circuit Court, Yamhill County, Oregon
9. Hon. Robert E. Jones, Circuit Judge, Multnomah County, Oregon
10. Robert P. Jones, Attorney
11. Howard R. Lonergan, Attorney
12. Robert W. Lundy, Legislative Counsel for the State of Oregon
13. William H. Morrison, Attorney, President, American College of Trial Lawyers
14. Owen M. Panner, Attorney
15. Frank H. Pozzi, Attorney
16. Hon. Kurt C. Rossman, Circuit Judge, Yamhill County, Oregon
17. Dwight L. Schwab, Attorney
18. George R. Suckow, M.D., Psychiatrist, Oregon State Hospital
19. Hon. Alfred T. Sulmonetti, Circuit Judge, Multnomah County, Oregon

II. BACKGROUND

Article VII (Amended) of the Oregon Constitution contains the only two provisions in the Oregon Constitution dealing with jury trials in civil cases. These two sections, Sections 3 and 5, are printed in Appendix A to this report. It will be noted that neither section now requires that there be a 12-member jury in civil cases. However, in Oregon, as nearly all states, the 12-member jury has been traditional, originating from the English common law from which most of our legal traditions have been derived.

The right to jury trial in criminal cases in Oregon is spelled out in Article I, Section 11 of the Oregon Constitution. This section, one of the Bill of Rights which is printed as Appendix B to this report, while not fixing the jury size at 12 members, does require in Circuit Court cases that ten members must find the defendant guilty before he may be convicted. In first degree murder cases, a unanimous verdict of guilty is required for conviction. Apparently, that section contemplates a 12-member jury in all criminal cases tried in the Circuit Courts.

At the present time in Oregon, by statute, all non-felony criminal cases are tried in the District Courts and Justice Courts to juries composed of six members. Appeals may be taken to the Circuit Courts where they are tried anew (de novo).

Felony cases originate and are tried in the Circuit Courts. All Circuit Court criminal cases, including appeals from the District Courts and Justice Courts, are tried to a 12-member jury, unless both the prosecution and the defense agree to a six-member jury.

Civil cases originating in the District Courts or Justice Courts (those cases involving relatively small sums of money) are tried to a six-member jury. As in criminal cases, they may be appealed to the Circuit Courts and tried anew. All Circuit Court cases (those involving larger sums of money and appeals from the lower courts) are tried to a 12-member jury unless both parties stipulate to the use of a six-member jury.
In the Federal Court system, the use of six-member juries has been widely adopted. In the U. S. District Court for the District of Oregon, and in a large and growing number of other U. S. District Courts, all civil cases are now tried to six-member juries by local rule, regardless of the wishes of the litigants. Legislation is now pending before Congress which would make this mandatory in all civil cases in the Federal Courts throughout the country.

The 1971 session of the Oregon Legislature, which referred this measure to the people, also passed legislation which would provide that all civil suits in which the amount in controversy is less than $3,000.00 be tried in the District Courts. In addition, it would do away with the right of de novo appeal to the Circuit Courts in both civil and criminal cases originating in the District Courts. Appeals to the Circuit Courts would be limited to a review of the record in the court below. However, this act will not take effect unless Measure No. 5 is adopted by the people.

The Constitutional Amendment which would be effected by this ballot measure is an enabling provision only, and would require additional legislation before six-member juries in civil cases originating in the Circuit Courts could be made mandatory.

Although your Committee believes there may be some room for argument as to whether the amendment would permit six-member juries in criminal cases in Circuit Court, it would strongly appear that it will not affect criminal cases because of the fact that it purports to amend only Article VII (Amended) (dealing with jury trials in civil cases) and would not amend the Bill of Rights section, Article I, Section 11.

Assuming this interpretation to be correct, the proposed amendment would permit six-member juries to be used on a mandatory basis only in civil cases and not in criminal cases tried in Circuit Court, i.e., felonies and de novo appeals from the District Courts.

The Legislature apparently intended that this amendment would also affect jury trials and criminal cases because there is a provision in Oregon Laws 1971, Chapter 623, doing away with the de novo appeal from the Circuit Court in criminal cases which, as noted below, may be of doubtful constitutionality.

III. ARGUMENTS FOR THE MEASURE

1. The fact that juries have traditionally been composed of 12 members is purely the result of historical accident. There is no known reason for the number 12.

2. Smaller juries reduce court administrative costs by eliminating certain direct costs of juries such as juror fees, meals, lodging and transportation, and by reducing administrative costs incurred in arranging for and dealing with larger numbers of people.

