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REPORT ON
STATE MEASURE NO. 7
PROHIBITS STATE EXPENDITURES, PROGRAMS
OR SERVICES FOR ABORTION

The Committee: Margery Abbott, Harriet Anani, Roy D. Lambert, A. Thomas Niebergall,
Randolph West, Jean G. Frost, Chairman; Gerard R. Griffin, abstaining.

REPORT ON
STATE MEASURE NO. 9
LIMITATIONS ON PUBLIC UTILITY RATE BASE

The Committee: Willard W. Bone, William V. Bottler, Ruth Bucknam, John A. Carlson,
Frank E. Blachly, Chairman.

REPORT ON
STATE MEASURE NO. 10
LAND USE PLANNING, ZONING
CONSTITUTIONAL AMENDMENT

The Committee: Donna M. Drummond, John Malick, Walter W. McMonies, Jr.,
Cristy Muller, Dana Rasmussen, Richard S. Wilhelmi,
Mark D. Whitlow, Chairman.

RESEARCH BOARD STATEMENT ON STATE MEASURES
NO. 3 and 5; MULT. CO. MEASURES 26-20 and 26-21; and
MUNICIPAL MEASURES NO. 51, 52, and 53
REPORT ON
STATE MEASURE NO. 7
PROHIBITS STATE EXPENDITURES, PROGRAMS OR SERVICES FOR ABORTION

Purpose: “Measure prohibits any State agency from spending any State money for abortions, and from providing any programs or services promoting abortion.”

AN ACT

BE IT ENACTED by the people of the State of Oregon that the following new law be created and read as follows:

SECTION 1. Notwithstanding any other provision of law, no agency of this state shall expend State monies for abortions or provide programs or services that promote abortion.

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

I. INTRODUCTION

Your Committee was appointed to study and report on State Measure No. 7. Our investigation covered the issues relating to:

a. funding, i.e., what would be the effect of eliminating these programs and services and would their elimination save the State money?

b. scope of proposed legislation, i.e., what is the scope of the programs and services which might be defined as “promoting abortion”?

Although your Committee is mindful of the deep emotional reaction the entire abortion question generates in the minds and hearts of many Oregonians, abortion is, in the 1973 opinions of the U.S. Supreme Court, a legal medical procedure. Consequently, your Committee has limited its considerations and this report to the very narrow question of state funding of abortions. Whenever the term “abortion” is used in this report, it refers to “induced abortions” only.

Because of the substantial number of technical terms used in the report, a glossary is included as Appendix A. Listings of all individuals contacted and all sources used are included as Appendices B and C.

II. HISTORY AND BACKGROUND INFORMATION

Until the early nineteen seventies many states had laws (enacted for the most part in the latter half of the nineteenth century) making abortion illegal except where the mother’s life was at stake. Oregon’s own statute, enacted in 1969 and still on its books today, restricted abortions to circumstances involving either (1) substantial risk to the mother’s physical or mental health, (2) a fetus with a serious physical or mental defect, or (3) pregnancy resulting from felonious intercourse. Such laws were held to be unconstitutional in January, 1973 by the U.S. Supreme Court in the case of Roe v. Wade and the companion case of Doe v. Bolton.

The Court held that during the first trimester of pregnancy—when the risk of mortality in abortion may be less than mortality in normal childbirth—the abortion decision must be left to the medical judgment of the pregnant woman’s attending physician without regulation by a state. During the second trimester, a state may regulate the abortion procedure in ways that are reasonably related to the preservation and protection of maternal health. In the third trimester—when the fetus presumably has the capability of surviving outside the womb—a state may regulate and even proscribe abortion, except
where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

In 1976 and 1977, Congress changed the provisions for federal funding of abortions and ultimately prohibited the expenditure of federal funds for abortion (on a maximum 90 percent match basis with the state) except

"... where the life of the mother would be endangered if the fetus were carried to term; ... for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or ... in those instances where severe and long-lasting physical health damage to the mother would result if pregnancy were carried to term when so determined by two physicians." P.L. No. 95-205, Section 101 [91 Stat. 1460] (Dec. 9, 1977)

Prior to implementation of this legislation, Oregon's Department of Human Resources had paid for (and received federal contributions for) abortions requested by all women who were eligible for welfare.

Following implementation of the federal funding cut-back on August 5, 1977, the Oregon Department of Human Resources requested an Emergency Fund allocation of $1,820,612 to replace the federal funds. After considerable debate, the Emergency Board voted to allocate $200,000 as a stopgap measure to provide a restricted level of abortion services until further consideration could be given to the question.

The Emergency Board then voted in February, 1978, to allocate an additional $481,790 to supplement the prior legislative appropriation for abortion services. Funding cutbacks affected existing programs and only provided funds for services to the following persons:

1) Women 18 years of age and older who were clients of Adult and Family Services Division, Department of Human Resources, at the time of conception; or

2) Women 17 years of age and younger who were welfare-eligible or already in foster care, or under the jurisdiction of the Children's Services Division, Department of Human Resources.

The Adult and Family Services Division and the Health Division of the Department of Human Resources have provided statistical information on the actual costs of the program to the state. In Fiscal Year 1977-78, there were a total of 13,163 abortions reported in Oregon. Of these, 1,738 (13.2 percent) were state funded. The actual cost to the state was $480,552 and to the federal government $213,983. Prior to the Emergency Board action in February, 1978, 13 percent of the abortions in Oregon were funded by the state; after the change in definition of eligibility in February, 1978, six percent, or 312, were state funded, and 11 of these qualified for federal match funding.

III. ARGUMENTS FOR AND AGAINST MEASURE 7

The following arguments were compiled from numerous interviews, statements, and reports from other groups concerned with the question. No attempt is made in this section to assess the validity of any argument presented by either proponents or opponents of Measure 7.

A. Arguments advanced for the Measure (and in opposition to state funding of abortions)

1. The passage of Measure 7 would mean a direct savings to the state of as much as $3 million for the 1978-79 biennium.

2. The Measure would provide indirect savings which are much greater than the direct savings. The estimated productivity of an individual to the State of Oregon is $146,422 over an average lifetime.
3. The Measure would eliminate the use of tax money for a program which many taxpayers feel is morally wrong. The state should not be in the business of promoting abortions.

4. This Measure would not cover medical procedures to save a pregnant woman’s life. The term “major abdominal surgery” rather than “abortion” applies in most situations where the pregnant woman’s life is in danger.

5. Carrying pregnancy to term instead of inducing abortion in women eligible for state funding will not increase the cost to the state. There is a long list of couples who wish to adopt children, including handicapped children, and who are willing to pay the mother’s hospital costs.

6. Measure 7 will not in any way limit privately financed abortions.

7. There are alternative ways for a welfare-eligible woman to obtain an abortion if she chooses or if her life or health is in danger.

8. The Measure would not preclude the training of doctors and nurses in medical schools. There are other medically valid reasons for teaching the abortion procedure.

9. The Measure would prevent women from being pressured into obtaining an abortion. It would not affect genetic counseling or family planning clinics unless they are “promoting abortion.”

10. Money now used for state funded abortions could be better used for improved family planning and counseling for welfare-eligible women in order to prevent unwanted pregnancy.

11. The Measure would eliminate welfare fraud relating to abortions.

B. Arguments advanced against the Measure (and in favor of state funding of abortions)

1. Measure 7 would increase the state's financial burden. The Division of Adult and Family Services estimates that the potential cost of discontinuing the abortion program may range as high as $14 million for the 1978-79 biennium to pay for hospital and medical costs associated with delivery and additional support costs for the newborn children.

2. The Measure restricts access to necessary medical care for a substantial proportion of Oregon’s population.

3. The Measure establishes the precedent of allowing government, rather than doctors and patients, to determine which individuals require and/or deserve medical care.

4. The breadth of the proposal and the failure of the Measure to define the meaning of the phrase “provide programs or services that promote abortion” will result in numerous lawsuits to establish the obligation of the state to fund therapeutic abortions.

5. The U.S. Supreme Court has determined that a woman has a constitutional right to consider the option of abortion and that the decision should be left to a woman and the medical judgment of her physician. This Measure would eliminate that option for welfare-eligible women.

6. No governmental funding would be available under this Measure regardless of the health risks to the mother, circumstances of conception, or the probability of a severely defective fetus.

7. Roughly one-third of the women obtaining abortions are teenagers. Childbearing for teenagers carries with it an increased risk of obstetric complications, poor pregnancy outcome (including low birth weight infants and a disproportionate share of perinatal deaths and developmentally impaired children) and social disruption.

8. Prospective adoptive parents cannot be expected to bear the costs of state-funded childbirth as indicated by the fact that over 90 percent of the unmarried women who do give birth elect to keep their children.
9. Bearing and keeping a child greatly decreases the chances of welfare-eligible women becoming self-supporting.

10. The restriction on programs that “promote abortion” would affect both the state amniocentesis program and family planning clinics and might prohibit medical and nursing school training for abortion at the University of Oregon Health Sciences Center.

