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NOVEMBER GENERAL ELECTION BALLOT MEASURE REPORTS

One of the most important services the City Club gives its members and the public is its analysis of nonpartisan ballot issues. At this Friday's meeting, the following ballot measure reports will be presented and voted upon in the order listed below. In addition, the Club's standing committee on Law and Public Safety has prepared an information report on the Justice Services Levy (Multnomah County Measure 28) which is also printed in this bulletin.

FOR DISCUSSION AND VOTE THIS FRIDAY, NOVEMBER 2:

Multnomah County Measures 10-27 (Charter Review Committee)  
Robert Wolf, Chair

State Measure #9 (Nuclear Waste)  
Gary Grenley, Chair

State Measures #4 & 5 (State Lottery)  
Mark Knudsen, for the Majority  
Diane Hopper, Chair, for the Minority

State Measure #2 (Property Tax Limitation)  
Frank Langfitt, Chair

State Measure #8 (Criminal Law Revision)  
Barnes Ellis, Chair

SPECIAL NOTE: The program will begin at 12:15 p.m., starting with Multnomah County Charter Revisions. RESERVATIONS AND CANCELLATIONS: Must be made by 2:00 p.m. on Thursday, November 1. Call 222-2582. Tickets: $7.50 Members; $9.50 Guests.

"To inform its members and the community in public matters and to arouse in them a realization of the obligation of citizenship."
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To the Board of Governors
City Club of Portland:

I. INTRODUCTION

State Ballot Measure 2, placed by initiative petition on the November 6, 1984, general election ballot, would amend the Oregon Constitution by adding a new Section 11.A to Article XI. (See Appendix A to this report for the full text of proposed Section 11.A, Article XI.) While Measure 2 is similar to property tax limitation measures which were on the Oregon ballot in 1978, 1980, and 1982, there are significant differences which will be discussed below. Your committee relied upon the reports prepared by prior City Club committees studying these measures as well as current interviews and literature.

II. BACKGROUND

Property taxes provide the largest single source of funds for local government services in the state of Oregon. Statewide, 36.6 percent of local government revenue is generated by property taxes. However, dependence upon the property tax varies greatly between different taxing districts performing different functions.

For cities and counties, most property tax revenues are directed to the local governments' general fund. General funds do not represent all revenues received by a governmental body, but do represent most of the discretionary funds.

Oregon's present law provides that a local taxing district cannot increase its property tax revenues more than 6 percent over the highest permanent tax base in the three preceding years unless voter approval is
obtained. In 1971, the Oregon Legislature enacted the Homeowner and Renter Relief Program (HARRP) to provide a form of property tax relief for low income renters and homeowners. Also during the 1970s, the Legislature increased basic school support and provided additional state aid to community colleges, having the effect of shifting a portion of the cost of schools from property taxes to income taxes. In 1979, the Oregon Legislature passed legislation establishing homeowners' property tax relief providing that the State would pay 30 percent of a homeowner's "qualified" property tax, up to a maximum payment of $800. Since then, due to reduced State revenues, the Legislature has reduced the maximum payment amount to $170. Relief also was provided to residential renters in addition to the established HARRP program designed for low income renters and homeowners.

In the late 1970s a "taxpayers' revolt" erupted in the United States resulting in movements to limit property tax revenues. California's "Proposition 13" was passed in June, 1978, and Massachusetts' "Proposition 2 1/2" was passed in November, 1981. Property tax limitation measures have been on the ballot in Oregon in 1968, 1978, 1980, and 1982, and each time the measure has been defeated.

In November, 1978, two property tax measures were on the ballot. Measure 6 provided for a 1 1/2 percent property tax limitation and was defeated. Measure 11 was a proposal adopted by the Legislature in special session and provided that the State would pay one-half of property taxes imposed upon owner-occupied principal residences in the state, up to a maximum of $1500, and would have placed a limit on the growth of state governmental operating expenses. Measure 11 also was defeated. In 1980, Measure 6 on the November general election ballot provided for a property tax limit of 1 percent of assessed value, plus that amount necessary to guarantee that the total amount collected would be not less than 85 percent of a district's 1977-78 revenue. Taxing units which provided only essential services such as police, sheriff, fire, ambulance and paramedic services, could not have their revenues reduced to an amount less than that unit's total revenue for the tax year beginning July 1, 1977. These provisions amounted to a "safety net." Revenue would be allowed to increase 2 percent per year. Voting requirements were set out for increasing either state and local revenues. The measure was defeated. In 1982, a similar measure was placed on the ballot limiting real property taxes to 1 1/2 percent of the 1979 true cash value with the safety net features, but this measure failed by less than one percent of the vote.

In 1983, a special session of The Legislature passed a bill which became law in 1984 and provided for a statutory property tax rate "freeze." The law has many exceptions, and it appears to have had little effect.
III. SUMMARY OF MEASURE NO. 2

A. Limitation on Assessed Valuation.

Measure 2 would roll back the assessed value of real property in the state from its present level to the assessed value in effect on July 1, 1981 and allow a maximum annual growth rate of 2 percent over the prior year's assessed value after 1981. Property newly constructed after 1981 would be assessed as if it had been built in 1981, based upon an estimate of the value that such property would have had in 1981.

B. Property Tax Rate Limitation.

Measure 2 constitutionally would limit the tax on real property to 1.5 percent of the property's assessed value or the 1983 tax on the property, whichever is less. Bond levies authorized prior to July 1, 1985 would be exempt from the limit.

At present, most real property in the state is taxed at rates greater than 1.5 percent of assessed value. The City of Portland's rate is close to 2.5 percent; Beaverton, 2.4 percent. Consequently, under Measure 2, most parts of the state would be taxed at or near the maximum permitted level. The net effect of the change in total property tax revenues is discussed in a subsequent section of this report.

C. Property Tax Allocation.

The first year in which the property tax limitation provisions of Measure 2 would become effective would be the 1985-86 fiscal year commencing July 1, 1985. Measure 2 provides that for the first year only, the taxes collected under the limitation system would have to be distributed to local districts in the same proportions that existed in the 1983-84 fiscal year.

Measure 2 does not specify any particular manner of distribution of property taxes after the first year. Because the measure does not specify how taxing authority and revenue distribution is to be allocated in subsequent years, the Legislature would have to assume this responsibility, and enabling legislation would be necessary. Local governments and districts

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1 The summary is based primarily on the Attorney General's Opinion No. 8156 on Measure 2, issued August 29, 1984, and on Legislative Revenue Research Report No. 5-84, Legislative Revenue Office, issued August 30, 1984.

2 Theoretically under current Oregon law, assessed values for homesteads are less than 100 percent of true cash value. True cash value is the actual market value of the property.
competing for the limited property tax dollars do not have the authority to challenge and re-allocate the taxing authority of their competitors.

D. Effect on Bonding.

The 1.5 percent limitation would not apply to taxes or assessments levied to pay the principal or interest on bonded indebtedness incurred prior to July 1, 1985. On and after that date, local bonds backed by property taxes would be subject to the limitation. It is the view of Oregon's Attorney General that most state bonding programs (including the Veterans Home Loan Program) have permanent self-executing authorization in the Oregon Constitution, and the limitation would not directly affect them.

E. Renter Relief.

Measure 2 would require the Legislature to pay direct rent relief to all renters, including residential, commercial, and agricultural renters. The Attorney General has expressed the opinion that such relief would have to reimburse renters for some portion of the property taxes paid indirectly through the payment of rent but would not necessarily require full reimbursement. Rent relief funds may come from other constitutionally dedicated funds.

Measure 2 would not mandate that the HARRP Program for low income homeowners and renters be continued. The Attorney General has expressed the view that, while Measure 2 would require property tax relief for all renters, it would not restrict the legislature to the terms of the existing programs for renters or homeowners.

F. User Fee Limitation.

Measure 2 would limit all state and local license fees, user fees, and other service charges to the amount necessary to cover the actual expense of the service or the cost of administering the regulation for which the fee or charge is levied. According to the Attorney General, this limit would apply only to new fees and charges and to increases in existing fees and charges. It would not apply to existing fees or charges so long as they were not increased.

G. Voter Approval of New Taxes or Tax Increases.

In most instances, Measure 2 would require a vote to increase any taxes or special assessments. An election would be required to be held any time the state or a local government desired to increase a tax rate, impose a new tax, increase a special assessment, or impose a new special assessment, if such action would cause an increase in governmental revenues.

In order to gain voter approval, such a measure would have to be voted on by at least 50 percent of the registered voters in the state or district and be approved by a majority of those voting. The election could only be held on the third Tuesday in May (the primary voting day) or the first
Tuesday after the first Monday in November (the general election day). The ballot would have to tell the voters the reason for the increased revenue, the amount involved, and how long the tax or levy would last.

Measure 2 differs from the earlier property tax limitation measures in that it would permit voters to increase property tax levies outside the 1.5 percent limit provided all of the above requirements were met.

H. Effect on Other Constitutional Provisions.

Measure 2 would not repeal any existing Constitutional taxation provisions. The presently allowed annual 6 percent increase in property tax bases would still be applicable, but only to the extent that such an increase would not exceed the 1.5 percent limitation.

IV. ARGUMENTS ADVANCED IN FAVOR OF MEASURE NO. 2

The following arguments were advanced by proponents of Measure 2.

1. The measure would reduce property taxes and thus the overall tax burden.

2. The measure would reduce government by limiting the amount of money available to local government.

3. The measure would mandate property tax relief for renters.

4. The measure would make it harder to increase taxes or enact new taxes for all governmental bodies by requiring an approval vote with a minimum turnout, and certain election days.

5. The measure would result in increased government efficiency through lower revenues and a forced evaluation of expenditures.

6. The measure would require the future involvement of the people in the financial and budgetary process as well as voter control and voter consensus for new taxes.

7. The measure would improve Oregon's economy by lowering property taxes, leaving more money in the hands of businesses and consumers to invest, save or spend.

8. The measure would encourage new residential construction by reducing the property tax.

9. The measure would shift some government expenses to those who use the services through user fees.
10. The measure would help protect senior citizens on fixed incomes from large tax increases.

11. The measure would force overall tax reform through the property tax reduction and the resulting need for local governments and interested parties to cooperate on a program of state and local taxes.

12. The Legislature has breached the faith of the taxpayers of Oregon by failing to provide adequate, lasting tax reform, and the only way to get reform is through the consequences of Measure 2. Otherwise, we will be left with the status quo or worse.

13. The voting/election provisions of the measure would prevent local governments and districts from scheduling levy elections on sporadic dates, permitting special interest groups to pass levies with low publicity and low turnout.

V. ARGUMENTS ADVANCED AGAINST MEASURE NO. 2

The following arguments were advanced by opponents of Measure 2:

1. The measure would result in a loss or significant decrease of essential services and/or needed services provided by local governments and districts.

2. The measure would result in a loss of local control because the Legislature would allocate taxing authority within the limitation and any state financial aid would probably come with restrictions.

3. The measure would result in a significant loss of educational quality by reducing property tax revenues available to schools.

4. The measure would hurt Oregon's economy and economic development by limiting the bonding ability of local governments, reducing revenues for local government services, and by reducing revenues needed to maintain the capital infrastructure and to maintain quality education.

5. The measure would result in a lack of flexibility for local governments and districts by limiting funding sources and the ability to raise funds.

6. The measure would severely limit the ability of local governments and citizens to override the limitation because of the minimum voter turnout requirement and only two tax elections per year.

7. The State of Oregon would be unable, or severely limited in its ability, to aid local governments and provide revenue assistance. The state does not have a surplus, and to the extent funds are provided, they may be diverted from areas of present need, such as higher education.
8. A portion of the property tax savings are illusory in that some of the savings will go to increased state and federal income taxes because of a smaller property tax deduction. The present homeowners' property tax relief probably would be discontinued.

9. The measure's renter relief provisions would extend not only to residential renters, but also to commercial, industrial, and agricultural tenants, resulting in windfalls to landlords.

VI. DISCUSSION

Many of Oregon's property and income taxpayers believe that Oregon's tax burden is too high. According to figures supplied by the Oregon Taxpayers Union, on a per capita comparison, Oregon is currently rated third in the nation on its income tax burden and 12th in the nation on property taxes. However, based on overall taxes, Oregon is 22nd in the country. Oregon depends heavily upon income taxes for its state functions and property taxes for local functions because it has no sales tax.

Oregon taxpayers have also become extremely frustrated with the Legislature's inadequate and unsuccessful attempts at property tax reform. Both proponents and opponents of Measure 2 indicated that the voters turned down the limitation measures in 1980 and 1982 because of implied promises by the Legislature to provide tax relief. However, the property tax relief enacted by the state Legislature in 1979 has gradually diminished to less than 25 percent of what it was in 1979-80. In 1983, the Legislature indirectly referred a sales tax measure to the voters, but the method of referral was held unconstitutional by the Oregon Supreme Court before it could be voted upon. Most persons interviewed, both pro and con, considered the Legislature's failure to act as a breach of faith by the Legislature.