3. Smaller juries result in speedier trials, thus helping to reduce litigation costs and relieve crowded court dockets.

4. Smaller juries result in more juror satisfaction with their verdicts because of increased participation by the individual jurors.

5. Six jurors selected at random will result in no less an adequate cross section of the population than is achieved under the present system.

6. A smaller jury reduces the likelihood of having a "hung jury".

7. Verdicts by six-member juries are no different than those rendered by 12-member juries.

8. Larger juries increase the likelihood of domination by a small number of dominant jurors.

Oregon Laws 1971, Chapter 623.
IV. ARGUMENTS AGAINST THE MEASURE

1. A greater cross section of the population is obtained by having a 12-member jury as opposed to a six-member jury.
2. The 12-member jury has served us well for centuries and should not be altered.
3. Cost savings with six-member juries are minimal, especially when compared with overall court administrative costs and the total tax load.
4. Smaller juries increase the likelihood of "one man rule" by a dominant juror.
5. Smaller juries are more easily influenced and tend toward more extreme results in their verdicts.
6. This measure is ambiguous and poorly drafted, leaving many unanswered questions which should not be left to the Legislature.
7. This measure is a step toward weakening or eliminating the jury system which must be preserved.
8. There is insufficient experience or data to support so fundamental a change in the judicial system in Oregon at this time.
9. The present system permits the use of six-member juries when both parties agree to do so.
10. Some of the problems existing in certain areas, such as crowded dockets, do not exist in Oregon to any great degree.
11. Twelve-member juries have greater recall of the evidence than do smaller juries.

V. DISCUSSION

Most of the support for this measure comes from judges and court administrators who are concerned with cost savings and the need to speed up the judicial process. These people see the use of six-member juries as making a significant contribution in both areas. The heaviest opposition, on the other hand, comes from practicing attorneys, including representatives from the plaintiff, defense, criminal and general practice sides of the Bar.

Clearly there are some cost savings inherent in increased use of six-member juries. Estimates varied widely, ranging from 32 percent to as much as 50 percent of that part of the total court administrative cost attributable to juries. From a purely economic point of view, therefore, the measure has merit, although the Committee gained the impression that the total impact would not be great when compared with the total judicial budget.

There also appears to be some time-saving with the smaller jury, due primarily to less time being taken in the jury selection and deliberation process. As with the cost savings argument, however, the Committee found no reliable data upon which to judge the impact of these possible advantages.

The Committee found most interesting the observation of a practicing psychiatrist who has studied the group dynamics of juries. He has found that a smaller jury tends to encourage individual participation in the decision-making process which, in turn, leads to greater juror satisfaction with the final outcome, a fact also noted by judges who had interviewed jurors after the verdicts were in. The larger group, however, tends to exert a moderating influence in more moderate damage awards and fewer criminal convictions. He believes that the lesser degree of individual participation which takes place in the 12-member jury enables a dominant juror to have a disproportionately greater influence. However, several trial lawyers expressed the view that the problem of "one man rule" by a dominant juror is greater with the smaller, six-member jury.

As noted above, the Committee found that the principal difficulty in evaluating the arguments in favor of the measure is the lack of data and experience to support them.

Six-member juries are in use in Oregon in the lower state courts and more recently the Federal Courts. In addition, a number of Oregon Circuit Court judges, particularly those in counties where appropriations for court budgets have
not kept pace with population growth, are actively encouraging attorneys to stipulate the use of six-member juries. It should be noted that these judges report widespread acceptance of smaller juries, possibly due in part to the fact that the stipulation also includes a requirement for a unanimous verdict in criminal cases and five out of six in civil cases. The principal exception appears to be those attorneys who represent defendants in negligence cases. These attorneys nearly always insist on a 12-member jury.

The Committee found most persuasive, however, the comments of a great many trial lawyers who strongly favor retention of the 12-member jury because of an apprehension that the quality of justice provided by the jury system may suffer by reducing the number of jurors.

If this is a legitimate concern, and a majority of the Committee believes it is, it outweighs whatever economic advantages the six-member jury may have. Most often mentioned as possibly having this effect were (a) obtaining a lesser cross section of the population; (b) a gradual reduction or eventual elimination of the jury system (which has been advocated by some writers); and (c) the lessening of the moderating influence of the 12-member jury.

The Committee unanimously believes this measure to be poorly drafted. A careful reading of this measure and the other applicable provisions of the Oregon Constitution leaves substantial doubt as to whether it would apply to juries in criminal cases. If it does not, the ballot title is clearly misleading. The Committee also found itself left with other unanswered questions as to the ultimate effect of the measure, one of which is the number of jurors required in order to render a verdict where the jury consists of less than 12 members.