11. State employees could be denied coverage for abortion on their health plans, which could cause the state-paid premiums to rise.

12. All hospitals in the state might be prevented from performing abortions since they require state licensure.

A. The Right to Abortions

The U.S. Supreme Court has established the constitutional right of women to obtain abortions in the first and second trimester of pregnancy. Your Committee accepts this legal interpretation as a “given” and has confirmed its examination to those issues relating to state funding of abortions.

Measure 7 directly affects women who are eligible for Aid to Families with Dependent Children grants or who are under the jurisdiction of the Children’s Services Division. Your Committee is concerned by the effect the Measure would have in denying low-income women a medical choice available to other pregnant women when this choice is eliminated. No evidence has been presented to support the assertion that these women can obtain abortions when they do not have the ability to pay (although your Committee is aware that free abortions have been provided on rare occasions). This potential inequality becomes particularly important when the life or health of the woman is at stake. The argument that termination of pregnancy in order to save the life of the woman is not an “abortion” is not supported by legal precedent. It appears that litigation may be necessary to determine the right of welfare-eligible women to obtain this type of medical procedure.

IV. DISCUSSION

B. Financial Aspects

1. Costs for Fiscal Year 1979. Measure 7 is presented by its proponents primarily as a tax saving measure. Your Committee obtained estimates of the direct costs to the state related to the funding of abortions for welfare-eligible women. No estimates were available relating to the costs of “programs or services that promote abortion.” According to the Adult and Family Services Division, approximately $2 million would have been spent during the current biennium had the state-financed abortion program received full funding. The Division also projects that direct savings from discontinuing the program would range from $230,334 to $1,743,719 for Fiscal Year 1979 depending on the assumptions relating to case load and cost of abortions.

However, estimates have also been made by the Adult and Family Services Division of increased costs for prenatal care and delivery and of ongoing grants for Aid to Families with Dependent Children resulting from the restriction of state funding for abortions. Projected costs range from $4,268,764 to $14,287,792 for Fiscal Year 1979. The variations depend on the number of women who carry to term and the number of children released for adoption.

Proponents argue that the costs associated with carrying the fetus to term will not be financed by the state because the children will be adopted and the adoptive parents will reimburse the state for these costs. The Children’s Services Division has stated that it neither requests nor expects adoptive families to reimburse the state for delivery costs. Your Committee has found strong evidence that at least 90 percent of the children will be kept by their mothers and fewer than 10 percent placed for adoption.

It is clear to your Committee that no precise estimates can be made of the direct costs to the state because of the number of variables resulting from Measure 7. However, your Committee believes that it may be reasonably anticipated that elimination of state funding for abortion will result in increased costs to the taxpayers of Oregon, as indi-
cated by the above figures. These figures indicate that the direct cost to the taxpayers could increase by at least a factor of two in Fiscal Year 1979.

2. **Long Term Costs.** An additional financial argument raised by the proponents is that the economic analysis of the impact of abortion funding cannot be confined to the immediate costs to the state but must, rather, include the loss to the economy for each potential life which is terminated. The proponents have calculated that “the average direct productivity loss to Oregon whenever an unborn baby is destroyed is . . . $146,422.” This figure is derived from data developed by the National Highway Traffic Safety Administration in 1976, corrected to apply to Oregon in 1978. The figure, however, is not directly applicable as stated by the proponents. It is an average for all segments of society and cannot be accurately applied to a specific segment such as children born of welfare-eligible women. The national average or even the state average may not be applicable to such children.

An additional element would have to be included if long-term costs to the state were to be analyzed, that being the cost of maintaining a child on welfare. The cost of one mother and one child on Aid to Families with Dependent Children for 18 years, assuming no cost-of-living adjustments, has been estimated to be $73,757. Your Committee believes that the assertion of long-term savings to the state, if state funding of abortion is prohibited, must be weighed against the substantial unknown variables relating to long-term welfare cost estimates and the uncertainties in the available data.

A further important financial consideration is that the elimination of state funding for all abortions will result in the elimination of partial federal funding under those circumstances where a federal contribution would otherwise be available.

Your Committee has found no cost data relating to other programs which might be affected, but prohibition of programs or services “promoting abortion” could affect family planning programs and genetic counseling programs, among others. These would include state programs and private programs which receive state funding.

**C. Absolute Prohibition of Programs and Services**

As drafted, the language of Measure 7 provides for no exceptions to the prohibition of state funds for abortions or for programs or services which promote abortions. The provision is much more stringent than corresponding federal legislation and could limit the access of women to necessary medical care as well as prohibiting induced abortions. Because of the Measure's all-encompassing language, at least the following issues will require administrative resolution and/or litigation if this Measure is passed:

1. **Constitutionality.** The constitutionality of withdrawing state funds for abortion may be questioned at least where the life or physical health of the woman is threatened. Current federal law provides for contribution towards the cost of abortion, based on matching state funds.

2. **Definition of abortion in Oregon.** Proponents of the Measure argue that abortion where the life of the woman is at stake will not be affected because it normally falls within the category of major abdominal surgery—not abortion. Judicial definitions do not support this contention. The Uniform Abortion Act, for example, defines abortion as the “termination of human pregnancy with an intention other than to promote live birth or to remove a dead fetus.”

3. **Definition of “promoting abortion.”** The phrase “promoting abortion” used in the ballot measure could be interpreted as precluding training in abortion procedure at state medical and nursing schools, prohibiting or limiting any state or state-funded counseling programs which discuss abortion as an alternative, preventing all hospitals in the state from performing abortions (since hospitals require state licensing) or prohibiting any state-funded or licensed facility from performing test procedures designed to disclose deformities of the fetus during pregnancy.

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1 Letter from Governor Bob Straub to David Kruse, Gladstone, Oregon, July 25, 1978.
D. Medical Considerations

Measure 7 would limit access to abortion for welfare-eligible women. While specific data are not available for this group, approximately one-third of the induced abortions in 1977 involved teenage women. There is strong evidence for the fact that pregnancy among teenagers results in a higher than normal percentage of premature or low birthweight babies, perinatal deaths and other obstetric complications. Young parental age has also been associated with decreased educational attainment, marital instability and child abuse. Denial of state-funded abortions for eligible teenage women could thus result in increased medical and other complications which could decrease if childbearing were postponed.

Some women who would be eligible for state-funded abortions will obtain abortions even if state funding were not available. This could result in two potential problems:

1. The reappearance in Oregon of non-medical abortions and their resultant medical complications; or
2. Delays in performing an abortion while a woman obtained funds exposes her to vastly increased risks of death. There is 50 times the chance of maternal mortality for an abortion performed at 16 weeks or later than for an abortion performed before nine weeks gestation.

As noted above, the Measure makes no provision for abortion to protect the life of the woman. Neither does it allow for therapeutic abortion when the health of the woman is at stake, nor for abortion following rape or incest. Federal funding is now available under these conditions but would be denied following the elimination of the state matching funds under Measure 7.

E. Other Arguments

1. While proponents of Measure 7 have argued that the elimination of state funds for abortions will prevent welfare fraud, no evidence of such alleged fraud was presented by the proponents to support this argument and your Committee did not investigate further.
2. The proponents have also stated that they are concerned that pregnant women are pressured into having abortions by clinics, counseling centers and volunteer agencies. They have stated that women are not given any realistic alternatives to abortion during counseling sessions. No evidence was presented by the proponents to support this argument and your Committee did not investigate further.

Your Committee finds:

1. no solid evidence that passage of Measure 7 will provide any decrease in state expenditures or relief to taxpayers;
2. it may be reasonably anticipated that direct costs to the taxpayer could increase by at least a factor of two in Fiscal Year 1979;
3. passage of the Measure would create a disproportionate financial hardship and deny a legal medical procedure to that class of citizens least able to afford such an impact;
4. passage of Measure 7 would unnecessarily increase the health risks to welfare-eligible women; and
5. the broad sweeping nature of the language used in the ballot measure allows no exceptions and will create uncertainty in a number of areas, which will ultimately be resolved either by administrative rule or litigation.

V. CONCLUSIONS

2 Vital Statistics Section, Oregon State Health Division
4 Ibid. p. 1476.
5 Ibid. p. 1475.
VII. RECOMMENDATION

Your Committee therefore recommends a "NO" vote on Measure 7.

Respectfully submitted,*

Margery Abbott
Harriet Anani
Roy D. Lambert
A. Thomas Niebergall
Randolph West
Jean G. Frost, Chairman

*Committee member Gerard R. Griffin requested the following statement be inserted:

My religious convictions preclude my endorsement of an otherwise unanimous study committee recommendation that City Club members vote against Measure 7.

On the other hand, Measure 7, as written, is so loaded with present and future problems of enormous sociological impact for individuals and additional economic costs to the State of Oregon, that neither can I vote for Measure 7.

Therefore, I abstain.