The breach of faith argument was the strongest and most persuasive presented by proponents of the measure. Your committee's impression is that many voters are willing to vote for Measure 2 because of the Legislature's "breach of faith" despite the Measure's estimated overall effect of cutting the property tax revenues of local governments and districts approximately $1.3 billion for the 1985-87 biennium. These figures are slightly different from those reported by a City Club Committee in 1984, based upon 1982 figures. There, the burdens were reported as follows: per capita income tax - 5th, per capita property tax - 12th, and per capita overall tax - 25th. "Report on Oregon's Tax System," City Club Bulletin, Vol. 64, No. 44, March 23, 1984.

limitation impact of Measure 2 is aimed directly at local government, although the "breach of faith" argument is aimed at the Legislature. For this reason your Committee does not believe that the argument justifies the drastic effect of Measure 2 on local revenues.

Several aspects of Measure 2 will be discussed below.

A. Impact on Local Control.

A primary argument presented in favor of Measure 2 is that it would give control over local government and local government spending to the voters by allowing voters to override the limitation at elections that might be held twice each year. In fact, such control may be illusory. The measure requires that at least 50 percent of the eligible voters in a district must vote on the tax issue before a tax increase could prevail by majority vote. A review of recent elections in the tri-county area indicates that voter turnout on tax measures is usually less than 50 percent. For example, in May 1984, at a presidential primary election, the Port of Portland's special levy for renovation of Terminal No. 2 passed 52 percent to 48 percent, but only 47.3 percent of the eligible voters voted on the issue.

Some proponents expressed the view that if Measure 2 passed, voter turnout would increase, but there is no evidence to support this argument. Election statistics show that a voter turnout of less than 50 percent in May or November elections held in odd-numbered years is the rule. According to The Oregonian, three times in the last ten years, primary elections in even-numbered years also failed to generate a 50 percent turnout. Election figures from Multnomah County and Washington County demonstrate a fall-off effect in which the percentage turnout on tax measures is less than the overall percentage turnout at the same election. The fall-off ranges from less than 1 percent to greater than 14 percent. In the 1984 primary, in Multnomah County, 11 out of 14 local tax measures (excluding the Port of Portland) failed to obtain at least a 50 percent turnout. The library and zoo serial levies, both of which passed 56 to 44 percent and 65 to 35 percent, respectively, failed to generate a minimum 50 percent turnout.

According to a Clark County, Washington official, in order for a local tax election to be validated in the State of Washington, a minimum of 40 percent of 60 percent of the voters who voted at the last general election must vote on the tax measure. This 24 percent base is not applied to registered, eligible or "legal" voters, but to the number of voters who voted at the last general election, a lower base than is proposed by Measure 2. Because of higher voter turnout in even-numbered years, taxing districts in Washington can present two-year levies to avoid low voter turnout in odd-numbered years. Even with such a low validation requirement, compared to Measure 2, some tax measures in Clark County, Washington, fail to generate the minimum percentage of voters for validation.
Voters have been able to vote upon and approve those measures which have given rise to much of the property tax burden. Measure 2 might prevent a determination of the level of services in the community by those interested enough and active enough to vote, if they constitute less than a majority of all registered voters.

In addition, by limiting property tax revenues to 1 1/2 percent of assessed valuation and by failing to provide a mechanism for allocating taxing authority or revenues after the first year, the measure would require the Legislature to develop a formula allocating the limited property tax revenues and taxing authority among the competing taxing districts. It is ironic that the measure would give this ultimate financial control to the Legislature when one of the primary arguments presented in support of Measure 2 is that the Legislature has been incapable of responding to the need for tax reform.

If Measure 2 passes, it is likely that local governments and schools will seek to have a portion of the lost revenue replaced from state funding sources. When "Proposition 13" passed in California, that state's legislature controlled a huge surplus which was used to aid local government, but the state funds came with state restrictions. Oregon does not have a state surplus. If the economic recovery continues, the Legislature may develop some funds for local aid, but only at the expense of other state programs, and the aid probably would come with restrictions.

B. Impact on Local Government and Districts.

1. Lack of Flexibility

A major impact of Measure 2 would be the lack of fiscal flexibility for local governments because of the tax limitation and the requirement that at least 50 percent of the registered voters vote if any future tax issue is to be approved. As a result, local governments would have less money and fewer potential sources of money to meet local needs creatively.

Measure 2 might cut 30 to 40 percent of local governments' property tax revenue, but it would do nothing to help local governments be responsive to their citizens.

2. Bonding

Another major effect of Ballot Measure 2 would be on the ability of local governments and districts to issue bonds. The measure provides that the property tax limitation shall not apply to ad valorem taxes or special assessments levied to pay the interest and redemption charges on any bonded indebtedness authorized prior to or concurrent with the date upon which the amendment becomes effective. The Oregon Attorney General has opined that this clause would exempt from the limitation bonds which have permanent self-executing authorization such as the State Veterans Department bonds. However, with respect to many governmental entities, there would be a continuing question as to whether bonds or bonding
authority apparently authorized at the present time would be subject to the
tax limitation and the voting requirement in the measure. Ultimately, the
question of prior authorization would be decided by bond counsel and the
courts.

Measure 2 would impair the ability of local governments and
districts to issue bonds for development and improvements. Tax increment
bonds and "Bancroft" bonds for local improvements would be seriously
hampered. The result would be that the bonding authority of local dis-
tricts would be reduced, interest rates would be higher and the general
cost of providing improvements financed by bonds would increase, while at
the same time the revenues of local governments would be reduced.

3. Effects on Some Portland Area Taxing Districts

In discussing the impact of Measure 2 below, your committee
distinguishes between a government's total budget and its true cash budget.
The latter results after internal transfers are deducted. Those internal
transfers include such items as "charges" for business done between depart-
ments or bureaus, short-term borrowing of funds in anticipation of receipt
of property taxes, and others.

a. Multnomah County

The impact of Measure 2 on counties would be severe. Multnomah
County estimates that it would lose $27 million in tax revenue and another
$1 to 2 million in lost spin offs such as interest derived from investing
tax receipts and interest from delinquent tax payments. The County would
lose 50 percent of its discretionary spending.

According to the County Executive, this would probably result in
the loss of county health services; a cut back in public safety personnel
and sheriff's patrols; the "final devastation" of county parks; closure of
county libraries; the inability to complete transfer to modern data proc-
essing systems; and reduction in planning capabilities.

Multnomah County's total budget is approximately $250 million per
year; its true cash budget only amounts to $162 million. The property tax
revenues are approximately $56 million, representing $53 million to the
general fund and $2.7 million to the recently-passed library serial levy.

The County's general fund is approximately $116 million, which represents a
ture cash general fund of $91 million after internal transactions are
deducted. Of the $116 million general fund budget, $63 million represents
non-discretionary spending such as state mandated services (tax collection,
Board of Equalization, tax assessor's office, certain jail services, elec-
tions, etc.); settlement of a lawsuit with School District No. 1 over
interest payments; and school fund payments ($10 per capita). This leaves
$53 million for discretionary spending.
b. City of Portland

The City of Portland has a more diverse revenue base than the County. Approximately one-fourth to one-third of the city's general fund comes from property taxes, but property tax revenues represent only approximately one-tenth of the city's total budget and one-seventh of its true cash budget. (Close to one-third of the cash budget represents water and sewer revenues.) Property tax receipts primarily fund police and fire pensions (which have first call on property tax revenues), police and fire services, parks, streets and capital improvements. Because of federal matching funds, tax revenues often have a multiplier effect, so the loss of property tax revenues by the City of Portland would have an effect beyond just the lost property tax receipts.

If Measure 2 became effective, Portland officials estimate that the City would lose 43 percent of its property taxes, a revenue loss of $34 million in 1985-86 and 70 percent of its property taxes, a revenue loss of $56 million in 1986-87. Because of the first claim of the police and fire pension programs, the impact on discretionary spending would be even greater. For various City Bureaus, unrestricted revenues make up the following percentages of budgets: Fire - 99%, Police - 99%, Transportation - 64%, Parks & Recreation - 95%, all others - 54%. City Officials estimate that passage of Measure 2 would result in the loss of 24 percent of the City's unrestricted revenues in 1985-86 and 40 percent in 1986-87. Primary casualties would be deterioration of the existing infrastructure and a lack of future capital improvements. Specific casualties of Measure 2 would probably be a new convention center or developing new arena space at Memorial Coliseum. These projects could not pay for themselves out of operating revenues, and therefore would be dependent upon property tax revenues.

Your committee was informed that San Francisco and some other California cities have gone to a 200-year capital maintenance program as a result of "Proposition 13." As a result of "Measure 2 1/2" in Massachusetts, Boston's capital budget for general operations dropped from $60 million to $14 million a year. If a city does not maintain its capital infrastructure, it is simply incurring a long-term, hidden deficit.

The City of Portland has lived within the 6 percent property tax limitation since World War II with the exception of special projects such as the Civic Stadium renovation and the Performing Arts Center, both of which were approved by the voters.

c. School District No. 1

The impact of Measure 2 upon primary and secondary education would be devastating. Portland's School District No. 1 estimates that it would lose 32 percent of its total revenue, or $75.9 million, in 1985-86 if Measure 2 went into effect. This represents a reduction of approximately 40 percent in property tax receipts. As a result, all aspects of the school district budget would be subject to reduction.
A recent study of the effects of Proposition 13 in California indicates that numerous courses, programs and extracurricular activities were eliminated and the quality of much that remained was reduced. If Oregon's legislature can provide some assistance to local school districts, one can assume that this would result in a transfer of some control from the local school board to Salem.

School District No. 1's assessment of its property tax losses if Measure 2 passes is based upon an allocation formula developed by the Legislative Revenue Office which is most advantageous to school districts and least advantageous to cities, counties, and other taxing districts. The Legislature would have to weigh the competing claims to limited property tax revenues, and it is entirely possible, if not probable, that school districts would end up with an even smaller share of the pie. A school district is limited in the types of user fees it can charge, not only by Measure 2's limit on user fees, but by restrictions which require certain equal educational opportunities for all students. School districts also face certain federal and state mandates with respect to education, including, among others, education for the handicapped.

d. Fire District No. 10

Other types of taxing districts would also face severe disruption if Measure 2 passes. For example, Fire District No. 10 in East Multnomah County depends almost entirely upon the property tax for its annual budget of $10,185,000 (1984-85). The district currently estimates that it would lose 30 percent of its budget if Measure 2 passes. At least some of the property tax savings would probably go to pay higher fire insurance premiums. Measure 2 does not have the safety net provisions included in previous property tax limitation measures in 1980 and 1982. In 1982, Fire District No. 10 estimated that the average insurance rating in its district would deteriorate from a 3 to a 5. This decline probably would not affect home owners, but would affect insurance rates for industry and commercial insurance purchasers. Without the safety net provisions, the reductions caused by Measure 2 might affect insurance rates even more and also affect home owners.

e. Port of Portland

The Port of Portland presently depends upon property tax revenues to generate an annual operating levy of $2.8 million and to retire $3 million in general obligation bonds the Port is allowed to issue each year for additional operating revenue. These amounts represent only 4 to 5 percent of the Port's operating budget. The remaining 95 to 96 percent is generated through charges such as airport landing fees, dock tie-up fees

6 "Fiscal restraints erode range of offerings in high schools," The Stanford University Campus Report, 8-22-84, p. 11.
and drydock fees. The Port also relies upon property taxes to support special levies to raise capital resources for projects such as the recently Terminal No. 2 renovation. It isn't possible for the Port to generate enough funds from its operating revenues to pay for new dock facilities or major renovation.

If Measure 2 passes, the Port estimates that its loss of capital resources, operating levy and operating bonds would amount to approximately 60 percent. Under some scenarios, it could lose its operating levy entirely. For example, the allocation plan used by the Legislative Revenue Office to estimate Measure 2's impact does not provide for any property taxing authority for the Port of Portland.

Measure 2's limitation on user fees and service charges could have a severe impact upon the Port. Measure 2 limits such fees or charges to revenues necessary to defray the actual expense of the service or the cost of administering the regulation for which the fee or charge is levied. Besides creating the problem of identifying the actual expense of services provided by the Port, the measure would have a "chilling effect" on the Port's ability to price its services according to market needs. The Port presently is allowed to charge drydock fees, dock tie-up fees or airport landing fees in excess of the actual cost of providing services to these users. Measure 2 might prevent this and thus cause additional revenue losses to the Port.

C. Impact on the Economy.

The loss of property tax revenue resulting from the passage of Measure 2 would result in reduced government capital construction as well as reduced capital maintenance. These reductions would result in the inability of cities and counties to expand services and infrastructure to attract new business unless the cities and counties could convince at least 50 percent of the registered voters to turn out to vote upon additional taxing authority. According to a recent article in The Oregonian, if Measure 2 had been in effect, National Semiconductor Corp. probably would not be locating a plant in Washington County because local improvement district bonds could not be sold to pay for road improvements needed to support industrial development in the area. The plant is expected to eventually employ about 2,000 workers.

Oregon's economic development depends in large measure upon the quality of its schools. Studies indicate that the quality of primary and secondary education is a major factor for those corporate decision makers who determine whether their facilities will be located within the state. An educated work force, which has been one of Oregon's strengths, also is important to attracting business.