Finally, the Committee found from talking with attorneys and judges that, for the most part, the factors which have led to the adoption of six-member juries in other jurisdictions, such as crowded dockets and endless delays, are not present to any great extent in Oregon.

VI. CONCLUSION

In weighing all of the arguments for and against this measure, the Committee simply was not persuaded that the possible advantages justify the possible risks incurred in substantially altering one of our most fundamental institutions. The Committee believes that Oregon should adopt a “wait and see” attitude, learning from the experience of other jurisdictions, before supporting any change from which the effect upon the quality of justice cannot be clearly foreseen.

This measure is poorly drafted and ambiguous in that it leaves open to question such important matters as (1) whether it applies to criminal cases and (2) the number of jurors required to concur in rendering a verdict. Your Committee believes that the latter questions should not be answered by the Legislature but should be spelled out in the Constitution.

Your Committee is not persuaded that the adoption of six-member juries will result in the significant cost savings and other benefits claimed by its proponents. On the contrary, the jury system is one of the most fundamental and necessary of the checks and balances in our system of government. As such, it should not be altered in any important respect unless and until a clear need to do so can be shown, together with convincing evidence that the protection which the jury system provides to every citizen will not be lessened in even the smallest degree.

Several members of the Committee are favorably inclined toward the concept of reducing the size of juries at some future time, if it can be shown clearly that the arguments in favor of doing so are valid in Oregon. However, the Committee is unanimous in opposing this particular measure at this time.
VII. RECOMMENDATION

Your Committee recommends that the City Club of Portland go on record as opposing the passage of State Measure No. 5 and urges a "No" vote thereon.

Respectfully submitted,
James D. Caufield
Don A. Johansen
Theodore D. Lachman
Ronald T. Saltmarsh
Harold Tascher
Thomas Healy Tongue
Stephen B. Herrell, Chairman

Approved by the Research Board September 26, 1972 for transmittal to the Board of Governors.
Received by the Board of Governors October 2, 1972 and ordered printed and distributed to the membership for presentation, discussion and action.
APPENDIX A

ARTICLE I

BILL OF RIGHTS

Section 11. Rights of accused in criminal prosecution. In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense has been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise; provided further, that the existing laws and constitutional provision relative to criminal prosecutions shall be continued and remain in effect as to all prosecutions for crimes committed before the taking effect of this amendment.

APPENDIX B

ARTICLE VII (Amended)

JUDICIAL DEPARTMENT

Section 3. Jury trial; re-examination of issues by appellate court; record on appeal to Supreme Court; affirmation notwithstanding error; determination of case by Supreme Court. In actions at law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict. Until otherwise provided by law, upon appeal of any case to the supreme court, either party may have attached to the bill of exceptions the whole testimony, the instructions of the court to the jury, and any other matter material to the decision of the appeal. If the supreme court shall be of opinion, after consideration of all the matters thus submitted, that the judgment of the court appealed from was such as should have been rendered in the case, such judgment shall be affirmed, notwithstanding any error committed during the trial; or if, in any respect, the judgment appealed from should be changed, and the supreme court shall be of opinion that it can determine what judgment should have been entered in the court below, it shall direct such judgment to be entered in the same manner and with like effect as decrees are now entered in equity cases on appeal to the supreme court. Provided, that nothing in this section shall be construed to authorize the supreme court to find the defendant in a criminal case guilty of an offense for which a greater penalty is provided than that of which the accused was convicted in the lower court.

(Created through initiative petition filed July 7, 1910, adopted by people Nov. 8, 1910)

Section 5. Juries; indictment; information. In civil cases three-fourths of the jury may render a verdict. The Legislative Assembly shall so provide that the most competent of the permanent citizens of the county shall be chosen for jurors, and out of the whole number in attendance at the court, seven shall be chosen by lot as grand jurors, five of whom must concur to find an indictment. But provision may be made by law for drawing and summoning the grand jurors from the regular jury list at any time, separate from the panel of petit jurors, for empaneling more than one grand jury in a county and for the sitting of a grand jury during vacation as well as session of the court. No person shall be charged in any circuit court with the commission of any crime or misdemeanor defined or made punishable by any of the laws of this state, except upon indictment found by a grand jury; provided, however, that any district attorney may file an amended indictment whenever an indictment has, by a ruling of the court, been held to be defective in form. Provided further, however, that if any person appear before any judge of the circuit court and waive indictment, such person may be charged in such court with any such crime or misdemeanor on information filed by the district attorney. Such information shall be substantially in the form provided by law for indictments, and the procedure after the filing of such information shall be as provided by law upon indictment.
REPORT
ON
CONSTITUTIONAL AMENDMENT
BROADENING ELIGIBILITY FOR
VETERANS' LOANS
(State Measure No.6)

Purpose: Amends Oregon Constitution to liberalize eligibility requirements for Veterans' loans for certain Oregon residents who served in the armed forces between 1940-47 and 1950-60. Also provides for eligibility of certain spouses whose husbands were killed, missing in action, or prisoners of war.