Gerard R. Griffin
APPENDIX A

GLOSSARY

Abortion
The termination of human pregnancy with an intention other than to promote live birth or to remove a dead fetus

Abortion, induced
Abortion brought on purposely by drugs or mechanical means

Abortion, therapeutic
Abortion induced because of the mother's poor health, or to prevent birth of a deformed child

Amniocentesis
Insertion of a needle into the fluid-filled amniotic sac surrounding the fetus, thus making possible injection of various chemical solutions or withdrawal of amniotic fluid. This fluid can be analyzed to determine the sex of the fetus, or chromosomal abnormalities.

Department of Human Resources

APPENDIX B

PERSONS INTERVIEWED

The following persons were interviewed by the full Committee or by individual Committee members:

Richard Arbuckle, Assistant Manager, Health & Social Services Section, Adult and Family Services Division
Rudy Batties, Manager, Budget & Rates, University Hospital and Clinics
Jesalee Fostering, Executive Director, Planned Parenthood Association, Inc.
Brad Germeroth, Oregon Pro-Life Council
Riley Hall, State Coordinator, Family Planning Program, Health Division
Hazel Hays, Manager, Multnomah Region, Adult & Family Services Division
Mary Heffernan, Taxpayers for Choice
Allene Klass, R.N., Administrator, Lovejoy Specialty Hospital
Gladys Knight, Supervisor, Intake Unit, Southeast Multnomah Branch, Children's Services Division
Chris Kowitz, sponsor of the petition
Mary Ann Lubich, Supervisor, Adoption Unit, North Branch, Children's Services Division
Bea McLellan, State Chairman, Oregonians Opposed to State Financed Abortion
Robert Mighell, M.D., Psychiatrist
Walt Mintkeski, Sierra Club
Ann Morgenstern, Attorney
Hardy Myers, State Representative, District 19
Linda J. Pecie, Legislative Advisor, Right-to-Life of Oregon
Gerald H. Prescott, M.D., Chairman, Department of Genetics, University of Oregon Medical School
Lucile Russell, Manager, Health Service Unit, Children's Services Division
Martin Schwartz, M.D., Oregon Medical Association
Gunnar Waage, M.D., Director, Premature Nursery, Bess Kaiser Medical Center
APPENDIX C

Published Sources


Wallerstein, Judith S., MSW, Kurtz, Peter, MSW and Bar-Din, Marion, MSW, “Psychosocial Sequelae of Therapeutic Abortion in Young Unmarried Women,” *Arch Gen Psychiatry*. Vol. 27, December, 1972.


SB 193, 1969 Legislative Session


Other Source Material


Health and Social Services Section, Adult and Family Services Division. Figures on numbers and costs of state-funded abortions for Fiscal Year 1977.


Bea McClellan, Oregonians Opposed to State Financed Abortions. Argument in Favor of Measure 7.


REPORT ON
STATE MEASURE NO. 9
LIMITATIONS ON PUBLIC UTILITY RATE BASE

Purpose: "Initiative would prohibit public utilities from charging customers rates based on a rate base which includes the cost, including construction or acquisition cost, of real or personal property not presently used to provide utility service to the customer."

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

I. INTRODUCTION

This Measure addresses the question of the current utility ratepayer's responsibility for a share of the cost of development of future resources. Although the Measure applies to all regulated public utilities, it seems reasonable to assume that it is primarily addressed toward energy producing facilities of the future. It is important to note at the outset that the Measure is limited to only one aspect of the whole energy question, namely, who pays and when. It does not address ecological considerations, energy conservation or comparison of alternative methods of future energy production. These issues may be implicit in the views of the proponents, but since the Measure itself does not specifically address them, the Committee has confined itself to the stipulated issue, that is, the question of the current ratepayer's responsibility for some share of the cost of development of future energy sources and other public utility facilities.

At the risk of oversimplifying an extremely complex process, the rate-making procedure is as follows:

1) A rate base is determined. This is roughly equivalent to the total cost of facilities used by the public utility in providing its services to the consumers. Traditionally, this rate base has included only costs of those assets actively being used to provide service, and has excluded costs of construction work in progress, or "CWIP."

2) An allowable rate of return is determined. This is an annual rate of investment return necessary to provide a reasonable compensation to utility investors and to enable the utility to successfully sell new security issues to finance expansion of its facilities, or to refinance existing obligations.

3) Service rates (charged to consumers) are set at a level adequate to pay all legitimate operating expenses and leave enough to provide the allowable rate of return on the rate base.

At issue here is whether the costs of construction work in progress may be includable in the rate base. To the extent that it is included, service rates will be raised enough to provide both a fair rate of return on the productive rate base and part or all of the expense of financing CWIP.

In the past, the rate base did not include the cost of CWIP, since CWIP was a small part of total company investment. However, in recent years several factors have emerged to change this picture. Among these are 1) diminished availability of low cost hydropower, 2) sharp rises in cost of gas, oil and coal fuels, 3) high costs of nuclear fuels, 4) accelerating inflation, 5) higher interest charges on borrowed money, 6) ballooning construction costs, 7) unforeseen environmental and siting requirements, and 8) expanded Federal regulations and, in some cases, reversal and outright denial of licensing after years of expensive development. It has been concluded that these factors have combined to place some utilities and their shareholders in financial jeopardy, presenting the possibility of rendering such utilities too weak to provide adequate and reliable service to the customers as required by Oregon statute. The utilities, seeing their costs magnify
beyond any reasonable expectation, concluded that the present consumers should share in some of the present costs of construction for future service, since they partially create the demand for the service.

The Public Utility Commissioner, in September 1975, ruled that the present consumer does have a responsibility for sharing some costs of construction work in progress. The determination arose from a rate increase request by Portland General Electric (PGE) which included the request that part of the interest paid for money borrowed for construction of the Trojan nuclear facility be included in charges to the consumer. PGE argued that its customers had a responsibility to share in costs expended for provision of future facilities in their behalf.

The cost of CWIP is the key issue of Measure 9. The inference of the wording of the Measure is that the total CWIP cost is now being borne by the consumer. This is not true. What is actually now included in the user's bill is not the cost of construction, as such, but a part of the interest charges for money used to finance construction, which is termed AFDC (allowance for funds during construction). It is important to clarify this point at the outset since it more correctly describes the magnitude of Measure 9's proposed savings to the consumer.

Measure 9 seeks to prohibit public utilities from charging customers rates which include any costs associated with the financing of construction work in progress.

II. HISTORY AND BACKGROUND FOR THE EMERGENCE OF MEASURE 9

Early in 1975 PGE determined that, due to delays in construction and high overruns in costs of the Trojan facility, PGE was in financial difficulty of a magnitude sufficient to endanger its solvency and ability to provide adequate reliable power, as required by statute. On March 11, 1975 PGE sought relief from the Oregon Public Utility Commissioner, Charles Davis, requesting a rate increase 24.7 percent above its then approved rate.

On June 10, 1975 the Commissioner convened public hearings in Portland and Salem to develop data relevant to the applicant's request, with particular concern to the equity of PGE's request. On September 26, 1975 the Commissioner allowed an increase of 24.7 percent over the original rate.

In order to determine that PGE was functioning efficiently, the Commissioner also required PGE to obtain and pay for an efficiency audit by the Arthur D. Little Co. of Cambridge, Massachusetts, with special attention to load forecasting, construction management, customer relations and overall management. The report was submitted first to the Commissioner, then to PGE and thereafter made public in April 1976. Its recommendations have since been incorporated in PGE management procedures.

It was in the September 26, 1975 ruling that the Commissioner expressed his views about CWIP. He stated that the Commissioner is not required by statute, administrative precedent or court decision to use any single method of determining a rate base. He stated that earnings are fair and reasonable when they return to the company its operating expenses and capital costs, which include debt service and reasonable earnings on stock. He further stated that the test of fair and reasonable rates of return is whether the return generated is proper, not the method used to calculate the base.

According to the Commissioner, it is not enough to say that only future ratepayers should pay for future service. In his 1975 ruling he reasoned that the cost of capital requirements is so large that the company's ability to survive is threatened and therefore present ratepayers must assume part of this responsibility. The Commissioner concluded that the then current service rates would not provide PGE with operating revenues adequate to provide a fair and reasonable rate of return nor to attract investor capital.

Although the Commissioner did not, and does not plan to allow inclusion of CWIP for unlicensed facilities in a utility's rate base, he rejected the contention that such facilities should never be included.
The Commissioner’s 1975 ruling contributed to an increase in some regulated utility rates and prompted the initiative petition submitted as State Measure No. 9 on the November 7, 1978 ballot.

The following arguments were compiled from numerous interviews, statements, and reports from other groups concerned with the question. No attempt is made in these sections to assess the validity of any argument presented by either proponents or opponents of Measure 9.

III. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURE

1. Present utility customers should pay for services they now use and not for the risks associated with building for future services. The elimination of charges for new power generating plants which are not now, and may never be placed in service would eliminate the major cause of recent increases in rates for electric power. This argument is especially pertinent for senior citizens who may never use power from future generating facilities.

2. The allowance of CWIP in the rate base forces the consumer to subsidize the utility shareholders, and allows the utilities to shed themselves of the risks of unnecessary expansion and fumbling management.