Although Oregon's four-year colleges and universities are not funded by property taxes, Measure 2 could have an effect on them as well. As a result of Measure 2, it is possible that funds from the Legislature which might have gone to faculty salaries or to new engineering and computer
education programs (which relate to economic development) would instead be diverted to assist local governments in coping with Measure 2. Faculty salaries are a priority because they are not competitive with those of comparable universities in other states. Electronics companies have repeatedly pointed to the symbiotic effect of universities, research centers and electronics companies in close proximity as a major factor in determining their business locations. One major casualty of Measure 2's passage probably could be programs that recently received new funding such as Portland State University's budding engineering and computer courses designed to meet the needs of electronics industries locating in the Portland metropolitan area.

Proponents of Measure 2 argue that a reduction in property taxes would result in increased residential construction. Your committee has heard that residential construction is much more affected by interest rates than by property taxes, and unless interest rates are reduced, lower property taxes would have little effect on increased residential construction.

D. Impact on Renter Relief.

Measure 2 would not require that any of the present renter relief programs stay in effect. However, the measure would require that the Legislature provide property tax relief for renters from funds generally available for state expenses, or otherwise dedicated by the Constitution. Apparently, this provision would mean that dedicated funds, such as the gasoline tax, could be used for renter relief.

The measure does not indicate what would constitute property tax relief. The Attorney General's opinion states that such relief must be real, but beyond that there are no guidelines.

The measure does not distinguish between residential renters and commercial or industrial renters. As a result, every renter would be entitled to property tax relief. Many businesses are on multi-year leases at fixed or increasing rates. It is doubtful that landlords would pass tax savings on to tenants. Tenants who have net leases that require them to pay apportioned property taxes in addition to the base rent would notice a direct savings, and under Measure 2, these tenants could be entitled to further relief from state funds.

E. Impact of Measure 2 as a Means of Forcing Tax Reform.

Proponents interviewed by your committee felt that passage of Measure 2 would force statewide tax reform. The property tax limitation measure in 1982 was defeated by a narrow margin statewide, while the measure passed in Multnomah County. Many expected the Legislature would provide property tax relief or overall tax reform as a result of that close call, but it did not. So now some see Measure 2 as a method to force action. But while one cannot predict accurately what would happen as a result of the passage of Measure 2, tax reform is questionable.
For any tax reform to occur, voter approval would be needed under the new requirements of Measure 2. It seems unlikely that voters would be willing to vote for a new tax structure to raise revenues, or to impose a sales tax, immediately after choosing to slash property tax revenues.

Much of the frustration with government's failure to respond to cries for tax reform and property tax relief is directed at the Legislature. However, Measure 2 would require the Legislature to develop a complicated allocation formula as well as tax reform. One may sympathize with the frustration which leads to a program of tearing down a system in the hope that something better will rise from the ruins. However, the damage to Oregon in the interim and the uncertainty that any positive tax reform would be approved by the voters argues against support for Measure 2. Tax reform should be attained by going directly to the voters with a complete plan for reform rather than destroying the present system piecemeal.

F. Other Impacts.

- While the requirement to roll back assessed valuations to July 1, 1981 levels would not have a major impact, the provision limiting increases in assessed values to no more than 2 percent per year would have an ultimate impact. The inflation rate has been reduced over the last several years, but it is unlikely to drop to two percent or below. Therefore, governments or districts dependent upon the property tax would find themselves falling further and further behind each year.

- Measure 2 provides alternate limits consisting of the amount of property taxes levied for the fiscal year beginning July 1, 1983, or the 1 1/2 percent limit, whichever is less. The July 1, 1983 limit is a total dollar cap. This means that districts which are presently taxing at 1 1/2 percent would not be able to increase their tax revenue at all in future years as the assessed values of real property increased. Districts taxing below 1 1/2 percent might end up with no ability to increase revenues. Districts presently taxing at slightly over 1 1/2 percent would reach their absolute dollar caps within a few years after passage of Measure 2. The only way any of these taxing authorities could obtain additional revenue would be by voter override.

- The measure provides that all property sold, purchased, newly constructed, or changing ownership after July 1, 1985, shall be assigned the assessed value it had (or would have had in the case of newly constructed property) for the fiscal year beginning July 1, 1981, adjusted at the rate of 2 percent per annum for the intervening period. This provision was designed to close a "loophole" in California's "Proposition 13," where taxing authorities were able to obtain significant amounts of revenue from reassessments of property sold, purchased or newly constructed.

- The requirement for a minimum 50 percent voter turnout in tax elections would not apply only to property taxes. Any increased tax rate or special assessment or new tax or special assessment, which would cause an increase in governmental revenues would have to be submitted to the
voters, and at least 50 percent of the legal voters of the taxing unit must vote on the question. The obvious result would be to put the state and local governments in a financial straitjacket.

- Measure 2 provides that Federal Social Security benefits shall not be considered income for purposes of state or local taxation. Since Federal Social Security benefits are not presently considered income for these purposes, this part of the measure would have little impact.

- Measure 2 would affect civil rights, desegregation and affirmative action programs. Many women and minorities recently have been hired in public service sectors, including police and fire. The United States Supreme Court has recently ruled that in light of budgetary constraints resulting in police and fire layoffs, the seniority rule of last hired, first fired does not violate equal employment or discrimination laws. As a result, many of the gains realized in recent years for women and minorities in the public sector will be lost if Measure 2 passes and results in personnel layoffs.

- Finally Measure 2 would lead to years of uncertainty following its passage. It is a measure full of ambiguities which will take time and resources to clarify until the new "rules" are understood.

VII. CONCLUSION

1. Measure 2 is not a tax reform measure; it is a tax limitation. While your committee believes that tax reform is a worthwhile objective, the attack on one aspect of local taxes is not appropriate.

2. The salutary effects of reduced property taxes or a limit on government spending are not worth the disastrous consequences this measure would have on schools and local government.

3. The Legislature's "breach of faith" in failing to provide tax reform does not justify punishing local government and the schools.

4. The measure is poorly drafted and will lead to years of uncertainty about its full application.

5. The measure is an emotional reaction to a complex problem and not a rational approach to tax reform or citizen involvement.

6. The measure concerns more than property taxes--the election requirements are not limited to property taxes--and is probably unclear to voters.

7. The measure is not likely to produce tax reform.

8. The measure would result in less local control although its stated intention is to further local control.
9. The voter override provisions of the measure provide an illusion of control by local voters. It represents control by non-voters.

10. The measure would hurt economic development, not help it.

VIII. RECOMMENDATION

Your committee unanimously recommends the City Club of Portland support a "No" vote on Measure 2 at the November 6, 1984 general election.

Respectfully submitted,

Karen Bunk
Paul Dagle
Virginia Ferriday
Frank Langfitt, III, Chair
James Mitchell
James Nelson
James Seal

Approved by the Research Board October 2, 1984, for transmittal to the Board of Governors. Received by the Board of Governors on October 10, 1984, and ordered published and distributed to the membership for discussion and action on November 2, 1984.
APPENDIX A
ARTICLE XI, SECTION 11.A.: (new section)

(1) (a) Notwithstanding the provisions of Section 11, Article XI of this Constitution, the maximum amount of ad valorem taxes levied per annum against any real property shall not exceed 1-1/2% of the assessed value of such property, or the amount levied for the fiscal year beginning July 1, 1983, whichever is less.

(b) For the initial fiscal year beginning July 1, 1985, revenues produced by taxes authorized under this subsection shall be distributed among taxing units in the same proportion as existed for the fiscal year beginning July 1, 1983.

(2) The limitation imposed by subsection (1) shall not apply to ad valorem taxes or special assessments levied to pay the interest and redemption charges on any bonded indebtedness authorized prior to or concurrent with the date upon which this amendment becomes effective.

(3) The assessed value of any real property shall not increase in any one (1) year by more than 2% over the prior year's assessed value. Assessed value for the fiscal year in which this amendment takes effect shall be the assessed value for the fiscal year beginning July 1, 1981, adjusted for the intervening period under provisions of this section.

(4) All property sold, purchased, newly constructed, or subject to change of ownership subsequent to the fiscal year beginning July 1, 1985, shall be assigned the assessed value it had, or would have had in the case of newly constructed property, for the fiscal year beginning July 1, 1981, adjusted for the intervening period under provisions of subsection (3).

(5) The Legislative Assembly shall provide for property tax relief for renters from funds generally available for State expenses, or otherwise dedicated by this Constitution.

(6) (a) Notwithstanding subsection (1), from and after the effective date of this amendment, the state, each city, county, special district, school district, or other taxing unit of or within the state may increase a tax rate or special assessment or may levy a new tax or special assessment, if such action would cause an increase in governmental revenues, only by a majority vote of the legal voters of the taxing unit voting on the question, provided that at least fifty percent (50%) of the legal voters of the taxing unit vote on the question.

(b) A question authorized by this subsection shall be submitted to the voters in a form specifying the reason for the new tax, tax rate, or special assessment, the amount of revenue it is intended to produce; and the time period during which it is to be in effect.

(c) Elections authorized by this subsection shall be limited to the third Tuesday in May and the first Tuesday after the first Monday in November.

(7) From and after the effective date of this amendment, the state, each city, county, school district, municipal corporation or other governmental entity may levy a license fee, user fee, or service charge only to the extent that such fee or charge produces the revenues necessary to defray the actual expense of the service or the cost of administering the regulation for which the fee or charge is levied.

(8) Federal Social Security benefits shall not be considered income for purposes of State or local taxation.

(9) Subsections (1) through (4) of this Section shall become effective for the fiscal year beginning July 1, 1985. Subsections (5) through (8) shall become effective upon adoption of this amendment.

(10) If any section, portion, clause or phrase of this Article is for any reason held to be invalid or unconstitutional, the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force and effect.

(11) In case of conflict between this initiative and any initiative or referendum submitted to the vote of the people of the State of Oregon subsequent to this initiative's filing with the Secretary of State and prior to or concurrent with this initiative's submission to the vote of the people, only the initiative or referendum receiving a majority vote and the highest number of affirmative votes shall become part of the Constitution.
APPENDIX B

I. Persons Interviewed (includes Committee, individual and phone interviews)

Richard H. Bornemann, Decom, Inc.

Dennis Buchanan, County Executive, Multnomah County

Sonny Conder, City Economist, City of Portland

Mike Cox, Washington County Elections

Bill Dawkins, Campaign Manager, Oregon Taxpayers Union

Chris Dudley, representing The Oregon Committee

Mark Gardiner, Director, Office of Fiscal Administration, City of Portland

Gerard R. Griffin, APR, Director, Corporate Communications, Louisiana Pacific Corporation

Gilbert Gutjahr, Director, Multnomah County Tax Supervising and Conversation Commission

Chief George Howland, Fire District No. 10

John Kaufman, Clackamas County Elections

Duane Kline, CPA, Dir., Budget & Management Analysis Division, Multnomah County

Tim Likness, Elections, Clark County, Washington

Frank McNamara, Lobbyist, Portland School District No. 1

Randolph L. Miller, President, The Moore Co.

Richard A. Munn, Director, Oregon State Department of Revenue

Robert Randall, The Robert Randall Company

Alan Robertson, Multnomah County Elections

Harvey W. Rogers, Attorney, Ragen, Roberts, O'Scannlain, Robertson & Neill

James R. Scherzinger, Legislative Revenue Officer
Albert Solnet, Member, City Club Committee on Coping with Measure 2

W. Ed Whitelaw, ECO Northwest

2. Bibliography

"1-1/2% Tax Opposed by AGC," Daily Journal of Commerce, 8/23/84


"Associated Oregon Industries Opposes Measure 2 Tax Limit," The Oregonian, 9/21/84.

"County Fears Halving of Spendable Income Under Tax Limit," The Oregonian, September 27, 1984


"Fiscal Restraints Erode Range of Offerings in High Schools," The Stanford University Campus Report, 8/22/84.

"Illusion in Measure 2," The Oregonian, October 2, 1984

"Mayors Oppose Lid on Property Taxes," The Oregonian, 8/17/84.

"Measure 2's Impact Berated," The Oregonian, September 29, 1984

"National Semiconductor's Plant Confirmed," The Oregonian, October 3, 1984


Oregon Voters Pamphlet – Explanation of Measure 2, Arguments in Favor of Measure 2, Arguments in Opposition to Measure 2.


"Report on State Measure No. 6, Limitations On Ad Valorem Property Taxes and State Measure No. 11.

"School Panel Told Tax Lid Would Cut Income 32%," The Oregonian, 9/14/84.

State and Local Tax Revolt, New Directions for the 80's, Dean Tipps and Lee Webb, Ed., 1980.


"Why Oregonians In Action Feels That Measure #2 Is Necessary," Oregonians In Action
Report on
CONSTITUTIONAL AMENDMENT ESTABLISHES STATE LOTTERY, COMMISSION;
PROFITS FOR ECONOMIC DEVELOPMENT
(State Measure No. 4)

and

STATUTORY PROVISIONS FOR STATE OPERATED LOTTERY
IF CONSTITUTIONALLY AUTHORIZED
(State Measure No. 5)

Measure 4:

Question: "Shall a state lottery operated by commission be established, profits to be used to create jobs and further economic development?"