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

I. INTRODUCTION

This Committee was assigned to study State Measure No. 6, a proposal for a Constitutional Amendment referred to the electorate by Senate Joint Resolution 23 passed by the 1971 Oregon Legislature. It is to be voted on at the general election on November 7, 1972. The effect of the measure would be to expand the number of people eligible for loans under the Veterans' Loan program.

The following table summarizes the changes which Measure No. 6 would make in Section 3 of Article XI-A of the Oregon Constitution relating to the persons eligible to receive loans under the Veterans' Loan program:

<table>
<thead>
<tr>
<th>SERVICE PERIOD</th>
<th>WORLD WAR II</th>
<th>Present</th>
<th>Proposed</th>
<th>KOREA</th>
<th>Present</th>
<th>Proposed</th>
<th>POST-KOREAN</th>
<th>Present</th>
<th>Proposed</th>
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</thead>
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<td>World War II</td>
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<td>Same</td>
<td>6/25/50</td>
<td>6/25/50</td>
<td>1/31/55</td>
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</tr>
<tr>
<td>Korea</td>
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<tr>
<td>LENGTH OF SERVICE REQUIRED</td>
<td>90 days</td>
<td>Same</td>
<td>90 days</td>
<td>Same</td>
<td>210 days or service connected disability</td>
<td>Same</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

In addition to these changes in subsections 1, 2 and 3 of Section 3, a new subsection 4 would be added, extending eligibility generally under the loan program to an Oregon resident whose spouse has been missing in action, a prisoner of war, or has died on active duty, during any of the three periods covered above.

1Under current legislation (ORS 407.040), loans may not exceed $24,500 for a home or $80,000 for a farm. The interest rate is variable but has been fixed currently by the Director of Veterans' Affairs, with the advice of an Advisory Committee, at 5.9 percent.
II. SCOPE OF RESEARCH

Your Committee, or one or more of its members, interviewed the following:

H. C. Saalfield, Director, and Larry Quinlin, Information Officer,
Oregon Department of Veteran’s Affairs;
State Senators Victor Atiyeh, George Eivers, Don S. Willner;
State Representatives Roger Martin, Frank Roberts, Keith D. Skelton;
David Barrows, Attorney, Executive Secretary,
Oregon Savings and Loan League;
Henry Helmstetter, Acting Manager, United States Veterans Administration,
Regional Office.

In addition, various members of the Committee have had informal discussions
or correspondence with various representatives in the private loan sector and
with members of the Attorney General’s Staff.

The Committee has also reviewed past City Club Reports.2

III. BACKGROUND

The Legislative history of Article XI-A and amendments thereto have been
discussed thoroughly in previous City Club reports. The program was adopted
initially by the voters on November 7, 1944 to cover World War II veterans. Sub-
sequent constitutional amendments extended coverage to Korean War veterans,
Viet Nam veterans and those serving in the military now or in the future. The
bonding limit to fund the expanding program has been increased three times.

Under present law the only period of time subsequent to September 15, 1940,
when military service does not qualify a person who meets the residence require-
ments for a loan is that period from July 25, 1947 to June 25, 1950.3 All applicants
must be residents of Oregon.

IV. ANALYSIS

The qualifications for those eligible to receive loans under the State Veterans’
Loan program, the proposed changes to the program and the significance of those
are as follows:

(1) The first subsection deals with World War II veterans. It is now
required that such a veteran must have served honorably for not less than
90 days, any part of which occurred between September 15, 1940 and July
25, 1947. The veteran must either have been a resident of the State of
Oregon at the time of induction, or have been a resident for at least two
years between his discharge and December 31, 1950. The sole change
which State Measure No. 6 would make in this paragraph is to permit a
two-year residency, as an alternative to residency at the time of induction,
to have occurred prior to December 31, 1952 rather than prior to Decem-
ber 31, 1950.

The Department of Veterans’ Affairs estimates that an additional 3000
veterans would be eligible by reason of this change in subsection 1 of
Section 3.

2The City Club Committee Report published on October 2, 1970 in Portland City Club Bulle-
tin, Vol. 51, page 84, reviewed in detail prior City Club studies on this subject, characterizing
them as “interestingly ambivalent in attitude”. The City Club Committee studying the 1970
proposed amendment, which was to raise the bonding limit from 3 percent to 4 percent of true
cash value of all property in the state, recommended approval. The measure was adopted by
the electorate.