3. Measure 9 would force the Public Utility Commissioner to serve the interest of the ratepayer rather than the utility stockholder.

4. Enactment of the measure would return the State to a more traditional method of establishing the rate base.

5. Increased demand for public utility services is due to out-of-staters moving into Oregon at twice the national average. Making ratepayers already in the State pay now for those demands is unjustifiable.

6. The measure would provide some rate setting guidelines, reducing the range of discretion exercisable by the Public Utility Commissioner.

IV. ARGUMENTS ADVANCED AGAINST THE MEASURE

1. Present utility customers have a responsibility to assist in the provision of facilities for long range use, since they in part create the demand.

2. It is largely because public utilities are now faced with large expenditures on behalf of the consumer that they are in a very vulnerable financial condition, leaving in doubt their ability to provide adequate service required by statute. The consumer reasonably ought to help with this cost.

3. If part of the interest associated with CWIP is not included in the current rate base, service rates will be even higher in the future, since customers will later be charged enough to provide a fair rate of return on investment on the consequent higher capitalized value of interest on those funds used during construction. The Commissioner, under statutory requirement to provide the utility with a fair rate of return, will be obliged to account for all legitimate costs affecting such return. The customer cannot escape, ultimately, any legitimate utility costs.

4. Ratepayers do not assume the risk of poor utility management if CWIP is included in the rate base. The Public Utility Commissioner protects the consumer by examining carefully all utility management decisions and operating procedures before allowing any portion of the costs of CWIP to be charged to ratepayers.

5. The ratepayer is paying only a part of the interest on money borrowed for CWIP, not the entire cost of construction work in progress.

6. The Measure would unduly restrict the discretion of the Commissioner in his rate-setting function, since he can now allow or disallow costs associated with CWIP, case by case, based on the merits of the individual request.
V. DISCUSSION

Your Committee’s deliberations were directed primarily toward the arguments regarding 1) the obligations of current ratepayers to help finance facilities for future utility services; 2) the degree of discretion exercisable by the Public Utility Commissioner; and 3) the effects of Measure 9 on the market for public utility securities and the consequent effects on ratepayers.

The question of current ratepayer obligations is certainly one of the most significant issues arising from this Measure. Over the life of a utility project, all acquisition costs, including financing charges paid during construction, will be included in the rates charged by a utility. Measure 9 would prevent a regulated utility from including in rates charged to customers any portion of interest paid during a facility construction period. Since the utility will recover all interest paid on bonds, either now or later, the only question is whether it should be allowed to recover a portion of that interest during the construction period.

Unquestionably, Measure 9 is a consequence of the charge to the ratepayer of a portion of the cost of raising money for the construction of PGE’s Trojan plant. A large amount of PGE’s resources are committed to expansion ventures, and its return on total investment is consequently being carried by its relatively small on-line services (in comparison to work in progress). It seems reasonable that if PGE, or any other utility, is to go forward in response to consumer demand, consumers must assume in some manner a portion of interim costs of projects designed to satisfy part of the demand of these consumers.

Proponents of Measure 9 contend that current statutes give the Public Utility Commissioner excessive discretionary powers in rate making and that some guidance should be provided to lessen the risk of poor judgment or human error. There appears to be doubt as to whether passage of Measure 9 would in fact significantly reduce the Commissioner’s discretion in rate setting. The Commissioner has said that if he is not allowed to include part of the interest on CWIP in rate determinations, he will be obliged to increase the utility’s allowable rate of return on investment. On the contrary, proponents of the Measure believe that the words “by no device” in the Measure will prevent the Commissioner from using that process.

The Commissioner currently considers any of those utility company facilities which have received licensing for construction in his rate setting process. Unlicensed CWIP expenditures are not presently included in rate bases.

Only a portion of the total financing costs of CWIP includable in the rate base is passed on to the consumer. The portion allowed in the case of PGE is presently on the order of 25-30 percent. On the assumption that future energy sources must be found, and that a utility is prudently going about the business of finding and developing them, this level of consumer involvement seems modest and fair. The Public Utility Commissioner’s ruling emerges as a sound pay-as-you-go practice in order to avoid heavier charges of interest upon interest later on.

Clearly, the question of company prudence is at issue. It seemed highly insignificant that the Commissioner ordered PGE to undergo the management study by Arthur D. Little Co. in 1975, before making a final decision on the then pending rate case which introduced the concept of limited development cost-sharing by the consumer.

In connection with company prudence, it is clear that energy forecasts are at best an inexact science upon which even experts disagree, a fact of great magnitude by itself, but greatly compounded by the long term nature of the forecasting. An energy producing facility can be ten to fifteen years in the making. Decision making processes today for that far distant future are indeed risky, with the bulk of the risk falling on the private investor. It seems inevitable that the consumer who creates the demand must assume a small stake in the energy future if investor capital is to continue to be obtained.
The ratepayers, as well as the utility itself, have an interest in the capacity of the utility to attract new funds in the marketplace. Capital must be forthcoming or the consumer becomes the ultimate loser. Most of the capital investment in utilities is derived from bond sales. The ratepayers' assumption of a portion of the interest charges on bonds sold to finance current construction helps to maintain the bonds' marketability. PGE serves as an example. Presently PGE's bonds enjoy a satisfactory rating, but were that rating to drop, certain segments of the investor market would automatically become closed to them. For example, banks and insurance companies are heavy investors in bonds, but they are also highly regulated businesses with restrictions upon the degree of risk they may undertake. A lowered bond rating would also result in a higher rate of return on the bonds, and the cost of that higher rate of return would ultimately fall to the ratepayer as a service charge.

VI. CONCLUSIONS

1. The Committee concludes that present ratepayers, since they create part of the demand, have a responsibility to assist in financing the costs of present construction of utility facilities for future use.

2. The Committee believes that the formula and rationale used by the Oregon Public Utility Commissioner for determining the ratepayers' share of CWIP is both fair and reasonable.

3. The Committee believes passage of Measure 9 will not accomplish any long range or net reduction in utility rates (especially energy). If Measure 9 passes, the probable results will be that:
   a) Financing costs will rise, requiring commensurate increases in the allowable rate of return on investment to a regulated utility; and
   b) As a consequence of deferred payment of interest, costs to the consumer will increase when a facility comes on line and the full costs will then be included in the rate base.

VII. RECOMMENDATION

The Committee recommends a NO vote on State Measure No. 9 at the November 7, 1978 general election.

Respectfully submitted,
Willard W. Bone
William V. Bottler
Ruth Bucknam
John A. Carlson
Frank E. Blachly, Chairman

Approved by the Research Board October 4, 1978 for transmittal to the Board of Governors. Received by the Board of Governors October 9, 1978 and approved for publication and distribution to the membership.
APPENDIX A

A. Persons interviewed by the Committee
1. Bob Vian, Salem, Oregonians for Utility Reform
2. Grieg Anderson, PGE Planning Executive
3. Norman Bradley, Sr. V.P., Investments, U.S. National Bank, Portland
4. Roy Hemmingway, Deputy Oregon Public Utility Commissioner
5. Jonne Hower, Staff, Oregon Public Utility Commissioner
6. Lloyd Marbet, Forelaws on Board

B. Oregon Law Reviewed
2. O.R.S. 757.305 Illegal Practices (Utilities)
3. O.R.S. 756.055 1971 Repeal of "Used and Useful" per Utilities properties in rate base.
4. O.R.S. 757.005 Public Utility Defined

C. Argument Papers of Proponents and Opponents of 1978 Measure No. 9.
2. Statements on State Measure No. 9 submitted to Secretary of State Norma Paulus on August 4, 1978 for insertion into 1978 Oregon Voters Pamphlet by:
   - Oregonians for Utility Reform
   - The Democratic Party of Oregon
   - The Oregon Consumers League
   - Oregon State Council of Senior Advocates
   - Young Democrats of Oregon
   - R. Keith Loeffer, individual of 3765 N.E. 2nd, Gresham, Oregon
   - Citizens Concerned for Oregon’s Energy Future

D. Other Published Documents Reviewed:

TEXT OF OREGON STATE MEASURE NO. 9

Relating to Public Utilities,
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:

SECTION 1. Section 2 of this Act is added to and made a part of ORS 757.305 to 757.330.

SECTION 2. No public utility shall, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates which are derived from a rate base which included in it any construction, building, installation of real or personal property not presently used for providing utility service to the customer.
REPORT ON
STATE MEASURE NO. 10
LAND USE PLANNING, ZONING
CONSTITUTIONAL AMENDMENT

Purpose: “Nullifies Land Conservation Development Commission adopted planning goals, guidelines March 8, 1978. Cities, counties must adopt comprehensive plans, have all planning, zoning authority except legislature must prescribe goals, zoning, planning, notice procedures to be used. Legislature may establish an advisory commission and may regulate use in state wide significant geographic areas subject to compensation for adversely affected owners. Voter approval required before new regional planning districts organized. State, local land use legislative acts subject to referendum.”