Explanation: "Constitutional amendment establishes state lottery and lottery commission to operate games other than bingo, pari-mutuel racing or social gaming. Bans casinos. Profits to be used to create jobs for economic development. Requires 50% of proceeds to be paid in prizes. Limits expenses to 16%. Requires legislature to lend $1,800,000 to fund initial costs, repaid from profits. If this and other constitutional initiative(s) authorizing lottery pass, only measure with most votes takes effect."

Measure 5:

Question: "Shall legislation be enacted to regulate state lottery, establish qualifications for commission, director, retailers, vendors and contractors, if constitutionally authorized?"

Explanation: "Measure regulating and providing for state operated lottery becomes effective if separate constitutional amendment passes. CONTAINS MANY DETAILS NOT MENTIONED HERE. Requires legislature to lend $1,800,000 to fund initial costs, repaid from profits. Requires 50% of proceeds to be paid in prizes exempt from state taxes. Limits expenses to 16%. Establishes qualifications for lottery commissioners, director, lottery retailers, vendors and contractors. Provides for security, audits, and studies. Prohibits play by minors."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

The proposal for a state-operated lottery consists of two related ballot measures: 1) an amendment to Article XV of the Oregon Constitution; and 2) statutory provisions to implement the lottery. The statutory provisions are not effective unless the constitutional amendment also passes.
The constitutional amendment (Measure 4) authorizes a state lottery to be administered by a Director and a five-person commission. At least one member of the commission must have law enforcement experience and another must be a CPA. The commission authorizes game procedure. Public sales of tickets must begin within 105 days after confirmation by the Senate of the Director and at least three commissioners.

Measure 4 requires that at least 84 percent of the gross revenues be returned to the public in prizes and net revenues benefitting the public purpose, with a 16 percent cap on operating expenses. Net revenues from the lottery, after prizes and expenses, are to be dedicated to "creating jobs and furthering economic development in Oregon." The lottery is to be self-supporting after an initial loan of $1,800,000 from the General Fund.

Measure 5 (the statutory measure) details the organization and administration of the lottery. It requires at least 50 percent of the gross revenues to be paid in prizes, which will be exempt from state income taxes. Independent financial and operational audits are required.

II. LOTTERY HISTORY

A. General History

New Hampshire established a lottery in 1964. Since then, at least 16 other states and the District of Columbia have adopted a lottery. Nine other states, including Oregon, now are considering lotteries. Last year lottery states collected $5 billion in gross revenue. More than $3 billion went to those states as net revenue used for transportation projects, education, parks, aid to the elderly, local aid, or general funds. Lotteries usually account for less than 3 percent of total state revenues.

States typically run lotteries as games of chance. Two key factors affecting gross revenues are: 1) the kind of games chosen; and 2) the commitment by the state to marketing the games. States with the most successful lotteries first implement "instant winner" games, then "numbers" games, using on-line computers. "Instant winner" games allow players to determine immediately whether or not they've won. One popular form requires the player to rub a coating off a card to reveal whether a prize is hidden beneath the coating. In the "numbers" games, a player chooses a combination of numbers that is compared to a set of numbers drawn by the runners of the lottery. The public shows an initial interest in each game as it is offered. This interest wanes as the game matures. When new and different games are offered on a continuous basis, revenues from lotteries tend to increase over time even though the revenue from any particular game tends to decline.

Marketing by a state becomes increasingly important after the initial lottery games are completed and interest begins to wane. To maximize lottery revenue, states must advertise, and do so effectively. Other factors influencing the amount of income generated from a lottery are a state's
Most state lotteries are similar to that proposed for Oregon. Staffs range in size from 10 to 500, depending on the size of the state lottery.\(^1\) Tickets are sold by independent retailers, such as grocery stores, liquor stores, drug stores, and convenience stores. Banks collect and hold funds deposited by retailers. Vendors and contractors help design games, print tickets, install computer systems (when a state moves to "numbers" games), and act as general consultants. Most states spend up to 10 percent of gross revenues on administrative expenses. States perform regular demographic studies to determine who play their lotteries.

B. Oregon History

The constitutional amendment and statutory provisions are similar to lotteries in other states. The major difference is the dedication of the net revenues to economic development and job creation.

The revenue collected from an Oregon lottery depends, in part, upon the commitment of the Governor and the lottery commission he appoints. Based upon patterns experienced by other states, the Oregon Legislative Revenue Office estimates first-year sales of up to $110 million, with net revenues for economic development of about $45 million. It is estimated that, after the initial surge associated with a new lottery, net revenues would drop to and stabilize at $30 million per year. If the state makes only a passive commitment to the lottery, estimates of sales range from $30-$40 million, with net revenues of $10-$15 million.\(^2\)

Other than general economic development and job creation, the proposed constitutional amendment does not define specific uses of net revenues. Those decisions will be made in the future by the Legislature.

The Attorney General's explanation of the constitutional amendment set forth at the beginning of the ballot measure incorrectly states that the amendment requires 50 percent of gross revenues to be paid in prizes. Although the statutory provisions set forth that requirement, the constitutional amendment does not. The validity of the constitutional amendment ballot measure was challenged in court on the grounds that: 1) the incor-

\(^1\) The lottery staffs of Arizona and Colorado are 80 and 93, respectively. Both of those states are comparable to Oregon in population.

\(^2\) "Vermont, in particular, has a policy of informational rather than promotional advertising. Vermont does not utilize hard-sell promotions. Legislative intent of the Vermont Lottery is to *** produce the maximum amount of new revenue consonant with the dignity of the State and general welfare of the people." (Title 13, Chapter 14. Vermont Statutes Annotated.)" Research Report #7-83, State Operated Lotteries, Legislative Revenue Office, Salem, Oregon, May 23, 1983.
rect explanation misled persons signing the initiative petitions, and, as a result, there was an insufficient number of valid signatures to place the measure on the ballot; and 2) the error would mislead voters. The Marion County Circuit Court rejected that challenge and held: 1) Oregon statute sets forth the only appropriate method for challenging the content of the ballot title and no such challenge was made; 2) the Secretary of State breached no alleged duty to correct the statement; and 3) there were adequate means available to inform voters of the error.

Lottery bills have been introduced in every regular legislative session since 1967. In 1984, two lottery initiatives were circulated. One failed to obtain sufficient signatures; the second consisted of the two measures under discussion.

Measures 4 and 5 were initiated by Hank Crawford, a Salem lobbyist who was contacted by a California law firm to evaluate possibilities of a lottery in Oregon, and Scientific Games, Inc., a subsidiary of the publicly owned Bally Corporation of Atlanta, a large supplier of lottery paraphernalia to other states. Scientific Games, Inc. spent $151,000, including payments to Crawford, law firms, and hired petitioners, to get the measures on the ballot.

III. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURES

1. A lottery is a completely voluntary system for revenue generation. It is a form of entertainment and fun.

2. The lottery would be a self-sustaining state-run business generating a profit of at least 34 percent of gross revenue to be used for economic development and job creation.

3. Aside from that 34 percent, the conduct of the lottery itself would result in the expenditure of a substantial amount of funds within the State of Oregon, and would stimulate Oregon's economy.

4. Money raised by the lottery would be used to create new jobs and for economic development.

5. A state lottery would capture revenue for Oregon which is currently being spent in the State of Washington and other states offering a lottery.

6. Lotteries do not attract or increase crime, do not cause persons to become compulsive gamblers, are not played disproportionately by those with lower incomes, and do not lead to corruption of government officials.

7. Lotteries appear to be socially and morally acceptable to a substantial majority of Oregon citizens.
IV. ARGUMENTS ADVANCED AGAINST THE MEASURES

1. The lottery misleads the public, playing on the perception that it is an adequate substitute for other taxes. The amount of revenue generated will not be significant in addressing Oregon's economic problems.

2. The lottery is a tax:
   
   (a) government-sponsored gambling is, in essence, a tax. As such, it is regressive, placing a heavier proportionate burden on the poor;
   
   (b) it is not truly a "voluntary" tax, as it requires constant and elaborate promotion to persuade the public to continue playing; and
   
   (c) the lottery is an inefficient means of raising revenue compared to other taxes.

3. Lotteries are unsound economically as:
   
   (a) the effect on the economy is depressing to the extent that lottery spending replaces consumer spending; and
   
   (b) there could be a greater net outflow of money from Oregon to other state lotteries with larger prize pools which would gain the right to advertise in Oregon.

4. It is inappropriate for the state to promote an activity which undermines the work ethic and promotes the belief that one can get something for nothing.

5. The lottery may lead to crime.

6. The measures are self-serving. They were promoted by an out-of-state contractor who stands most likely to benefit financially from enactment of an Oregon lottery. The contractor promoted its own particular financial objectives and has been unwilling to disclose the extent of its involvement with the Oregon measure.

7. The measures violate the spirit of the initiative process through the use of paid petitioners rather than grassroots volunteers.

V. MAJORITY DISCUSSION

The proposed lottery is a painless method of raising needed revenue. Unlike a tax, a lottery is a completely voluntary system for both players and retailers. Each player participates based upon personal desire. Each retailer decides to become a lottery vendor based upon individual business and economic considerations.
Lottery games are fun. As lottery games mature and become more sophisticated, the entertainment value increases and greater revenues result. The lottery provides pleasure to the players and needed revenue for the state.

Revenues from the lottery would be dedicated to economic development and job creation. That broad objective gives the Legislature the flexibility to channel funds into varying areas. For example, proceeds could subsidize public programs that may be cut or eliminated from the budget in the next biennium. Lottery funds could provide a source of entrepreneurial seed money. Lottery revenues could fund some programs which otherwise would not be possible.

The lottery is not a substitute for tax reform nor would the revenue raised be significant if compared to a sales tax or a property tax. However, it would raise some money that may not be otherwise raised. There are far greater historical and economic impediments to the passage of needed tax reform than simply the passage of the lottery measure. The passage of the lottery would not alter these forces, but it would provide money to create jobs in the private sector and to support other kinds of economic development.

From 1981 to 1983 Oregonians spent at least $18.5 million in the Washington State Lottery—of which approximately $7.4 million passed to Washington's General Fund. An Oregon lottery will help to keep this money in Oregon.

The lottery would be self-supporting and would make money from the very beginning. Projected net revenues are as high as $45 million in the first year, and $30 million each subsequent year. This is better than private enterprise where most companies barely survive the first years and, if they do survive, often do so with a net loss.

Operating expenses, limited to 16 percent of gross revenue, include: 1) commissions paid to sales agents and banks; 2) advertising; 3) production costs; 4) computer expenses; 5) staff salaries; and 6) other adminis---

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3 Robert Boyd, Director of the Washington State Lottery, states that Washington's lottery sales to out-of-state residents total 5 to 9 percent of all lottery sales. A recent Oregon legislative research report states that the revenue drain has been one of the motivating forces in urging a state lottery. The report cites a Daily Journal of Commerce study published in January 1983 showing that in one Washington lottery game, Oregonians spent approximately $2.24 million on tickets, with net revenue to Washington of over $800,000. Mr. Boyd also stated that some Washington residents would play the Oregon lottery if passed.

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4 Last year in Arizona, for example, the Phoenix Gazette and Arizona-Republic received $78,000 in advertising revenue (State Legislatures, 3/84).
Most of this money would go to Oregon businesses and citizens with the exception of the money paid to purchase the lottery tickets. There is no Oregon company to provide this product at this time.

The lottery would pay Oregon retailers approximately $5-7 million a year, based upon annual gross revenue estimate of $110 million. Oregon supermarkets, convenience stores, gas stations, and liquor stores would benefit substantially. Retailers in Washington received $10 million in 1983.

Scientific Games, Inc. is most likely to supply tickets for the initial lottery, as it did for Washington's initial lottery. Opponents of the lottery argue that the inclusion of the 105-day requirement and a provision requiring public disclosure by bidders are deliberate attempts by Scientific Games, Inc. to manipulate the outcome of the bidding for lottery ticket services.

Beginning the lottery within 105 days of Senate confirmation of the Director and at least three commissioners will prevent unnecessary delays in the implementation of Oregon's lottery and the generation of revenue. Because the Oregon Senate will not meet again until January 1985, at least five and one-half months will elapse before ticket sales must commence after the election. If the Senate is sufficiently concerned about the 105-day requirement, it can slow implementation of the lottery by simply delaying confirmation.

Public disclosure requirements assure the honesty, integrity, and competence of lottery vendors. The extent of disclosure depends on the entity involved. A corporation or a subsidiary of a publicly held corporation need only disclose its corporate name, address, officers, directors, and outstanding shareholders who own more than 15 percent of the corporation's outstanding shares. The corporation must disclose its financial statement, but any disclosures required by an individual are confidentially submitted to the lottery commission.

There is little concrete evidence from any state to support the argument that the lottery will have deleterious social and moral effects. For example, there is no evidence that criminal elements are involved in Washington's lottery.