3Your Committee has been unable to determine any reason for this omission except that there
was no draft during these years. Persons serving in the military in the future are eligible for
loans under present law. If the draft is terminated, the rationale of excluding those serving in
the above ineligible period no longer applies.
The present provisions for the veterans serving during the Korean War era are very similar to those for the World War II veterans. Any part of the 90 days honorable service must have been served between June 25, 1950 and January 31, 1955. The two-year residency, as an alternative to residency at induction, must now take place prior to December 31, 1960. State Measure No. 6 would make two changes in this paragraph: First, the closing date for any part of the 90 days service would be changed to January 31, 1960 (instead of 1955); Second, the closing date for the alternative two-year residency would be changed to December 31, 1965 (instead of 1960).

The Department of Veterans’ Affairs estimates that an additional 4,850 veterans would be eligible by reason of these changes in subsection 2; of these, 3,700 are estimated to qualify because of the change of eligibility date from 1955 to 1960 (those serving in this period would already have been eligible under subsection 3—how many of these 3,700 would be eligible because of the shortened period of active duty required as opposed to those made eligible because of the alternative residency permitted under subsection 2 is unknown).

Subsection 3 is much more restrictive than subsections 1 or 2. Rather than 90 days service, 210 days on active duty is required. The only exception to the 210 days service is discharge prior thereto on account of service-connected injury or illness. To qualify under this paragraph the veteran must have been an Oregon resident at the time of induction—no period of Oregon residency subsequent to discharge is allowed as an alternative.

The sole change which State Measure No. 6 would make in subsection 3 is one which is necessary to make it consistent with the change in subsection 2; coverage would begin with active duty subsequent to January 31, 1960, rather than to January 31, 1955. Those excluded by this change would become eligible under the proposed subsection 2.

Measure No. 6 would also add a new subsection 4 to section 3 of Article XI-A. This new subsection would make the following persons eligible for loans:

(a) The spouse of a person who is qualified to receive a loan under subsections 1, 2 or 3, but has either been missing in action (MIA) or a prisoner of war (POW) while on active duty, even though the status of missing in action or being a prisoner of war occurred prior to completion of the minimum length of service or residency.

(b) The surviving unremarried spouse of a person who was qualified under subsections 1, 2 or 3, but who died while on active duty, even though death occurred prior to completion of the minimum length of service or residency.

Both the spouse of a POW or MIA and the surviving spouse of a deceased veteran must reside in the State of Oregon at the time of applying for the loan.

The Department of Veterans’ Affairs estimates that 500 persons would become eligible under this new subsection 4. Your Committee estimates this figure could run as high as 1700.

V. ARGUMENTS FOR THE MEASURE

Arguments in support of Measure No. 6 include:

1. Spouses of those presently missing in action or held as prisoners of war, and widows of service men who died on active duty have suffered greatly, therefore, the benefits of the Veterans’ Loan program should be extended to them.

2. The program is self-supporting and without cost to the taxpayers.

3. The program has been well run, is popular throughout the state, and should therefore be expanded to additional veterans not now eligible.
4. The excellent bond repayment record, plus the large block of liquid assets (mortgages) held by the Department of Veterans' Affairs aids the sale of other State of Oregon bonds.

5. The program is an aid to the economy in that large sums of mortgage money at lower interest rates are brought into the state from Eastern sources.

6. Although this present proposal may be imperfect, its deficiencies and inequities can be remedied by future legislation and voter action.

VI. ARGUMENTS AGAINST THE MEASURE

Arguments in opposition to State Measure No. 6 include:

1. The measure is poorly drafted; specifically, it appears to allow a separate eligibility for a spouse of a veteran who, in the distant past, may have been a prisoner of war or missing in action, even though the veteran himself may now be discharged and himself be eligible for, or already have obtained, a loan under this program. This is true, even if the spouse married the veteran long after he had been a POW or MIA. It is uncertain how many additional persons become eligible under the "spouse provision".

2. The greatest number of veterans benefiting by these changes are those who served between 1955 and 1960; very few of these would have been in active combat and a great many of them would have had only six months' active service under the Reserve Forces Act program (with an obligation for an additional 5 1/2 years in the active reserves).

3. There is no logical reason for the distinctions between the various service periods. The Viet Nam veteran is discriminated against by longer service required and by lack of an alternate residency period to residency at time of induction. The Legislature and the voters should quit "tinkering" with the eligibility requirements and adopt uniform rules applying to all eras.