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

Measure 10 is a far-reaching proposal for a constitutional amendment which would nullify, effective March 8, 1979, the 19 existing state-wide planning goals which have been adopted under current law by the Land Conservation and Development Commission (LCDC) and require the legislature to directly adopt new, but unspecified, state-wide goals. With or without legislative action by March 8, 1979, Measure 10 would either repeal or sharply curtail all LCDC powers and functions and would render uncertain the status of existing and in-process local comprehensive plans. Measure 10 also includes provisions for notice and compensation to certain “adversely affected” landowners in specified land use actions, purports to guarantee the rights of initiative and referendum in land use matters, and forbids the use of the emergency clause in land use planning actions.

II. LEGISLATIVE HISTORY OF OREGON’S STATE-COORDINATED LAND USE PLANNING SYSTEM

A. The 1969 Legislation.

The concept of state-wide planning goals for local jurisdictions originated in 1969 with Senate Bill 10 (the “1969 legislation”), which prescribed so-called “goals for comprehensive physical planning.” These included such currently controversial goals as the conservation of open space and prime farmlands, as well as the goal of providing “for an orderly and efficient transition from rural to urban land use.” This legislation was subject to an initiative in 1970 and the voters defeated the initiative by a 56 percent vote against repeal.


In the 1973 session, the legislature enacted Senate Bill 100 (the “1973 legislation”) to insure that comprehensive land use planning, as originally envisioned by the 1969 legislation, would in fact be effectively implemented and coordinated. Although the 1969 legislation required counties to have comprehensive plans and gave the governor statutory authority, including the set of goals, over the planning of any county that was neither completely zoned nor making satisfactory progress toward that end, the 1969 legislation provided neither funds nor a workable enforcement agency necessary to insure that comprehensive plans would be adopted.

The 1973 legislation was, therefore, designed to make state land use goals mandatory on local planning jurisdictions and create an enforcement agency. As conceived, the
Land Conservation and Development Commission (LCDC) was responsible, together with its administrative arm, the Department of Land Conservation and Development, for drafting state-wide land use goals and guidelines, coordinating comprehensive planning, and assuring compliance by the local planning units with the goals and guidelines.

The thrust of the 1973 legislation was not that local planning should be actually conducted from a state-wide level, but that actual planning was to occur at the local level through cities and counties, and at the regional coordination level through agencies such as CRAG. The primary function of LCDC, as envisioned by the 1973 legislation, was to insure "coordinated state-wide land conservation and development, through the promulgation of state-wide goals and guidelines." LCDC did not have any comprehensive planning authority, unless a local planning unit failed to accomplish its prescribed planning task.

Under the 1973 legislation, LCDC had until January 1, 1975, to adopt a first set of state-wide planning goals and guidelines which would then be used by local jurisdictions in preparing, adopting, revising and implementing their own comprehensive plans. LCDC was given discretion in the drafting of the goals, within the limitations set out by the legislation's preamble, its policy statement and certain specified priority considerations. The legislature made no effort to further define "goals" for LCDC, "preferring the definition to be refined in the process of citizen input, Commission approval and legislative review."

On December 27, 1974, after holding 56 public hearings around the state and 18 additional public hearings and work sessions, LCDC adopted the original 14 state-wide planning goals. (A 15th goal relating to the Willamette River Greenway was adopted by the Commission in late 1975 and four additional goals were added in late 1976, the latter dealing with the Oregon coast.) The resulting LCDC goals were the product of the extensive hearing process and conformed with the legislative priorities provided by the 1973 legislation, as well as the "goals" contained in the 1969 legislation, which had been made "interim goals" by the 1973 legislation.

Legislative review of LCDC's goals and activities was specifically provided for by the 1973 legislation, through the creation of a special Joint Legislative Committee on Land Use. This Committee was to receive monthly reports from LCDC, as well as a pre-session draft of LCDC's biennial report to the legislature. Since goals and guidelines adopted by LCDC were to be included in the biennial report, the legislature was thereby afforded an opportunity to revise or amend any goals it wished. The 1973 legislation also required the Joint Legislative Committee to study and recommend to the legislature a program for compensating landowners for loss of use of their property attributable to land use regulations and restrictions.

In 1976, opponents of LCDC and its goals placed an initiative on the ballot (which was also designated "Measure 10"), seeking repeal of the 1973 legislation and the abolition of LCDC. Most of the same arguments made in support of the current Measure 10 were also advanced in support of the 1976 Measure. After much public discussion, the 1976 repeal effort was defeated, with 57 percent of the voters supporting retention of the state's current land use planning agency and goals.

C. The 1977 Legislation.

Despite its defeat, the 1976 repeal attempt resulted in a full-scale review of state-wide land use planning by the 1977 legislative session. Various groups (including Associated Oregon Industries (AOI), the Oregon State Home Builders Association, the Oregon Association of Realtors, the League of Oregon Cities, and the Association of Oregon Counties), submitted various proposals for change in the land use planning law.

After extensive hearings in both the House and Senate, Senate Bill 570 was enacted into law. It included many of the suggested substantive and procedural changes to the 1973 legislation. The resulting legislation was strongly endorsed by most cities and counties, was supported by AOI, and was not opposed by the Realtors or the Homebuilders
associations. SB 570 was designed to deal with most of the concerns which had been raised by the 1976 ballot measure and (1) removed LCDC’s controversial power to “take over” planning at the local level; (2) imposed a two-year moratorium on the adoption of new goals by LCDC; (3) clarified the non-mandatory nature of the LCDC “guidelines” (not the goals themselves, but the LCDC’s interpretative commentary which accompanied the goals); (4) instructed LCDC to tailor its requirements to the diverse administrative capabilities of local governments; (5) mandated state agency cooperation and coordination with local planning activities; and (6) required mailed notice of contemplated planning and zoning changes to affected landowners. Finally, it tightened up certain definitions, particularly the concept of “goals.”

In addition to SB 570, the 1977 legislature passed other bills intended to meet concerns and complaints raised by the then-existing state-wide planning system. Senate Bill 827 authorized a reduction in the assessed value of property devalued by a zoning change not requested by the property’s owner. SB 820 required LCDC to pay reasonable attorney’s fees and court costs incurred by a city or county in defending a suit or action challenging a planning decision legitimately adopted or taken to comply with a state-wide planning goal. Senate Bill 846 allowed permits for non-farm uses in exclusive farm-use zones and established procedures for LCDC’s issuance of compliance acknowledgments and plan extensions to local jurisdictions.

In sum, the 1977 legislation made many corrective changes in the basic statutory framework established by the 1973 legislation, all of which were responsive to the concerns raised in the campaign for the 1976 repeal effort. The legislature did not, however, revise or amend LCDC’s current goals; on the contrary, the legislature adopted a moratorium which required LCDC, absent extraordinary circumstances, to retain its goals as currently adopted until 1979.

II: SUMMARY OF MEASURE 10’S PROJECTED IMPACT

A. In General.

Your Committee has found great confusion and disagreement among both proponents and opponents as to Measure 10’s projected impact upon our existing state-coordinated planning system. We strongly recommend a complete reading of Measure 10, the full text of which is reprinted as Appendix C to this report.

Because of the complex interrelationship of its diverse and sometimes internally conflicting provisions, the projected impact of Measure 10 is difficult to meaningfully summarize without drawing some conclusions, and making some characterizations, which may not seem to follow from the language of the Measure itself. We therefore wish to point out that the summary which follows depends somewhat on our acceptance of the Oregon Attorney General’s May, 1978, Opinion as to the effect Measure 10’s passage would have on existing law.

B. Nullification of LCDC Goals; Legislative Adoption of Goals.

Section 2 of Measure 10 requires state-wide planning goals to be adopted by legislative action. The Oregon Attorney General has concluded that the effect of such requirement would be to nullify, as of Measure 10’s March 8, 1979 effective date, the goals previously adopted by LCDC. Despite the March 8 “deadline,” Section 2 does not require the adoption of goals by this date. If the legislature fails to adopt goals prior to March 8, Sections 5 and 7 of the Measure would combine to prohibit the use of an emergency clause, and any goals thereafter adopted could not then go into effect until 90 days following the end of the legislative session in which goals are passed. Any such goals would also be subject to further delay by referendum. Therefore, to avoid a period of time, possibly quite lengthy, without any state-wide goals in effect, the legislature must adopt new goals within approximately the first 60 days of the 1979 session. The Measure contains no guidance as to what the substance of any new goals ought to be.

Section 4 of Measure 10 states that the legislature "may establish" an LCDC-type agency, giving the legislature the option of creating a new LCDC with the limited "advisory, arbitration and administrative" powers enumerated in Section 4.

In the Attorney General's opinion, Section 4 must be interpreted to mean that the statutory provisions creating and empowering the existing department would be repealed in toto effective March 8, 1979.