There is no evidence that any state lottery has been operated by corrupt officials, or that any lottery has lent itself to the development of

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5 "State Lotteries," Legislative Research, p. 11.

6 Robert Boyd, Director of the Washington State Lottery, stated that Scientific Games, Inc. had done a good job for Washington, and had acted thoroughly professional in providing its goods and services. Washington now receives bids from several different companies.
The statutory provisions of Oregon's proposed lottery provide for strict regulation and control of the lottery's operation.

The disclosure requirements and the state's control of the lottery will assure the integrity, honesty, security, and fairness required by the constitutional amendment. The responsibilities involved are analogous to those assumed by the state regarding liquor control. Under the auspices of the OLCC, the state carries out a normally private function in order to minimize abuses and avoid general social problems.

Demographic studies by Washington and other states indicate that lotteries are played by all segments of the population. In relation to their proportional share of the population, middle-income, college-educated play more frequently than the poor or the rich.

While the lottery is regressive in that all income groups pay the same price for tickets, lotteries must be compared to other forms of entertainment, not to taxes. Using that analogy, movies, boat rentals, and cable TV are equally regressive. More important, because the lottery is voluntary (unlike a tax), those who choose not to play, regardless of income, will not be subject to any impact at all.

There is also little evidence to suggest that a lottery encourages people to gamble compulsively. Serious gamblers will not like the lottery's odds and therefore will not play the game with any regularity. Individual personality traits weigh far more heavily in the development of compulsive gambling behavior than the availability of a state lottery. Oregon already authorizes many other forms of gambling. Horse and dog racing, bingo games, and card parlors exist throughout the state. Even supermarkets offer games to customers.

There is nothing wrong with winning money, even potentially a lot of money. Current polls indicate that an overwhelming majority of Oregonians support the introduction of a lottery into the state. Given the voluntary nature of a lottery, an individual opposed to the lottery is free to exercise ethical and moral objections by not buying a ticket. Those who do wish to participate should be given that choice.

7 An isolated scandal associated with the modern lottery era occurred in Pennsylvania in 1980. A drawing making use of ping pong balls painted with numbers in a glass-enclosed box was rigged so that only balls with certain numbers were selected. Four people, including the TV announcer who reported the daily numbers drawing, went to jail.

VI. MAJORITY CONCLUSIONS

The majority believes that the lottery is a self-sufficient form of entertainment that will raise needed revenue for economic development. The voluntary nature of the lottery allows each individual to choose whether or not to participate. The beneficial impacts of an Oregon lottery far outweigh any hypothetical drawbacks.

VII. MAJORITY RECOMMENDATION

The Majority of the Committee recommends a "YES" vote on Measures 4 and 5 in the November 6, 1984 general election.

Respectfully submitted,

Patrick Adams
William Back
Chris Kitchel
Mark Knudsen
Donna Roberge
Valerie Scatena

FOR THE MAJORITY

VIII. MINORITY DISCUSSION

A. Measures 4 and 5 Will Primarily Benefit a Private Corporation

The Atlanta-based Scientific Games, a manufacturer of gambling paraphernalia, initiated Measures 4 and 5. The company paid $151,614 to a California law firm, a Salem lobbyist, and signature gatherers to gain ballot status. Use of paid petitioners, although legal,\(^9\) violates the intent of the initiative process, which is to allow voters access to the ballot on issues with widespread public support. Paid signature gatherers have never been necessary where grassroots organizations have volunteers working for a cause. In spite of various proposals, a lottery has never gained sufficient support in the Legislature to be approved, and the current proposals are publicly opposed by all four of Oregon's major elected state officials.\(^{10}\)

\(^9\) A 1982 court decision resulted in the repeal of Oregon's statute prohibiting the use of paid petitioners.

\(^{10}\) Governor Atiyeh, Secretary of State Paulus, Attorney General Frohnmayer, and Treasurer Rutherford.
Scientific Games' approach in Oregon was very similar to one it has used in many other states: to pick a popular cause, earmark revenues for that cause, pay to gather signatures, and finance election advertising. For example, the firm spent over $1 million in California to pay petitioners using a group called "Californians for a Better Education."

And following a $200,000 investment in Arizona, the firm has sold the state $5.5 million in instant lottery tickets.

Much of the favorable "research" on lotteries is reported in Public Gaming Magazine, which is published by Scientific Games. Many of the reports provided to your committee cited this publication as a source.

Dr. John Koza developed for Public Gaming Magazine a method of representing lottery statistics by indexing players to the general population; participation is described only by comparative categories while actual numbers playing is missing. Koza's interpretation allows the Washington lottery to falsely describe players as "middle to upper income" and college-educated when, in fact, numeric data indicate otherwise. (See Section C for discussion.)

These lottery measures appear designed to give a competitive advantage to Scientific Games through specific provisions not in the best interests of the state. The constitutional measure provides no means for discontinuing the lottery even if it is unsuccessful. The constitutional provision providing for a 105-day start-up, which cannot be changed by the Legislature, appears to have the purpose of either insuring that Scientific Games will be the only bidder or that the state will be forced to award a contract without competitive bidding. Oregon's Purchasing Manager stated that "105 days is not a realistic amount of time" for a major contract such as a lottery to be implemented, estimating six to nine months would be needed. The Majority's suggestion that the Senate could merely delay confirmation to allow more time would be impossible, both legally and practically. The start-up process would include establishing a new state agency, organizing its operations, awarding a major, complex contract, and establishing outlets, distributions, and collections throughout the state. This would require the primary participation of those lottery officers and directors to be confirmed by the Senate.

The measures would exempt the lottery from following the state's competitive bidding statutes. Washington did not follow the normal bidding process because of time constraints and instead engaged Scientific Games by "sole source" contract. Washington paid as much as 21 percent more under this contract than with later contracts which were bid.


Of three other possible bidders on an Oregon contract, two have stated that the disclosure requirements in Measure 5 would prevent them from bidding, and one said it would make a bid less likely. Firms must disclose three years of individual income tax returns and current financial statements of all directors, officers, and board members of any company or its parent firm bidding on the contract. Beatrice Companies, whose subsidiary Webcraft Technologies would be a potential bidder, is a conglomerate with sales of $9.3 billion last year and has so many officers and directors that "to comply would be almost impossible." But Scientific Games would have no problem complying with these requirements because the firm already furnished this information in New Jersey in order for its parent, Bally, to gain a casino license.

In 1980 the New Jersey Attorney General's office conducted a two-year, $3 million investigation of Bally and recommended that the firm not be allowed to operate a casino in Atlantic City. The primary problem identified was that the firm's founder, chairman, and largest stockholder had alleged ties with organized crime figures. The Casino Control Commission later granted the license on the condition that the chairman of Bally resign and divest himself of stock ownership.

B. Lottery States Entice People to Gamble with Advertising

Advertising plays a major role in the success of state lotteries. Sales in new lotteries typically enjoy an initial surge which drops off after many citizens lose interest. Subsequently, to prevent a major decline in revenues, a state must conduct an aggressive advertising program along with continuous creation of new games to attract otherwise non-participants to play. "Persuasion may be more dangerous than coercion. A person realizes it when he is forced to pay a tax, but not necessarily when he is enticed to gamble."

The permitting of racetrack gambling in Oregon differs from the continued promotion required with lotteries. Even though Oregon allows dog and horse racing, it only promotes them at the Oregon State Fair 11 days

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14 "Lottery wording viewed as effort to exclude rivals," Oregonian, September 19, 1984.

15 Source: James F. Flanagan, Deputy Director, Office of the Attorney General, Division of Gaming Enforcement.

16 The Washington lottery's promotional efforts have included direct mail advertising with free ticket coupons included, aimed at the 18-34 age group, because of the concern that "the lottery was not being played by" that group. This promotion was conceived by Scientific Games. Eugene Register-Guard, December 22, 1983.

A state lottery is a monopoly and bureaucracy with a vested interest in its own success. It places the state in the business of creating a market for a product where most of the customers must lose. This is contrary to principles of consumer protection and corporate responsibility which have gained public support in recent years. Although large prize winners in some lotteries are widely publicized, in reality the odds of winning in a lottery are worse than for any other form of legal gambling, including casino gambling. For example, the odds of winning any money in Washington's Lotto game are 1 in 445. The odds for most larger jackpots deteriorate to one in several million.

States are exempt from regulation of advertising by the Federal Trade Commission, so they may advertise in false and misleading ways which are prohibited for businesses. (Oregon's Fair Trade Practices laws also exempt the state.) For example, the winnings described by total amount which are received by winners over a period of years would not comply with the Federal Truth in Lending law. "It is ironic that today not even the sleaziest moneylender is permitted to do things that state lotteries do as a matter of routine."

The role of government should be to foster an environment which is healthy and productive. Reciting the shibboleth that citizens must be free to make choices not in their own best interests denies the state's active role in promoting a lottery. The value we place on individual freedom of choice does not imply that the state should be empowered to exploit its own citizens. Stressing the voluntary nature of a lottery and the ease of raising revenues without raising taxes would imply that there is no cost to anyone when in fact there are real costs.

C. A Lottery Is an Inequitable Form of Tax

A lottery is a type of sales tax but is more regressive than a general sales tax because the latter can be structured to exclude most expenditures of the poor. Hardy Myers, former Speaker of the Oregon House, opposes the lottery in part because it is inequitable. Government should attempt the accumulation of revenues on some rational basis and to achieve some degree of fairness based on ability to pay. The proposed Oregon lottery is not part of any overall tax plan.

The lottery draws most of its revenues from lower income levels. A total of 64 percent of Washington lottery players in 1983 had incomes under $25,000. Of these, 23 percent earned less than $10,000. Fully $127 mill-

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lion of total ticket sales of $200 million in the Washington lottery was contributed by those with incomes under $25,000 in 1983. This is not middle class by most standards.

In contrast, the income tax is considered the least regressive of taxes. Taxpayers with low incomes in Oregon (and elsewhere) pay the lowest rates of personal income tax, so that state collections from income tax are not proportional to population shares but rather the opposite. Collections in 1982 from returns filed with incomes under $25,000 amounted to only 34 percent of total collections, while 72 percent of the Oregon population is in this income bracket.

The lottery will not raise enough money for the state to address effectively any of its financial problems, according to Vera Katz, co-chair of the House Ways and Means Committee. Katz believes that widespread public misunderstanding of the amount a lottery could generate would erode voter support for other more effective revenue tools such as a sales tax.

(A lottery would raise from 1 percent to 5 percent of the revenues that a sales tax would raise. A 4 percent sales tax exempting necessities would raise about $800 million per year.)

The lottery's economic development purpose is addressed in only one phrase in Measure 4. There is no guidance as to the particular use of revenues, but legislators Katz and Myers indicated that earmarking of funds is ineffective. It is likely lottery revenues would be used to replace present allocations for the variety of decentralized economic development programs already in existence, especially in light of the shortfall projected at the start of the next biennium due to sunsetting of temporary tax measures enacted to meet the State's fiscal crisis, and the possible additional $600 million which will be needed if Measure 2 should pass. The Minority strongly supports efforts toward economic development but views the proviso in these measures as ineffective and essentially designed to draw automatic voter support for a lottery through association with a popular cause.

The lottery is an inefficient means of raising money. Overall state revenues cost about 5 percent to collect; a lottery's will cost 66 percent. An Oregon lottery would also be less efficient to administer than in most other states in which an existing sales tax mechanism can be used to collect receipts from vendors.

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20 State of Oregon, Department of Revenue, 1982 tax year data (latest year available).

21 Katz bases this conclusion on her experience in seeking the opinions of voters in her district and on public opinion polls which have indicated voters would reject a sales tax in favor of a lottery.

22 Only 34 percent of gross revenues will go to the state. Washington receives 40 percent of gross revenues for its General Fund.
D. **A Lottery Would Be Economically Harmful to Oregon**

A lottery in Oregon would detract from consumer spending to the degree that it is played by those who spend their whole incomes, that is, those with low incomes, according to Dan Goldy, consulting economist and former Director of the State Department of Economic Development. A dollar spent for a lottery ticket cannot be spent for merchandise. And the purchase of a chance to win money does not engage the productive capacity of the economy as the purchase of a good or service does. A lottery creates no new wealth but redistributes wealth on an arbitrary basis.

Benefits to businesses selling lottery tickets are questionable. The owner of City Liquidators, a large Portland and Vancouver retailer, described the sale of lottery tickets at his business in Vancouver as negative and eventually rejected it. His employees were distracted from the sale of store merchandise and were forced to handle large amounts of cash on a low profit margin.

The goal of stopping the outflow of money to neighboring lotteries, although desirable, may not be achieved with an Oregon lottery. Existence of an Oregon lottery would enable other lottery states to advertise in Oregon, which is currently prohibited. States with populations greater than Oregon will be likely to offer larger jackpots. Advertising from Washington and California lotteries, made possible by these measures, might encourage Oregonians to play where prizes are biggest. The Washington lottery also paid $6 million to out-of-state vendors in 1983, or 3 percent of gross sales.