4. The surplus from the present program is illusory in that the program is only financially viable because of the federal and Oregon tax free status of interest on the bonds.

5. If a veteran dies of service-connected disabilities, his spouse should be given the same rights as the spouses of those who died on active duty.

6. There should be no further expansion of the program to veterans not in actual combat.

7. Congress is considering changes in the Internal Revenue Code which could result in loss of tax exempt status of bonds issued by the State; there should be no further expansion of the program until the law in this respect is settled.

8. The large amount of bonds sold under this program has a tendency to saturate the bond market, making the sales of other types of bonds by the State of Oregon and its subdivision more difficult.

9. Expansion of the program continues to place the state on a competitive basis with the private sector for home loans.

VII. DISCUSSION

Previous City Club Reports state the Veterans' Loan program is well run and is popular. Your present Committee concurs with that statement.

The program affords those eligible the opportunity to borrow mortgage money at rates lower than those offered by the private sector. If the resolution is adopted, more Oregonians will be eligible for the loans, more will apply for the loans, and the administered program will be larger. Your Committee has not been able to identify those persons who proposed the changes initially. It is safe to conclude that no person takes credit for the proposed changes and no person interviewed is interested in being identified publicly as being opposed to the resolution.
Your Committee feels that the Legislature, in referring various amendments to the electorate, has unwisely adopted a "cut and patch" approach to the eligibility dates. It sees little logical choice for many of the dates in question, including the proposed extension of the Korean War eligibility period by five years beyond the actual conclusion of the war. However, there is similarly little sense in the discrimination against veterans serving subsequent to the Korean War, in requiring 210 days service instead of 90 days and in not allowing a period of Oregon residency as alternative to residency at the time of induction. The present proposal eliminates any logical argument in favor of the 210 days service requirement, by in fact giving eligibility to those serving only 90 days active duty during the period up to January 31, 1960.

Your Committee also feels that the proposed new paragraph (a) of subsection 4 is poorly drafted in that the past tense is used in reference to POWs and MIAs. The obvious intent of this paragraph is to grant relief to spouses of servicemen presently suffering either status. However, for some inexplicable reason, the proposed amendment would appear to give a separate eligibility to a spouse of a veteran who at any time during World War II, for instance, has been missing in action or prisoner of war. This separate eligibility could conceivably be used either to acquire an additional residence or to qualify the family for a second loan to which it would not otherwise be entitled. It is not necessary that the eligible spouse be married to the veteran at the time the veteran was MIA or was a POW.

VIII. CONCLUSIONS AND RECOMMENDATIONS

Your Committee after serious deliberation cannot concur as to whether it should recommend passage of State Measure No. 6. Three members favor recommending its passage and three members favor recommending opposition. Members of your Committee therefore file the following recommendations individually:

(1) Members of Committee in favor:

Those Committee members listed below have concluded that, in spite of the drafting mistakes, the number who will actually benefit from such mistakes is quite small. The attempt to assist the spouses of Viet Nam POWs and MIAs and war widows is well directed and important. These spouses have no doubt suffered more than the vast majority of veterans who are presently eligible for loans. In light of the above, those listed below are unwilling to recommend anything other than passage.

Stephen S. McConnell
Dennis F. Todd
Wm. M. Keller, Chairman

(2) Members of Committee Opposed:

Although the Committee members listed below support the Veterans' Loan program as a whole and support the inclusion of surviving spouses and the spouses of persons who are presently prisoners of war or missing in action, we do oppose the present proposed amendment to the State Constitution. We do this for the following reasons:

(a) Whether by intention or inadvertence, the proposal would make spouses of World War II and Korean War prisoners and MIAs eligible for benefits independently of the veteran spouse. This means that the spouse could claim benefits after the veteran had claimed his or her benefit, that the spouse could claim benefits whether or not he or she were living with the veteran, and that the spouse could claim benefits whether or not he or she had been married to the veteran at the time of imprisonment or being missing in action.

(b) There are different sets of eligibility rules for the veterans of the three conflicts covered. These differences include requirements both for Oregon residency and for the number of days of active duty needed to qualify.
We oppose the passage of this constitutional amendment because of its ambiguity, particularly in subparagraph 4(a), and the administrative problems that this ambiguity will cause the Department of Veterans’ Affairs. It is doubtful that the Legislature intended to include those spouses discussed in point 2(a) above. The defeat of this referendum proposal will give the Legislature an opportunity to bring a better amendment before the voters in the future.

John Brady Marks
Gordon V. Walker

(3) Additional Opposing statement:
In view of the foregoing observations and rationale, as set forth by our entire Committee’s study, the proposal is deficient in serving the general welfare. Therefore, the negative position is assumed.