D. Impact on Obligatory City and County Adoption of Comprehensive Plans.

Sections 1 and 2 of Measure 10 appear to continue the requirement of existing law that each city and county must prepare and adopt a comprehensive land use plan consistent with state-wide planning goals. However, it seems probable that these sections, together with Sections 4 and 6, would be interpreted as abolishing the existing statutorily imposed timetable for compliance, leave existing and in-process plans in limbo, and would preclude the re-creation of an LCDC with any enforcement powers. Legal experts are in considerable disagreement on these questions as well as a whole complex of related questions as to just what functions could be lawfully performed, and what funds lawfully expended, by any LCDC-type agency created under Measure 10's framework. The matter is further confused by Section 2's provision that the legislature "shall not" delegate its duties to adopt planning goals and shall "establish general land use planning and zoning procedures to be used by counties and cities in the preparation or amendment of their comprehensive plans."

E. Impact on Federal Funds Received for State Planning.

The state currently receives $1.5 million annually for coastal zone planning, 75 percent of which goes directly to local governments. To the extent that Measure 10 results in a stoppage or curtailment of the state-coordinated planning, the availability of these funds will be jeopardized.

F. Compensation and Notice for Specific Land Use Actions.

Section 7 of Measure 10 requires compensation for landowners "adversely affected" by any future legislative establishment and reservation of an area of "state-wide significance." There are presently no such designated areas, nor are any planned.

The Oregon Constitution currently provides for compensation of landowners whose land is condemned for use for the public good; and existing law does not charge the Joint Legislative Committee on Land Use with the duty to study and make recommendations for compensating landowners for the value of the loss of their land resulting from land use legislation. There is, however, no existing statutory provision for compensating "adversely affected" landowners, a phrase which is not further defined by Measure 10 and which is probably so vague as to assure that no areas of "state-wide significance" would ever be designated.

Section 3 of Measure 10 requires that an "affected owner" be given notice by mail prior to the adoption of any "legislative ordinance" which would require or result in the rezoning of the owner's property. Current law requires county notice and citizen input at every stage of the planning process. Notice by publication is a prerequisite to the adoption of state-wide planning goals. Moreover, a county governing body can take no action without first giving notice by publication of such action and holding a public hearing on the changes. The 1977 legislature adopted procedures requiring counties to give individual written notice prior to amending or adopting a land use plan (or portion thereof) to landowners whose property would have to be rezoned as a result of that action. The county is relieved of this obligation if the LCDC cannot fund this notice obligation. The legislature, in a 1978 Special Session, appropriated funds for this notice.
G. Rights of Initiative and Referendum on Land Use Matters; Emergency Clause Restrictions.

Sections 5 and 6 of Measure 10 purport to guarantee the rights of initiative and referendum with respect to state, city and county land use legislation, although these rights are already clearly contained in the Oregon Constitution. By court decision,* these rights are available in the case of local, as well as state, land use matters.

The right of initiative is already absolute and unlimited, while the right of referendum has for generations been subject to the possibility of being prevented by legislative (state or local) ability to use an emergency clause to put a law or ordinance into immediate effect. Section 5 of Measure 10 absolutely prevents the state legislature from ever using the emergency clause on "any legislative act which relates to land use planning or zoning." Section 6 extends to 90 days (vs. the usual 30 days) the period during which city or county land use action is subject to challenge by referendum.

H. Miscellaneous.

Measure 10 also contains a provision relative to the creation of regional planning districts, which does not appear to meaningfully change existing law or have any impact on CRAG or the new MSD.

IV. ARGUMENTS ADVANCED IN FAVOR OF MEASURE 10

1. Measure 10 makes comprehensive land use planning a constitutional, as opposed to a statutory, requirement for cities and counties.
2. Establishment of land use planning goals should be the responsibility of elected representatives and should not be delegated to a commission appointed by the governor.
3. Measure 10 will force the legislature to assume the responsibility for reviewing and adopting comprehensive land use planning goals and policy, a duty it has avoided to date.
4. Measure 10 will not necessarily result in the elimination of LCDC.
5. LCDC's existing land use goals and procedures are unworkable.
6. LCDC has not been effective. Measure 10 will provide the necessary review of its entire program.
7. Citizens should be entitled to prior mailed notice of all potential rezoning of their property as a result of any comprehensive plan or legislative ordinance.
8. The Measure prevents local jurisdictions from utilizing the emergency clause to circumvent the citizens' referendum rights in land use planning and zoning actions.
9. Passage of Measure 10 will guarantee compensation to landowners "adversely affected" by the state legislature's designation of areas of state-wide concern.
10. The timing of Measure 10's effective date will insure prompt and uncommitted enactment of state-wide land use goals by the 1979 legislature.

V. ARGUMENTS ADVANCED IN OPPOSITION TO MEASURE 10

1. Measure 10 effectively repeals the state's land use planning framework and replaces it with confusion, giving the legislature no guidance as to what kind of state-wide goals it should adopt.
2. Measure 10 is not necessary to force legislative goal adoption and review. The legislature has in fact frequently reviewed LCDC's goals, directly and indirectly, and can approve, modify or repeal any or all of LCDC's goals whenever it wishes by passing a bill for that purpose.

3. Measure 10 will disrupt, and may obliterate, completion of Oregon's nine-year-old land use program to bring local plans into conformity with minimum state standards. Passage of the Measure would abolish the current statutorily imposed timetable for local compliance with state planning goals and would prevent LCDC from being re-created with goal enforcement powers.

4. Measure 10's passage would throw the legality and enforceability of local comprehensive plans into limbo. Making LCDC an advisory agency will destroy the state's ability to effectively coordinate planning and provide for orderly growth state-wide.

5. Measure 10 threatens orderly and predictable private land development. Expensive litigation, a costly and time-consuming process, will be re-introduced to frustrate the planning process, resulting in chaos.

6. Passage of Measure 10 will jeopardize local planning procedures and funding received both from the state and from the federal government.

7. The promise of compensation applies only to "areas of state-wide significance." Although none are currently planned, future designation of such areas will be discouraged by a broad judicial interpretation of "affected owners" deserving compensation and the lack of budget provisions for compensation.

8. Much of the criticism of LCDC cited by Measure 10's proponents is misdirected and is more properly attributable to early misinterpretation and misapplication of the goals by local governments.

9. Measure 10's restriction on the use of the emergency clause would create serious potential for abuse of the referendum procedure, making it available as a tool to halt individual private development projects; and remove the long-established and vital procedure for quick, remedial legislative action at both the state and local levels.

10. Measure 10 does not provide the legislature with sufficient time for meaningful deliberation over the adoption of new goals prior to the March 8, 1979 nullification of the existing goals, after which a potentially lengthy and extremely confusing gap will exist in planning and land development at both the state and local level.

11. Measure 10's provisions for notice and compensation to certain "affected landowners" are dangerously vague and would not result in meaningful benefits to individual landowners.

12. Measure 10 is deceptive, in that it purports to create populist-sounding rights which are either already provided for under existing law or will not in fact result in any tangible citizen benefits.

VI. DISCUSSION

The high degree of legislative, political and citizen effort expended over the past ten years in establishing and refining Oregon's existing system of land use planning compels your Committee to accept as a "given" that the citizens of this state want some form of meaningful state involvement in the planning process. We also accept as a "given" that the present system, although certainly in need of further refinement and corrective action by the legislature, is essentially reasonable and workable. Two years ago the voters rejected a straightforward proposal for the outright repeal of LCDC and the then-existing system, which was subsequently amended by the legislature to cure many of its most controversial aspects.

The question then becomes whether passage of Measure 10, which on its face appears to concede the need for state involvement in the land use planning process, will provide a more workable, equitable planning system than that which we now have.

The confusion surrounding Measure 10's impact is evident in the uncharacteristic line-up of organizations on both sides of the debate. The Home Builders Association of Metropolitan Portland opposes Measure 10, while its parent organization, the Oregon Home Builders Association, supports the Measure, as does the Oregon Association of
Realtors. The Oregon Savings and Loan League, the Oregon Mobile Home Dealers Association, the League of Oregon Cities, and 1000 Friends of Oregon oppose Measure 10. Associated Oregon Industries (AOI) has continued to endorse passage of Measure 10 despite heavy internal pressure from key industry members to reconsider that decision. Among other supporters of Measure 10 are the First National Bank of Oregon, Publishers Paper Company, Eugene Sand and Gravel, Gilchrist Timber Company, Meier & Frank, and Benjamin Franklin Savings and Loan. On the other hand, opponents of Measure 10 include Pacific Power and Light, Boise Cascade Corporation, Weyerhaeuser, Portland General Electric, Brooks-Scanlon, Georgia-Pacific and prominent developer John Gray. In addition to confusion over Measure 10’s impact, this curious division of proponents and opponents probably also reflects somewhat of a trend toward a breakdown in the traditional standoff of “environmentalists versus land developers” as actual working experience is gained with LCDC’s goals—as, for instance, in the case of the recent alliance between private land developers and 1000 Friends of Oregon in opposition to the Beaverton construction moratorium.