E. **A Lottery May Lead to Gambling-Related Crime**

There have been several cases in which modern lotteries have had problems with crime: the 1980 conviction of four persons associated with Pennsylvania's lottery for rigging drawings, the piggybacking of an illegal numbers game on Maryland's lottery, and attempted altering of tickets in some states. Some lotteries have developed ways to evade lottery laws: for example, New York and New Hampshire found methods of circumventing federal prohibitions against interstate transportation of lottery tickets or prizes.23

Secretary of State Norma Paulus offered as an analogy the introduction of social gambling in Oregon. Social gambling was pushed through the Legislature in an especially underhanded way, according to Paulus, and was portrayed as an aid to problems from tourism to loneliness. Instead, social gambling has resulted in numerous enforcement problems, especially for smaller counties with limited law enforcement resources.

Conclusive evidence about crime is not available from the relatively short history of modern lotteries. However, crime has typically followed

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23 Blakey, p. 82.
most other forms of gambling and has been associated with some lotteries. A major gambling program such as a lottery may have unforeseeable social consequences and provide an inviting environment for increased crime.

IX. MINORITY CONCLUSION

The Minority believes the public is being deceived about the purposes and results of the proposed Oregon lottery. A lottery will be economically harmful to the state, while self-serving provisions of these measures provide for the enrichment of an Atlanta corporation. It will decrease the potential for the state to achieve needed real tax reform while contributing a pittance to needed economic development. A lottery is an inequitable form of taxation and will place the state in the position of exploiting its own citizens. Oregon deserves better than a degrading scheme whose true beneficiary will be an out-of-state gambling conglomerate.

X. MINORITY RECOMMENDATION

The Minority recommends a "No" vote on Ballot Measures 4 and 5.

Respectfully submitted,

Jim Walter
Diane Hopper, Chairperson

FOR THE MINORITY

Approved by the Research Board October 2, 1984 for transmittal to the Board of Governors. Received by the Board of Governors on October 10, 1984 and ordered published and distributed to the membership for discussion and action on November 2, 1984.
Appendix A

Persons Interviewed

George Ascherl, Purchasing Manager, State of Oregon.

Scott Bassett, Management Analyst, Budget & Management Division, Executive Department, State of Oregon.

Robert A. Boyd, Director, Washington State Lottery.

Hank Crawford, Co-Sponsor and Campaign Chairman of the Lottery Ballot Measures; President, Hank Crawford Public Relations, Inc. and Oregon Small Business Council.

Gary K. Eisler, Campaign Director, Stop Oregon's Lottery; Public Relations Consultant, Media Connection.

James F. Flanagan, Deputy Director, New Jersey Attorney General's Office, Division of Gaming Enforcement.


Shirley Gold, State Representative, District 14.

Daniel L. Goldy, Consulting Economist.

Dr. Myron Hall, S.T.D., Director of Legislative and Governmental Affairs, Ecumenical Ministries of Oregon.

Vera Katz, State Representative, District 10.

Hardy Myers, Attorney, Stoel, Rives, Boley, et al.

Norma Paulus, Secretary of State.

Walter Pelett, Chairman, Stop Oregon's Lottery; President, City Liquidators.

Rick Peterson, Economist, Legislative Revenue Office.

Sgt. Thoet, Organized Crime Unit, Washington State Patrol.
APPENDIX B

Bibliography

Published Reports and Magazine Articles:


Newspaper Articles:


Mapes, Jeff, "Lottery Wording Viewed as Effort to Exclude Rivals," The Oregonian, September 19, 1984.


"Oregonians to Vote on Lottery," Eugene Register-Guard, August 12, 1984.


Correspondence, Statements, and Other Materials:

Information supplied by Norma Paulus, Secretary of State, including articles from California and Arizona publications.
Letter to Norma Paulus, Secretary of State, from Dave Frohnmayer, Attorney General, regarding Ballot Title of Constitutional Initiative Measure Relating to State Lottery: OP 5718.


Washington Lottery Player Profile.
Report on

REVISES NUMEROUS CRIMINAL LAWS CONCERNING
POLICE POWERS, TRIALS, EVIDENCE, SENTENCING"
(Ballot Measure No. 8)

Question: "Shall prosecutor's control over trial procedures be expanded, and major changes made in police powers, evidence, sentencing, parole, victim's role?"

Explanation: NOTICE: "THIS DESCRIPTION DOES NOT IDENTIFY ALL CHANGES PROPOSED TO CRIMINAL STATUTES. "Gives prosecutors new or additional authority, including to compel jury trials, prevent dismissals after civil compromises, try multiple defendants jointly; repeals statutes regulating stops and searches of persons and statutes allowing challenges to illegally or unconstitutionally obtained evidence; gives victim role in trial scheduling, sentencing, parole; regulates cross-examination on witness's prior convictions; regulates multiple and consecutive sentences; makes other changes."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

State Measure 8, if approved by the voters in November 1984, would amend or repeal numerous provisions of state law relating to criminal procedure including victims' participation, selection and waiver of juries, use of prior crimes for impeachment, joint trials, scope of search warrants, definition and sentencing of multiple offenses, period of parole supervision, police stop and frisk authority, exclusion of illegally obtained evidence, and civil compromise of criminal cases.

II. BACKGROUND

Recently, public attention has begun to focus on victims of crimes. Many states have adopted legislation granting victims restitution from public funds and developing victims' bills of rights, including requirements for victim notification, counseling for victims, victim participation in criminal justice proceedings, and provision of financial aid and social services to victims of crime.

In response to these concerns, the 1983 Oregon Legislature enacted legislation imposing penalties on persons convicted of crimes ($50 for a felony conviction, $20 for a misdemeanor conviction and $40 for a conviction of driving under the influence of intoxicants), one-half of the proceeds to be returned to the county or city of origin if it maintains a comprehensive victims' assistance program. The victims' assistance program must accomplish the following: (1) Inform victims and witnesses of their case status and progress; (2) perform advocate duties for victims within
the criminal justice system; (3) assist victims in recovering stolen or damaged property and in obtaining restitution or compensation; (4) prepare victims for pending court hearings; (5) accompany victims to court hearings; (6) involve victims when possible in the decision-making process in the criminal justice system; (7) assist victims in obtaining the return of property held as evidence; (8) assist victims with personal logistical problems related to court appearances; and (9) develop community resources to assist victims.

The proponents of Ballot Measure 8 view it as a further response to crime victims' concerns. Drafted by prosecutors of the Multnomah County District Attorney's office, it has the support of Crime Victims United, a group formed about two years ago. The initiative includes 15 substantive sections relating not only to victims' rights, but also to criminal procedures, sentencing, and laws pertaining to law enforcement behavior. None of the victims' rights sections has been proposed to the Legislature. The sections pertaining to impeachment, merger, joint trials, and stop-and-frisk have been before the Legislature in one form or another, but in the view of the measure's proponents, the result was not satisfactory. Two of the sections would overrule recent Oregon court decisions.

The measure has been before the Oregon Supreme Court twice. First the Court ruled that the proposed title, "Rights of the People and Victims in Criminal Cases," was misleading and changed it to read "Revises numerous criminal laws concerning police powers, trials, evidence, sentencing." Second, the Court rejected, 5-2, a petition to invalidate the measure on grounds it embraced more than one subject matter contrary to the provisions of the State Constitution for initiatives. The Court based its decision on untimeliness of the challenge, but indicated the issue could be raised again if the measure passes.

III. ANALYSIS

A. General Analysis

Proponents of the measure argue: Court decisions and legislative enactments have tipped the scales too much in favor of persons accused of crime; Oregon laws controlling police authority should be limited to the constitutional minimum requirements; the Legislature, and particularly the Senate Justice Committee, in recent years has been dominated by the views of criminal defense attorneys and not responsive to a public desire to strengthen law enforcement and prosecution powers; the Parole Board has been too lenient; victims should have greater opportunity to be heard at the time of sentencing and parole.

Opponents of the measure argue: The measure is a "prosecutor's wish list" dressed up as a victim's rights measure; provisions relating to lengthened parole supervision and minimum sentence before eligibility for parole will require millions of dollars to implement; many of the proposed changes are unfair and probably unconstitutional; the measure is an attempt to override by popular vote numerous considered legislative and judicial decisions in areas where the Legislature and the courts are better equipped
to decide; the measure is an abuse of the initiative process because it ties a few appealing sections to numerous questionable provisions.

Before addressing these general arguments, the Committee believes it useful to analyze the measure section by section.¹

B. Section Analysis

1. Victim Participation.

   a. Expansion of Restitution from Fines.

   The measure expands the current law on compensation for victims. Under existing law, the court may order restitution paid out of fines only in cases resulting from the commission of an intentional crime that resulted in serious physical injury. The measure would permit use of fines for restitution in any crime.

   Discussion:

   Pro: More victims may receive compensation for their injury.

   Con: None.

   Comment: The public should not be misled into believing that victims are going to receive significant cash awards because convicted criminals rarely have financial assets, fines levied are generally small relative to cost of injury, and there are other statutorily mandated uses of fine revenues.

   b. Victim Convenience.

   The measure would require the court to take the victim into consideration when scheduling hearing times if the hearing requires the presence of the victim.

   Discussion:

   Pro: This is a simple courtesy to be extended to victims. It minimizes further disruption to their lives because of court proceedings, on top of the crimes they have already suffered.

   Con: None.

   Comment: We found no evidence that convenience of victims is not already taken into consideration in court scheduling, particularly when prosecution attorneys bring this factor to the attention of the court. The 1983 Act adequately addresses this issue.

¹ Because the measure is lengthy and will be reprinted in the Oregon Voters' Pamphlet, it is not reprinted here in full text.
c. **Victim’s Impact Statement at Sentencing.**

The measure expands on the existing practice of permitting victim impact statements at the time of sentencing. Such statements would be mandatory (or require a certification of why the statement could not be included). The victim would be permitted to make the statement in person to the court, and to elaborate on the statement in a reasonable manner, discussing the crime, the criminal, and the need for restitution and compensation.

**Discussion:**

**Pro:** At present, victim impact statements are optional and are usually written by an investigating officer as part of a presentence report, based on interviews or impressions of the victim. In some instances, victims are excluded from the hearing except when testifying. This provision permits victims to participate in the judicial process and assures that the judge will be aware of the impact of the crime at the time of sentence.

**Con:** None.

**Comment:** Victims may not always be easy to locate - they may move, change their names, disconnect their phones, or fail to respond to court notices. Some victims may prefer to dissociate themselves from the crime. Attempts to obtain victim statements from unwilling contributors may create costly delays in sentencing, and the section as worded could result in arguments of invalid sentences where victim participation procedures have not been completed or a defendant is denied speedy trial.

d. **Victim Participation in Parole Process.**

The measure amends current law by giving the victim, and the district attorney responsible for the conviction, the right to appear at all parole hearings or to submit a written statement to the hearing board. It also gives the victim and the district attorney access to all other information about the prisoner that is being considered by the Parole Board. The victim is required to inform the Board of his/her desire to be notified and to provide the Board with a current address.

**Discussion:**

**Pro:** Victims have information sometimes not heard by the Parole Board about the results of the crime and its continuing impact; victims have a continuing interest in protection of themselves and society from the criminals by whom they were injured; the Parole Board always hears the side of the petitioning prisoner, so it is only fair that it hear the victim’s side as well; passions cool, and it is sometimes necessary to rekindle memories in order to keep the nature of a crime and of the criminal in perspective.

**Con:** The function of the Parole Board is to gauge the sincerity, intent, and capability of the prisoner to live in a law-abiding manner at
the present time; it is unfair to give undue weight to past events in estimating present and future ability of a person to return to society; reintroduction of the victim's testimony may turn a parole hearing into a retrial of the case; it may be inappropriate or dangerous to release confidential information on the prisoner to the victim.

Comment: We agree that the victim's interest does not end with initial sentencing any more than society's does. We trust the Parole Board to weigh victims' statements as objectively as they do the other information presented to them. However, we have concern about the broad opening of confidential files this section permits, and if the measure passes, we would encourage amendment to impose conditions and safeguards. This section avoids the "missing victim" problem by placing the responsibility on the victim to provide a current address in order to receive notifications.

2. Evidence Law Changes.

a. Impeachment of Defendants by Evidence of Prior Offenses.

The measure would amend present evidence law by permitting the impeachment (i.e., attacking the credibility) of a defendant in a criminal trial by evidence of prior conviction of crimes. The section would delete provisions of present law which provide a balancing test whereby the judge determines the probative value (i.e., the tendency to prove disputed fact) of admitting evidence of past crimes as against its prejudicial effect on the defendant. Crimes relevant for impeachment purposes would be expanded to include all felonies, and not just crimes involving false statements. The period during which a prior conviction could be used for impeachment would be expanded from 10 to 15 years after conviction or release, whichever occurs last. A witness, including a defendant, will be permitted to explain the circumstances of the former conviction, and the opposing side could then rebut that explanation.

Discussion:

Pro: The balancing test applies only to the defendant and not to other witnesses and is thus "unbalanced" and unduly protective of defendants; impeaching parties should be able to rebut explanatory claims.