E. John Rumpakis

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Received by the Board of Governors September 25, 1972 and ordered printed and distributed to the membership for discussion and action.
REPORT
ON
REPEALS GOVERNORS' RETIREMENT ACT
(State Measure No. 7)

Purpose: Measure would repeal 1971 legislative act establishing retirement fund for the office of governor. Any person who served as governor for two years upon retirement from public employment, Oregon or federal, is entitled to pension equal to 45 percent of his salary. However, benefits are reduced by amounts received from other public retirement programs. Retirement fund is financed by legislative appropriations, donations, and contributions from governor's salary in the amount of 7 percent.

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

I. INTRODUCTION

This initiative ballot measure would repeal House Bill 1728 passed by the 1971 Oregon Legislature. The bill provided for the establishment of a retirement benefit program for former Oregon governors. They would become eligible upon their attaining the age of 62. The bill passed the House by a vote of 50 to 8, and the Senate, 25 to 5.

The Act provides that continuous service as governor for a period of two or more years before or after the effective date of the Act qualifies the individual for yearly benefits equal to 45 percent of the annual salary to which he was entitled at the time he ceased to be governor.

While in office the governor would contribute seven percent of his salary to the Gubernatorial Retirement Fund. However, he would retain no vested proprietary rights, interest, or equity in this contribution.

Any other retirement benefits received from the federal or state government or from any local political subdivision of the state accruing from service as an elected official or as an employee would be deducted from the benefits due under this Act. Not included in such deductions are Social Security payments or benefits received for service in the Armed Forces.

The Act appropriated the sum of $11,655 out of the General Fund for the current biennium.

Due to the enactment of the Emergency Clause, the provisions of House Bill 1728 took effect on July 1, 1971.

Herschel Soles of Portland, Oregon, as a private citizen, filed an initiative petition seeking repeal of this Act and was successful in obtaining the signatures necessary to place the repeal measure on the 1972 General Election Ballot.

II. BACKGROUND

As originally introduced by Representatives Paulus, Stults and Crothers, House Bill 1728 was concerned with reinstating the eligibility of state employees who previously had withdrawn from the Public Employee's Retirement Fund. In the last two or three days of the 1971 Legislative Session, there occurred a process that unfortunately is not uncommon during the frantic closing sessions . . . the "jacking up" of a bill.

In this instance, the content of House Bill 1728, which had had two readings, was discarded and the bill rewritten in its entirety to create the Gubernatorial Retirement Fund. Suspension of rules in both houses allowed for quick passage of the rewritten bill prior to adjournment. Representative Stults, listed as a spon-
The sponsor of House Bill 1728 was one of eight representatives who voted against the measure as finally passed.

Since July 1, 1971, former Governor Robert Holmes has been receiving a monthly pension of $655 under the 1971 Act, with annual benefits totaling $7,860, based on his gubernatorial salary of $17,500.

If Senator Mark Hatfield is successful in his 1972 bid for re-election, he will then be eligible for the Federal benefit in an amount which will preclude his receiving any payments from the Gubernatorial Retirement Fund.

Based on his current salary of $29,000, Governor Tom McCall would be eligible for retirement benefits, beginning shortly after completion of his present term, in the amount of $13,050 annually.

III. SCOPE OF RESEARCH

Interviews with Herschel Soles, who filed the initiative, and with Doug Seymour, Oregonian Staff writer assigned to the Legislature, were conducted by the full committee. Individual committee members contacted a cross-section of state representatives and senators in the metropolitan area to ascertain their reasons for supporting or opposing the measure. These included State Senators John D. Burns, Vernon Cook, George Eivers, Ted Hallock, Tom R. Mahoney and Don Willner, and State Representatives Fritzi Chuinard, Dick Groener and Roger E. Martin.

The Committee wishes to express its appreciation for the compilation of information on governor pension programs in other states provided by James L. McGoffin, Director of the Public Employee’s Retirement System.

IV. ARGUMENTS PRESENTED IN FAVOR OF THE REPEAL

1. The length of time in office to qualify for benefits is too short and the amount of benefits paid is too great.

2. The Bill was designed in haste and is defective. New legislation is needed that would provide an actuarially sound benefit program not only for the governor but for legislators and other state elective officers as well.

3. The public was given no opportunity to express opinions on the merits of a governor’s pension plan and the use of the Emergency Clause was uncalled for and was an obvious attempt to forestall public opposition.