The proponents of Measure 10 (which was placed on the ballot largely through the efforts of the “Land Use Planning Constitutional Amendment Committee” or “LUPCAC”) assert that LCDC’s goal-making and administration powers have produced an unworkable land use planning program. They believe that LCDC’s goals were badly drafted in the first place, that LCDC has been unresponsive to the need for review and amendment of the goals, and that LCDC has done an inadequate job of interpreting and administering the goals. They express particular concern with LCDC’s application of the agricultural land goal, its allegedly unbalanced application of the goals in general and a lack of attention to the housing and economy goals. They assert that these problems stem from the legislature’s delegation of goal-making authority to LCDC in 1973 and that they have been compounded by the legislature’s failure to adequately review and amend the goals in the meantime. In this regard, the Measure’s proponents point particularly to poor performance by the Joint Legislative Committee on Land Use, which is primarily responsible for legislative review and control of LCDC.

As embodied in Measure 10, the essence of LUPCAC’s proposed solution to these problems is a constitutional amendment which would, in effect, repeal the existing goals, remove LCDC’s power to make new goals, and permanently assign all goal-making responsibility directly to the legislature itself, which would be prohibited from delegating that responsibility to an administrative body.

Your Committee finds no validity to the proponents’ major expressed need for passage of Measure 10—the assertion that the legislature has failed to adequately review the LCDC goals, in particular, and the state’s land use coordination program in general. We think that the legislative history, as set forth earlier in this report, speaks for itself in this regard, notwithstanding our feeling that the Joint Legislative Committee’s goal-reviewing function has not, at least until very recently, been very well performed. We concur, rather, with those Measure 10 opponents who believe that the legislature has effectively adopted the existing LCDC goals by repeatedly declining to amend or revise them.

Although we are concerned about the LCDC administrative shortcomings identified by Measure 10’s proponents, we do not feel that Measure 10 even attempts to address these problems, much less to cure them. If, following passage of Measure 10, the legislature elects to create a new LCDC-type agency, the same type of administrative problems are likely to continue. If a new LCDC is not created, only our part-time legislature will be available to administer goals and policy, thus amplifying the potential for administrative problems. Measure 10 also fails to address or really deal with its proponents’ argument that the existing LCDC goals are undesirable or “unworkable.” The Measure gives no direction whatsoever to the legislature as to what kind of “state-wide goals” might be “workable” or otherwise acceptable, even though it gives the legislature a constitutional mandate to adopt something in the way of goals.
It is unlikely that the legislature conscientiously will be able to adopt new and meaningful land use goals within the 60-day “deadline” prior to March 8, 1979. Passage of Measure 10 will force the legislature either to adopt the existing goals or some hastily-fashioned substitute. Your Committee, however, places little credence in the proponents’ speculation that the legislature will merely adopt the current goals. Passage of the Measure would certainly be viewed by the legislature as a mandate for change, but Measure 10 charts no direction for such change. Those interviewed, both proponents and opponents, could only guess what change in goals would result from the passage of Measure 10, and their guesses differed greatly.

Whether or not the legislature adopts new goals before the old ones are nullified on March 8, 1979, and regardless of the content or quality of any new goals, we think that the evidence is clear the passage of Measure 10 would throw the status of both state and local planning activities into a legal quagmire of uncertainty. The legality and enforceability of existing and in-process local comprehensive plans would become questionable because of possible, if not probable, noncompliance with Measure 10’s new constitutional requirements. The existing compliance timetables for adoption of local plans would probably cease to be binding. Any new goals adopted by the legislature would be of doubtful practical enforceability, because of the constitutional limitation on the legislature’s ability to create a new LCDC with real enforcement powers, not to mention the proposed constitutional prohibition against delegation by the legislature of its duty to “establish general land use planning and zoning procedures.”

Although legislative action prior to March 8, 1979 will not really provide the solution to any of these problems, there will be considerable pressure to adopt some kind of new goals prior to that date in order to avoid a period during which no goals are in effect. That need will at least seem to be heightened by the fact that any action taken after March 8, 1979 will be subject to attack and potential delay by referendum until November, 1980—a result attributable to Measure 10’s constitutional prohibition on the legislature’s use of the emergency clause.

In short, regardless of legislative response, Measure 10’s passage would result in an extended period of serious confusion. The effect would not be simply to suspend meaningful state coordination of local planning activities. Private land development at the local level would also be forced to proceed under the cloud of uncertainty which would overhang the validity of local planning activities.

This threat of unpredictability at the local level is compounded by the dangerously imprecise use of the term “legislative act” in Section 6 of the Measure, which may well have the effect of exposing individual development projects to attack and delay by local referendum (due to the restriction on use of the emergency clause). This will very possibly be the case where the project requires such local government action as issuance of a conditional use permit. It will very probably be the case where the project involves large area rezonings, new approval procedures for shopping centers or energy plants, or such policy changes as minimum lot-size decreases or special benefits for incoming industries. Opponents of growth would, in effect, be able to obtain a “bond-free injunction” against a proposed development project, posing an unnecessary and probably unintended threat to private land development.

On a broader plane, use of the emergency clause is vital to both state and local governments, which must at the very least have the ability to expeditiously correct defective legislation and respond to court decisions which invalidate existing laws or ordinances. Passage of Measure 10 would, for instance, prevent the legislature from taking the kind of prompt action which was necessary in early 1974 to repeal the controversial 1973 subdivision control law and to immediately enact the related remedial legislation. There are many related examples at the local government level.

Moreover, we simply find no basis for believing that the legislature has abused the use of the emergency clause in land use matters. Neither the 1969 nor the 1973 legislation contained an emergency clause. Nor did the subsequently repealed 1973 subdivision
control act, which did not become effective until nearly 120 days following adjournment of the legislative session.

Finally, your Committee hopes and believes that the legislature will continue, and expand upon, its efforts to assure that Oregon's landowners are meaningfully compensated for any adverse side-effects of state and local land use policies and decisions. We also support continued sharpening of the requirement that all citizens receive adequate notice of land use actions affecting their property. But Measure 10 does not meaningfully enhance these citizen rights. Measure 10, as it does in purporting to guarantee initiative and referendum rights, offers little more than the attractive-sounding words "notice" and "compensation" coupled with the undefined and dangerously vague terms "affected owners," "legislative ordinance" and "adversely affected," the effect of which can only be needless, perhaps serious, complications for responsible economic growth and land development.

VII. CONCLUSIONS

Your Committee concludes that Measure 10's impact would be almost entirely negative. It would leave our present land use planning framework, and the system for its implementation, somewhere between oblivion and extreme confusion. It would do so without providing a substitute system and without enhancing citizen control over planning matters or increasing citizen protection against state or local planning decisions.

Measure 10, in the last analysis, would result in the effective repeal of state-coordinated land use planning, creating in the process an indefinite period of needless uncertainty in local planning activities and local land development projects.

At the very best, Measure 10 proposes an unacceptably confusing alternative to Oregon's existing land use planning system, substituting vague catchwords and unpredictability for a comprehensive, relatively well-refined and functioning, if imperfect, system. At the worst, Measure 10 is an artfully contrived, even deceptive, attempt to accomplish by indirection the effective repeal of LCDC and any meaningful state involvement in the planning process—the same outright repeal rejected by the voters two years ago.

Under either characterization, your Committee concludes that Measure 10's apparent offer of greater citizen control over the state's land use planning process is largely a mirage which does not begin to justify—from the standpoint of the citizen-at-large, the individual landowner, the land developer, the environmentalist or the local planning official—the confusion and wasted effort which would almost surely result from Measure 10's passage.

VIII. RECOMMENDATION

Your Committee unanimously recommends a "NO" vote on State Measure No. 10 on November 7, 1978.

Respectfully submitted,
Donna M. Drummond
John Malick
Walter W. McMonies, Jr.
Cristy Muller
Dana Rasmussen
Richard S. Wilhelmi
Mark D. Whitlow, Chairman
APPENDIX A

The following persons were interviewed either by the Committee as a whole or by individual Committee members:
Jim Allison, President, Washington County Landowners Association
John W. Alltucker, President, Eugene Sand & Gravel Company
Al Benkendorf, City Planner, Benkendorf & Associates
Robert Frisbee, Citizens to Defend Your Land
Dave Frost, Associated Oregon Industries of Oregon, Land-Use Committee; Attorney for Land-Use Planning and Conservation Amendment Committee (LUPCAC)
Mark Gardner, State Representative; Member, Joint Legislative Committee on Land Use.
Stephen T. Janik, Attorney, Representing Citizens to Defend Your Land
Stephen Kafoury, Oregon State Senator
Wes Kvarsten, Executive Director, Department of Land Conservation and Development
Janet McClennan, Assistant to the Governor on Natural Resources
Walt Mintkeski, Chairman, Oregon Chapter of the Sierra Club
Jack Munro, AOI Staff, Oregon Association of Realtors
Mark O'Donnell, Attorney for the Oregon Mobile Home Dealers Association
Jerry Orrick, Executive Director, Association of Oregon Counties
Henry Richmond, Executive Director, 1000 Friends of Oregon
John Sewell, Chief Planner, Mid-Willamette Valley Council of Governments
Anne W. Squier, LCDC Commissioner
David B. Tegart, Executive Director, Western Environmental Trade Association (WETA)
Nancy Tuor, Program Division Manager, LCDC Staff
Fred Van Natta, Vice-President, Oregon State Home Builders Association
Burton Weast, Director of Planning & Governmental Affairs, Home Builders Association of Metropolitan Portland
Frank Wyckoff, Planning Director, Polk County

APPENDIX B

BIBLIOGRAPHY


Other Source Material
Willard E. Fox, Allen, Stortz, Barlow, Fox and Susee, letter to Fred Van Natta, Oregon State Homebuilders Association, August 17, 1978. Section by section legal discussion of Measure 10 as requested by Fred Van Natta.