Con: The proposed changes would deter defendants from taking the stand; there is a low probative value to the use of prior convictions, but the disclosure of a criminal past will excite jury prejudice; the present law properly balances probative value with the risk of prejudice on a case-by-case basis; extension from 10 to 15 years during which a conviction could be used for impeachment increases the likelihood of nonprobative but highly prejudicial evidence, particularly because the date used is the later of the conviction or date of release which could be 20 or 30 years after the act; the opportunity to rebut the explanation of a prior impeachment crime may result in greatly lengthened trials and has the potential for turning trials into "legal circuses."
Comment: Present law (ORS 40.355, Rule 609 of the Evidence Code of Oregon) represents a carefully considered reevaluation of the use of prior crimes for impeachment in Oregon courts. The Evidence Code became effective October 15, 1983, and the Committee can see little justification for undoing the considerable study which went into the new Code one year later before any meaningful experience with it. The suggested changes would definitely assist prosecutors in obtaining convictions but might be at the expense of innocent persons who had the misfortune of being guilty of prior crimes. We trust the trial courts to administer the balancing test fairly. Present law permits this on a case-by-case basis, rather than as an absolute rule.

b. **Expansion of Cross-Examination.**

The measure amends present law (ORS 136.643) by providing that when the defendant testifies either party may question the defendant about any matter that tends to the defendant's conviction or acquittal, and not just those matters raised in the direct testimony.

Discussion:

**Pro:** The opportunity for the prosecutor to inquire into facts beyond the scope of the direct examination will assure a full and complete examination of all facts relevant to the guilt or innocence of the defendant.

**Con:** Cross-examination beyond the scope of the direct examination contravenes traditional evidence rules applicable to both criminal and civil cases; while a defendant waives the self-incrimination privilege by testifying on the subject of direct examination, there is a serious question as to the constitutionality of making that testimony a waiver as to other matters; the section will deter defendants from testifying.

Comment: The Committee opposes this section. We are concerned by the constitutional issue, and we do not think it wise to deter defendants from testifying. This deterrent effect will be all the greater in view of the measure's provision allowing broader use of prior convictions for impeachment.

3. **Statewide Search Warrants.**

This section amends present law (ORS 133.545) by stating that any warrant issued by any judge "authorizes execution by any police officer at any site within the state."

Discussion:

**Pro:** This change would overrule the Oregon Court of Appeals decision in State v. Plankinton (1983) which held that warrants are only coextensive with the geographic jurisdiction of the issuing court. State v. Plankinton puts unnecessary restraints on the ability of the police and prosecutors to
effectively use search warrants in view of the mobility of criminal elements and the uncertainty of location of county lines.

**Con:** Local judges will be more sensitive to privacy concerns of the voters who elected them; recent U.S. Supreme Court decisions will protect against good faith mistakes.

**Comment:** Telephone search warrants are now being used in Oregon, which should minimize the difficulty in obtaining a warrant from the proper court. The change requested in this section could encourage judge shopping in this sensitive area. The Committee was not convinced that the present system is not working satisfactorily.

4. **Consecutive Sentencing/Merger.**

The measure provides that if a defendant has been previously sentenced in another court and has not completed that sentence at the time the defendant is sentenced for a different offense, the court may impose a concurrent or consecutive term. Where the defendant is accused of committing more than one crime in an episode, the court has discretion to impose a consecutive sentence if the court finds that (a) the offense was not merely an incidental violation of a separate statutory provision in the course of the commission of a greater crime but rather was a manifestation of defendant's willingness to engage in the separate offense, or (b) the criminal offense caused or created a risk of causing a greater or different loss, injury or harm to the victim than was caused or threatened by the other offense committed during a continuous and uninterrupted course of conduct.

The measure further provides that with a violation of separate statutory provisions during a continuous and uninterrupted course of conduct there are as many separate offenses as there are (i) separate statutory violations, (ii) victims (excepting joint owners in property crimes), or (iii) where there are repeated violations of a single statutory provision involving the same victim, there are as many offenses as violations.

**Discussion:**

**Pro:** In sentencing a defendant guilty of more than one offense in a single episode, the court should have discretion to impose consecutive sentences if it makes the required findings; the Legislature has not responded to requests to make clear its intent regarding sentencing of multiple convictions in a "crime spree."

**Con:** Unless the required findings of fact with respect to the defendant's intent and risk of injury to the victim are left to a jury rather than to the court the measure may be unconstitutional. In State v. Quinn (1980) the Oregon Supreme Court invalidated the death penalty (adopted through an initiative) because it required the court rather than the jury to make findings of fact relating to the crime.
Comment: The Committee agrees with the proponents that whether multiple sentences should be served concurrently or consecutively should be up to the discretion of the judge, but that is true under present law. We are concerned that the measure may be subject to the same constitutional challenge as invalidated the death penalty initiative. The entire section would overrule the Oregon Supreme Court's decision in State v. Garcia (1980), which held that one in a series of crimes is "separate" if it is committed after a period of reflection such that a new criminal intent may be thought to have been formed. The Court urged the Legislature to clarify its intent in this technical and complex area. A 1983 bill failed to pass near the conclusion of the session. We urge the next Legislature to enact a clarifying law.

5. Jury Waiver and Selection.

The measure would change the procedures for determining when trials would be sent to juries and how juries are selected. The district attorney could veto a defendant's request to waive a jury trial. The number of peremptory challenges (dismissal of jurors without need to show cause) would be equalized at 12 in crimes punishable by life imprisonment or death and 6 in all other cases. Presently, defendants have 12 peremptory challenges to the state's 6 in life/death cases and 6 to the state's 3 in all others.

Discussion:

Pro: Requiring prosecutorial consent to jury waiver will prevent defense shopping for lenient judges; an equal number of peremptory challenges would be more balanced and would increase the likelihood of selection of an impartial jury; since a jury verdict requires a majority or unanimous decision to convict a defendant, it should not be necessary for the defendant to have the additional advantage of "stacking the deck" in his/her favor.

Con: The implementation of these two sections would increase the state's already overwhelming advantage in conducting a criminal trial; with the district attorney's available manpower, ability to use police to gather evidence, and aura of righteousness in the eyes of the jury, the defense cannot accept more handicaps and still obtain a fair trial; jury waiver is already subject to consent by the court; defendants typically do not waive juries except in technical crimes or where there is a risk of passion by the jury - which are exactly the cases it would be unfair to allow prosecutors to insist on a jury; counterbalances to judge shopping (i.e., manipulating system to get favorable judge) already exist - judges that are shown to be lenient in their findings or sentencing can be censored, recalled, or voted out of office.

Comment: The increased peremptory challenges to the state would increase the possibility of prosecutors systematically excluding particular classes of jurors such as racial minorities, homosexuals, etc. In combination with a prosecutorial veto over jury waiver, this section could lead to
extreme unfairness. Together, these sections undercut the defendant's ability to choose the means of a fair trial. Judges can always refuse a defendant's waiver of a jury trial, and it is preferable to leave this decision in the hands of a "neutral" referee rather than in those advocating a verdict of guilty. On the other hand, there seems to be a basic fairness to allowing both sides to have the same number of challenges, especially since the defense is protected from a prejudiced jury by the need for a large majority or unanimous decision. However, we believe it preferable to lower the number of challenges permitted the defense rather than increase the number of challenges given to the state to avoid the risk of systematic exclusion of certain classes of jurors. Because of that risk, the Committee opposes these sections.

6. Civil Compromise.

This section would amend current law by requiring the approval of the district attorney for a civil compromise of a criminal case.

**Pro:** The district attorney is not just the victim's advocate, but represents a broader interest of the state that may be adversely affected by civil compromise; due to Bar Association ethics, the prosecutor's office is prohibited from advising the victim on out-of-court settlements.

**Con:** Civil settlements lighten the case load; if both the victim and the court are satisfied, there is no justification for allowing a prosecutor to veto a civil compromise.

**Comment:** We reviewed the Bar Association ethics opinion in question and do not agree with the proponents' claim. The opinion did not preclude prosecutors from advising victims - it merely stated they must do so honestly. We see no benefit in limiting civil compromises approved by the court. Ironically, this section would take away a victim's right to civilly compromise and give prosecutors a veto over such agreements.

7. Changes in Parole, Prison Bond Measure.

Section 20 would extend the time prisoners must remain in custody to the entire duration of their sentences unless "certified" by the State Board of Parole as "no longer a threat to society"; persons accepted for parole would remain on parole for the entire term of their sentence, although active supervision could be discontinued for exemplary behavior; any person convicted of a serious crime while on parole would be required to return to prison for the duration of his sentence (only a unanimous decision by the Parole Board with the consent of the Governor could permit a new parole); present Oregon statutes (ORS 144.310) regarding the elements of parole are repealed.

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The measure specifies that the Legislative Assembly must refer a bond measure authorizing the construction of prison facilities. All provisions except the requirement that parole extend for the entire sentence would only go into effect if the bond measure passes.

Discussion:

Pro: Parolees will be more responsible for their actions; society will be protected from further crimes by incapacitating repeat offenders; the public will no longer be deceived into thinking that convicts actually serve the time of their sentences; costs of these provisions will not be excessive because (i) judges will reduce the sentences they give to match the reality of the new parole standards, and (ii) the full impact will occur gradually as it would apply only to those persons convicted subsequent to the passage of the measure.  

Con: The measure's "warehouse" approach to corrections would cost too much and holds little hope of rehabilitation; more parole officers would be needed to supervise the increased number of parolees, or the quality of supervision will be diluted as parole officers become burdened with larger caseloads; since the prisons are presently full to Constitutional-standard capacity, expensive new facilities would be required; some Class A felonies may be committed under such extenuating circumstances as not to warrant a mandatory return to prison; the State Board of Parole is not equipped to certify a person as "no longer a threat to society"; alternatives to incarceration should continue to be used and considered as correctional options.

Comment: Cost is the most important issue with regard to Section 20. The number of people in prison is almost certain to increase with the passage of this measure as the Parole Board tightens the standards for release and persons with revoked paroles spend longer periods in prison than before. Prison costs would increase. Parole supervision costs would also increase as the average length of parole is extended. The subsections regarding revoked paroles and mandatory prison time unless certified are contingent upon the passage of a prison bond measure. However, the wording of this section is so vague that it is quite possible that any bond measure, for any amount, for any size of facility, could trigger these subsections. In any case, increased parole supervision would be in effect and would result in more personnel costs or "watered down" supervision as the same number of officers supervised larger caseloads.

The Committee is distressed that the proponents of this measure have presented no assessments of the monetary impacts. For the public to make an informed, responsible decision, it must know the cost it is assuming. We have sought estimates of the prison costs from the Oregon Prison Overcrowding Project (OPOP), a private nonprofit organization concerned

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with corrections. Its staff reports that, according to figures provided by the Corrections Division to the State Executive Department, the immediate and longer term costs would be many millions of dollars. On the assumption that 85% of the current prisoners could be certified as "no threat to society," the following costs would be incurred:

** Construction costs for additional prison facilities $59,000,000.00

** Operation costs for maintaining additional facilities per biennium $35,000,000.00

** Psychological Evaluations per biennium for "certifying" parolees $775,000.00

Other evaluations of Oregon's prison population, based on information provided by OPOP, suggest that the percentage of "certifiable" prisoners is much less than 85%, closer to the range of 50-70%. If these lower percentages are accurate, the costs cited by the Corrections Division would be more than doubled. Mrs. Hays, chair of the Oregon Board of Parole, states that the cost to the Parole Board if Measure 8 were passed would be "astronomical."

In light of these costs, the Committee is strongly opposed to Section 20.

8. Joint Trials.

The measure requires jointly charged defendants to be jointly tried unless before trial the court concludes that it would be "clearly inappropriate to do so."

Discussion:

Pro: Expanding use of joint trials in criminal cases will be less burdensome on courts, prosecutors, and witnesses (including victims) than repeated trials involving related acts; present provisions of Oregon law inappropriately preclude court-ordered joint trials in some cases (i.e., different felonies committed in same act or transaction); joint trials enhance the likelihood of conviction because defendants who testify on their own behalf may incriminate co-defendants.

Con: Court-ordered joint trials may be unfairly prejudicial to some defendants, particularly where a confession is offered against one defendant that would be inadmissible against another; because of the procedural difficulties in managing joint trials where evidence inadmissible against one or more co-defendants is offered against another, there is a greater likelihood of successful appeals; each defendant should be entitled to his or her day in court.
Comment: Prior to 1983 Oregon law permitted joint trials of criminal defendants only if each defendant consented. In 1983 the Legislature authorized courts to order joint trials in a limited number of situations. The 1983 Act was part of the product of a two-year study by the Oregon Commission on the Judicial Branch on ways to make courts more efficient. The legislation was the subject of extensive hearings in the House, which passed out a bill giving trial courts broad discretion in the area. The Senate Justice Committee substantially modified that bill, specifically precluding court-ordered joint trials in cases involving different crimes even if committed as part of the same act or transaction. The final bill permitted court-ordered joint trials in all other cases involving defendants jointly charged. The defense bar generally opposed any court-ordered joint trials; prosecutors generally favored no restrictions on such joint trials. Federal law and many states give broad discretion in this area to trial courts. There has been no meaningful experience yet with Oregon's 1983 law.