4. Any benefit program should be based on a self-sustaining actuarial basis.

5. The Bill was only an opening wedge to be followed by similar programs for legislators and other elected officials.

V. ARGUMENTS PRESENTED IN OPPOSITION TO THE REPEAL

1. Governors of our state are entitled to the same retirement privileges as our judges. The Bill was modeled after and has merit similar to the Judicial Retirement Act.

2. Most states provide similar retirement programs for their governors and Oregon should provide for the men who serve in its highest elective office.

3. A pension is deserved because service as governor in what normally would be a period of highest earnings in other activities, penalizes the individual in terms of what he could provide for his family and future through engaging in his regular business or professional occupation.

4. Opportunities after one leaves the office of governor are limited both politically and privately. A retirement plan compensates for this.
VI. DISCUSSION

Much weight was given by those opposing the repeal to the fact that the Gubernatorial Retirement Act was based on the Judicial Retirement Act created by the 1943 Legislative Assembly and amended periodically since then.

Both Acts require a contribution into the retirement fund of 7 percent of the individual salary for each year in office. However, while the Governor's pension is set at 45 percent of his salary at the time of leaving office, judges receive 45 percent of the average annual salary in the highest five of the last ten calendar years of service on the bench.

By serving two years in office, a governor is entitled to full pension benefits on reaching the age of 62. Only if they have served on the bench for 18 years can judges retire before the age of 65 and receive their full pension benefits. With only 12 years of service, a judge must wait until the age of 70 to voluntarily retire on full benefits.

Judges contribute to the fund for a maximum of 16 years. In the last biennium, circuit judges contributed approximately $1,500 a year each while the state's contribution to his plan was approximately $1,600 per judge.

Due to the short eligibility period and the large benefit payment in relation to contribution, the relative parity between individual and state contribution to be found in the Judicial Retirement Fund is impossible to obtain with the Gubernatorial Retirement Fund. It has been facetiously stated that "the only way to put the Gubernatorial Fund on any actuarial basis is to elect the retiring governor to Federal office so that his Federal pension reduces or eliminates his state benefits."

What do other states do for former governors? Information on 41 out of the 50 states show that seven states (including Oregon) have separate pension plans; six states provide special benefits in lieu of their general retirement program for state personnel and 28 states have no special or separate plans.

All Oregon state elected officials are eligible to participate in the Public Employees' Retirement System. Testimony presented during the Ways and Means Committee hearing on the amendment to original House Bill 1728 indicated that with eight years' service, the PERS benefits due a former governor at 65 would be approximately $325 a month.

Ten of the 13 states providing separate or special benefits base the amount paid on length of service. A criticism of the Oregon plan is that no consideration is given to length of service in determining amount of benefits.

Another criticism of the Bill, as written, is that the loss of proprietary rights and interest in contributions made in the Retirement Fund has no justification if it is accepted that former governors are entitled to receive retirement benefits. Under the present Act, a governor's contribution can be reduced or lost entirely if he is entitled to receive retirement benefits from any other governmental service.

The manner in which this legislation was introduced and passed raises serious question as to whether proper consideration was given to the merits of the program as adopted. While legislative enactment of the Emergency Clause for non-emergency measures is not uncommon, your Committee objects to such uncalled-for use of this Clause. Your Committee cannot understand why it was necessary for this Act to go into effect less than a month after it was introduced in the Legislature in order to preserve "public peace, health and safety," as specified by the Emergency Clause.

The whole problem of providing proper compensation, including retirement benefits, to elective state officials and legislators has been under consideration for some time by both the legislative and executive branches of state government. For purposes of evaluating Measure No. 7, your Committee did not feel it necessary to involve itself in the progress or merits of such considerations.
VII. CONCLUSIONS

House Bill 1728 is a hastily conceived and poorly drawn measure and was enacted under legislative procedures that have always been subject to question. The fact that the amount of state funds involved is "peanuts" does not contribute to the conclusion that the "end justifies the means." Normally such a measure would slip through the Legislature unnoticed by the public and would quietly become law. Unfortunately for the measure's proponents, such was not the case with House Bill 1728.

It is the unanimous opinion of your Committee that a properly designed compensation program for former governors is desirable. Due consideration of this problem by appropriate bodies should be undertaken, with subsequent legislative action proceeding in a manner that would allow full public scrutiny of the proposed measure.

VIII. RECOMMENDATION

Your Committee unanimously recommends that the City Club go on record as favoring the repeal of the Governors' Retirement Act and urges a vote of "Yes" on State Measure No. 7.

Respectfully submitted,
Alan T. Button
William W. Hale
Robert I. Mesher
James Pizza
Robert W. Redding
William Zimmerman
Morton T. Rosenblum, Chairman

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