Henry Richmond, Executive Director, 1000 Friends of Oregon, letter to Dale Deharpport, Dale Construction Company, August 28, 1978. Discussion of Measure 10, the difference between quasi-judicial acts and legislative acts.

——, memorandum to members, Advisory Board and Board of Directors, 1000 Friends of Oregon on effects of Measure 10, September 11, 1978.


APPENDIX C

Submitted to the Electorate of Oregon by initiative petition, to be voted on at the General Election, November 7, 1978.

MEASURE NO. 10

Ballot Title: LAND USE PLANNING, ZONING CONSTITUTIONAL AMENDMENT.

Purpose: Nullifies Land Conservation Development Commission adopted planning goals, guidelines March 8, 1979. Cities, counties must adopt comprehensive plans, have all planning, zoning authority except legislature must prescribe goals, zoning, planning, notice procedures to be used. Legislature may establish an advisory commission and may regulate use in statewide significant geographic areas subject to compensation for adversely affected owners. Voter approval required before new regional planning districts organized. State, local land use legislative acts subject to referendum.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:

AN ACT

The Constitution of the State of Oregon is amended by creating a new Article to read:

ARTICLE . . . — Land Use Planning and Zoning.

SECTION 1. Land use planning required by cities and counties. The governing body of each county and city shall adopt a comprehensive land use plan for the land within its jurisdiction and may amend such plan.

SECTION 2. Legislature required to adopt planning goals and procedures to be used. Delegation of powers denied. By legislative act, the Legislative Assembly shall define terms, adopt statewide land use planning goals and establish general land use planning and zoning procedures to be used by counties and cities in the preparation or amendment of their comprehensive plans. The duties of the Legislative Assembly in this section shall not be delegated.

SECTION 3. Owners to be notified before government rezones their land. Except as otherwise provided by a city or county charter, the Legislative Assembly shall establish by law a procedure for giving notice by mail to affected owners prior to the adoption of any legislative
ordinance which, if adopted by the governing body, would require or result in the rezoning of the owners’ property.

SECTION 4. Establishment of Land Conservation and Development Commission as an advisory, arbitration and administrative agency permitted. The Legislative Assembly may establish a Land Conservation and Development Commission as an advisory, arbitration and administrative agency and may grant to such commission the authority to: (1) Provide funds and technical assistance to counties and cities; (2) Make recommendations to the Legislative Assembly regarding (a) General planning and zoning procedures, (b) State-wide planning goals, (c) Activities and geographic areas of state wide significance; (3) Arbitrate land use conflicts that may arise between counties and cities which shall be subject to judicial review; (4) Perform such other duties as may be prescribed by law consistent with this Article.

SECTION 5. Guarantees the right of referendum on state land use legislation. Notwithstanding Section 28 of Article IV, the Legislative Assembly shall not attach an emergency clause to any legislative act which relates to land use planning or zoning.

SECTION 6. Guarantees the right of referendum on city and county land use legislation. Restrictions on the use of privately owned land imposed by the adoption of a comprehensive land use plan or zoning regulations shall be enacted only by the applicable county or city. Any legislative act which relates to land use planning or zoning shall be by ordinance and shall be subject to the right of initiative and referendum reserved to the people in Article IV, Section 1, paragraph (5). Except as otherwise provided by a city or county charter, an ordinance shall become effective upon a date specified in the ordinance. However, if a proper referral petition containing the appropriate number of valid signatures is filed within 90 days after the adoption of the ordinance, the ordinance shall become inoperative and the effective date shall be suspended.

SECTION 7. Compensation required for adversely affected private land owners if legislature imposes land use restrictions on geographic areas of state-wide significance. Notwithstanding the provisions of section six of this Article, the Legislative Assembly may by law impose land use planning or zoning restrictions, in addition to or in lieu of those imposed by the applicable county or city, on the use of certain geographic areas after finding that such areas of state-wide significance and that the imposition of such additional restrictions is in the state-wide public interest. After the effective date of this Article, any private landowner adversely affected by the enactment of a law under the authority of this section shall receive just compensation for such loss and the Legislative Assembly shall provide for such compensation.

SECTION 8. Regional planning permitted; voter approval required before new regional districts organized. Notwithstanding the provisions of section six of this Article, nothing in this Article shall invalidate special or regional planning districts lawfully in existence prior to the effective date of this Article. However, after the effective date of this Article, no regional district relating to land use planning shall be formed unless approved by the voters in the area affected in a manner to be established by law. This Article shall not invalidate or prohibit voluntary associations of cities, counties or other units of local government whether or not in existence on the effective date of this Article.

SECTION 9. Legislature may regulate activities of state-wide significance. Nothing in this Article shall prevent the Legislative Assembly from providing for the regulation of activities of state-wide significance.

SECTION 10. Effective date. Notwithstanding the provisions of Articles IV and XVII, if a majority of the electors voting on this Article shall vote in favor thereof, this Article shall become effective March 8, 1979.
STATE MEASURE NO. 3

VEHICLE REGISTRATION AND FEE INCREASE REFERENDUM

Purpose: Referendum of measure concerning vehicle registration and fees. Requires annual registration at same fee ($20 for most private vehicles) as for present biennial registration; except that fee for first vehicle of registrant 65 or older is set at $12.50. Increases most motor carrier rates. Increases annual light truck fee from $10 to $20. Annual recreational vehicle fee reduced to half present biennial fee. Emissions test certificate for Portland-area vehicles required every second registration only.

This Measure was addressed by the City Club in its May, 1978 Report on "Highway Repair Priority, Gas Tax Increase." The Research Board concluded a study of November Measure No. 3 would duplicate those conclusions and recommendations and would use substantially the same data base for study. A similar Measure was before the voters two years ago. Research Board is doubtful a study of November Measure No. 3 would produce new information.

STATE MEASURE NO. 5

AUTHORIZES, REGULATES PRACTICE OF DENTURE TECHNOLOGY

Purpose: Measure authorizes taking oral impressions by licensed denturist, and constructing, repairing, fitting, etc. of dentures by licensed denturists or their assistants. Treatment requires dentist's or physician's certificate that oral cavity is free from disease and suitable for denture. Establishes licensing requirements, creates Advisory Council on Denture Technology within Health Division. Any dental insurance policy covering any service which may be performed by denturists must cover denturists' services. Major provisions of Act effective July 1, 1980.

In view of the importance of Measure No. 6 and the necessity of addressing Measure No. 11 referred by the Special Legislative Session, and because of the broad impact of both measures on the voters, a study of Measure No. 5 received less priority and was not authorized by the Research Board.
MULTNOMAH COUNTY MEASURE NO. 26-21
PROVIDES INDEPENDENT OPERATION OF DOG SHELTER

Amends Multnomah County Ordinance 156 to require county to contract with Reach Out for Animals, Inc. to shelter dogs; effects separation of enforcement functions from care and disposition of animals; provides shelter funding (not to exceed costs) from revenue collected under Ordinance and from general fund; exempts shelter from Chapter V of Ordinance; lengthens redemption and adoption periods; permits shelter to render adoptive dogs neuter; mandates euthanasia by sodium pentobarbital; alters judicial remedies for violations.

Because time and financial constraints forced prioritizing ballot measure studies, the Research Board determined that a study of the Mult. Co. Charter Amendments was of greater significance and would have a broader impact on the membership and the voters than would a study of Measure 26-21.

MULTNOMAH COUNTY MEASURE NO. 26-20
INCREASE HOTEL TAX TO PROMOTE CONVENTIONS

and

MUNICIPAL MEASURE NO. 52
HOTEL-MOTEL TAX TO PROMOTE CONVENTIONS, TOURISM

The City Club approved the original hotel-motel tax (Municipal Measure No. 56) in 1971. The November 1978 Measures would increase the present five percent tax by one percent and proceeds would be dedicated to conventions and tourism. Because of the short amount of time available for study, Research Board declined to authorize study of these Measures.

MUNICIPAL MEASURES NO. 51
FLUORIDATION OF MUNICIPAL WATER SYSTEM

and

NO. 53 CITY COUNCIL TO ESTABLISH CONTRACT LIMITS

These Measures were referred to City of Portland voters in September and October by the Portland City Council. In view of the time limitations for study, the Research Board concluded City Club could not do an adequate job of addressing either Measure No. 51 or No. 53.