The Committee recognizes the validity of arguments both for and against court-ordered joint trials. In general, the Committee believes the trial court should have broad discretion in this area, rather than a presumption of joint trial (as in Measure 8) or a prohibition of them in related-act cases (as in the 1983 Senate bill).

9. Repeal of "Stop and Frisk" and Evidentiary Exclusion Statutes.

The measure repeals two 1973 Oregon statutes. The first statute to be repealed (ORS 131.605 to 131.625) relates to the authority of officers to stop and frisk persons. The second statute to be repealed (ORS 133.673 to 133.703) relates to procedures for exclusion of evidence seized under invalid warrants.

Discussion:

Pro: There is no need to afford protection in the areas of stop and frisk and evidentiary exclusion beyond the constitutionally mandated minimum defined by the U.S. Supreme Court; the likelihood of conviction will be increased by reducing the instances of evidentiary exclusion; officers should be authorized to stop and frisk persons reasonably suspected of being about to commit a crime and not have to wait until a crime is committed.

Con: Stop-and-frisk legislation protects all citizens from overzealous police officers, and not just criminal defendants, and serves a salutary purpose in deterring officers from abusing their power against such groups as protestors, racial minorities, vagrants, and other potentially vulnerable citizens; it is appropriate for the Oregon Legislature to define for this state the authority of police officers in the area of stop and frisk and searches, even if it imposes restrictions greater than the constitutional minimum; unless stop and frisk and search and seizure violations are meaningfully enforced, innocent persons' privacy may be invaded.
Comment: The Oregon stop-and-frisk statute permits an officer to stop a person and make a reasonable inquiry if the officer reasonably suspects that the person has committed a crime. The detention and inquiry are to be conducted in the vicinity of the stop, only for a reasonable time, and must relate only to the immediate circumstances that aroused the officer's suspicion. If the officer reasonably suspects that the person is armed and presently dangerous, the officer may frisk by means of an external pat of the person's outer clothing. In Terry v. State of Ohio, 392 US 1, 88 S Ct 1868, 20 L Ed 2d 889(1968), the United States Supreme Court defined the minimum constitutional standards for a valid stop and frisk by an officer less stringently than the Oregon statute and permitted such action by the officer not only where he reasonably suspects that a crime has been committed, but also if he reasonably suspects that a crime is about to be committed.

The Oregon suppression of evidence statute permits a moving party to challenge the good faith, accuracy, and truthfulness of an affiant upon whom an officer issuing a warrant relied, and requires exclusion of evidence seized pursuant to an invalid warrant. The statute also provides for a procedure requiring that confidential informants either have testified in person before the issuing authority, or that the court make a finding by a preponderance of the evidence that the confidential informant in fact exists and is reliable. In Massachusetts v. Sheppard (1984) and United States v. Leon (1984) the United States Supreme Court has recently redefined the constitutional minimum standards for suppression of evidence seized by means of a warrant, and held that such evidence is admissible if the officer making the seizure relied on a warrant even if the warrant is later determined to have been invalidly issued. The effect of repeal of both of these statutes would be to conform the law in Oregon on these subjects to the constitutional minimum, and not to the more exacting standards enacted by the Legislature in 1973.

The Committee is very concerned that voters will simply not understand the effect of repealing these statutes. The initiative petition accomplishes this repeal in two lines, citing seven statutory section numbers. The statutes themselves were the product of detailed review by the 1973 Legislature, and represent a balance struck between the need for police authority and concern that that authority not be abused. These sections protect not only those persons formally accused of crime, but all citizens who may be subject to unwarranted conduct by officers. With respect to stop and frisk, the Oregon Legislature knew the constitutional minimum defined in Terry v. State of Ohio was less stringent, but determined as a matter of policy to establish a higher level of control over police conduct in this state. With respect to exclusion of evidence seized pursuant to an invalid warrant, the Supreme Court's decisions were rendered on July 5, 1984. There has been no opportunity for the Legislature to review this issue in light of those decisions. The constitutional minimum may or may not be the policy optimum in these areas.
IV. CONCLUSIONS

The Committee concludes:

1. The relatively innocuous benefits of the victims' amenities sections are substantially outweighed by the many detrimental sections of the measure;

2. The Committee strongly opposes the measure's criminal procedure changes in evidence law, search warrants, jury selection and waiver, civil compromise, stop and frisk, and mandatory increases in sentence and parole time;

3. The Committee opposes passage of the measure when there has been no careful estimate of the costs implicit in its requirements of new prison space, which may well exceed $100 million, and which commits the state to a "warehouse" approach to corrections;

4. Measure 8 is a questionable use of the initiative process because of its highly technical provisions in an area of great complexity, the criminal justice system;

5. Measure 8 would override numerous carefully considered legislative and judicial positions, many of which are too recent to have had any meaningful experience justifying change;

6. The topic of victims' rights and assistance is too important to be used as a slogan for a bill primarily designed to strengthen the hand of prosecutors.

V. RECOMMENDATION

The Committee recommends a "No" vote on Ballot Measure 8.

Respectfully submitted,

Barnes H. Ellis, Chairman
Barry Caplan
William S. Fritz
William P. Goldsmith
Kathryn L. McFerron
Barbara C. Ring
Coleman T. South

Approved by the Research Board October 2, 1984 for transmittal to the Board of Governors. Received by the Board of Governors on October 10, 1984 and ordered published and distributed to the membership for discussion and action on November 2, 1984.
APPENDIX A

Persons Contacted

Michael D. Schrunk, Chief Petitioner; Multnomah County District Attorney

William J. Brady, Chief Petitioner; Multnomah County Medical Examiner

Robert B. Kouns, Chief Petitioner; Member, Governor’s Commission on Violent Crimes; President, Crime Victims United

Peter K. Glazer, Former Clackamas County Prosecutor

James D. Hennings, Director, Metropolitan Public Defender

Steven Jacobson, Metropolitan Public Defender, Training Director

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Karen Ariens, Vice President, Crime Victims United; Governor’s Commission on Violent Crime

David Yett, Crime Victims United

Kenneth Lerner, Federal Defender

Marc Blackman, Defense Attorney; Former Assistant U.S. Attorney

Mark Kramer, St. Andrews Legal Clinic

Brenda Watson, Crime Victims United; Volunteer, Clackamas County Victims Advocate Program

Norman W. Frink, Multnomah County Assistant District Attorney

Jerry Cooper, Task Force Against Drunk Driving Bureau of Police Standards & Training

Sidney I. Lezak, Former U.S. Attorney; Chairman of Oregon Prison Overcrowding Project Policy Group; Chairman of City Club Standing Committee on Law & Public Safety

John C. Bradley, Multnomah County District Attorney; Chief Drafter of the Measure

Ruth E. Kuzmaak, Victim Relative

Hazel Hays, Chair, Oregon State Board of Parole
APPENDIX B

Bibliography

References


ORS 131.605, 131.615, 131.625 (Stopping of Persons); 133.673, 133.683, 133.693, 133.703 (Evidentiary Exclusion).

Evidence Code of Oregon, Rule 609


State v. Lopez, 56 Or App 179 (1982).


Report on
ADDS REQUIREMENTS FOR DISPOSING WASTES
CONTAINING NATURALLY OCCURRING RADIOACTIVE ISOTOPES
(State Measure 9)

Question: "Should the Energy Facility Siting Council consider additional factors before approving sites for disposing wastes containing naturally occurring radioactive isotopes?"

Explanation: "This measure would add to existing requirements by requiring the Energy Facility Siting Council to find, before approving a site for the disposal of wastes containing only naturally occurring radioactive isotopes, that the site is not subject to water erosion, earthquakes, volcanoes, or landslides; that there is no safer choice for such disposal; and that there will be no radioactive release from the waste."

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

I. INTRODUCTION

Measure 9 would amend the existing Oregon law (ORS 469.375) that governs the disposal of wastes containing naturally occurring radioactive isotopes. The measure would establish additional and more stringent criteria which the Energy Facility Siting Council (EFSC) (the responsible state agency operating within Oregon's Department of Energy) must consider prior to issuing a site certificate for such waste disposal.

Measure 9 is the result of a successful initiative petition led by Elaine Kelley and Lloyd Marbet of Forelaws on Board and Jim Johnson of Friends of the Earth. It is the most recent in a series of efforts to regulate disposal of radioactive wastes in Oregon. In 1975, radioactive waste disposal was, in effect, banned in Oregon (ORS 469.525). There are four legislative exemptions to the 1975 ban: (1) certain medical, industrial and research wastes; (2) radioactive coal ash at licensed thermal power plants; (3) the Teledyne Wah Chang Albany (TWCA) sludge waste disposal site located in Millersburg, Oregon; and (4) uranium mine and mill wastes.

The TWCA and uranium mine and mill waste exemptions require, however, that disposal can only take place if a site certificate is issued by the EFSC of the Oregon Department of Energy. Measure 9 expands the disposal site requirements which the EFSC must consider before issuing a site certificate.

Currently, in order to certify disposal of such radioactive wastes, the EFSC must find (among other factors) that:

1. The site is suitable for disposal, considering flood, wind and water erosion potentials.
2. There is no currently available alternative site for disposal; and

3. Following closure of the site, radon gas release, gamma radiation levels and radium release to surface or groundwaters will not exceed specified levels adopted by Department of Energy regulation.

If Measure 9 is approved, the EFSC would have to find, instead, that:

1. The disposal site is not to be located in or adjacent to:
   (a) An area potentially subject to river, creek or ocean erosion within the facility's lifetime;
   (b) The 500-year flood plain of a river within the facility's lifetime;
   (c) An active fault or active fault zone;
   (d) An area of ancient, recent or active mass movement, including land sliding, flow or creep; or
   (e) an area that has experienced volcanic activity within the last two million years;

2. There is no available disposal technology and no available alternative site for disposal that would better protect the health, safety; and

3. After the disposal site is closed, the waste will not release any radioactive material or radiation.

While it is not clear what effect the passage of Measure 9 would have on other sites containing "low level" radioactive wastes, including future sites of uranium mine and mill wastes, it is clear that the immediate effect of this measure would impact the TWCA site. TWCA was granted a site certificate by the EFSC in December, 1982, after months of hearings. Both TWCA and the Measure 9 proponents are appealing the certification. That appeal is now before the Oregon Supreme Court, and its ruling may determine the significance of Measure 9 if approved by the voters. The degree of impact would depend upon the Supreme Court's specific ruling, possibly further EFSC hearings and even future litigation.

II. HISTORY AND BACKGROUND

In 1975, the Oregon Legislature adopted a ban on disposal of radioactive materials in Oregon. This action was prompted by a proposal to bury such materials at Arlington, Oregon, which has since become a chemical disposal site. Hanford, Washington has been the primary radioactive waste disposal site in this region, although it is not used for disposal of "low level" radioactive wastes which are the subject of Measure 9.

In 1977, the Oregon Department of Energy and the Oregon State Health Division identified TWCA as having wastes containing radioactivity. The question arose as to whether these wastes were banned from disposal in
Oregon. The Oregon Attorney General responded to an opinion request from EFSC by stating that all materials contain some radioactivity and it was EFSC's responsibility to decide which materials were banned from disposal in Oregon.

TWCA is one of the world's largest producers of zirconium and other rare metals. The principal raw material used by TWCA in its zirconium manufacturing process is zircon sand. Zircon sand is found on some beaches and contains naturally occurring radioactive isotopes which include uranium and thorium and their decay products. TWCA uses and produces no human-made radioactive isotopes in its process.

Prior to 1980, the TWCA manufacturing process for zirconium produced a waste byproduct, a sludge, found by the Oregon State Health Division to be radioactive within the definition of Oregon state laws and regulations. (2) TWCA currently holds its pre-1980 sludge in two sludge ponds at the site of its Millersburg, Oregon manufacturing plant. The sludges are described as approximately 120,000 cubic yards of lime waste solids, containing approximately 13-91 picocuries per gram of radium. (3)

In 1978, EFSC adopted administrative rules (OAR 345-50), which identified those radioactive materials that were banned from disposal in Oregon. The rules stated, in essence, that materials which are sufficiently radioactive to require a license during use would be defined as radioactive and subject to the ban on in-state disposal. Upon adoption of these rules, and in the absence of any further legislative action, the TWCA wastes might have been required to be shipped out of Oregon.

In 1979, the Oregon Legislature affirmed EFSC's definition of radioactive materials but postponed taking action regarding TWCA's request for exemption from the ban until completion of an independent study. This study was performed by the California firm of Science Applications, Inc. for the legislature. The study, completed in March, 1981, concluded that TWCA's waste posed no significant health hazard, but for the future recommended: (1) removal of the wastes from the flood plain along the Willamette River; or (2) stabilization of the existing dikes; or (3) dispersal of the material as an agricultural additive.

During the 1981 Oregon legislative session, TWCA argued that its wastes were not radioactive and therefore out-of-state shipment was not required. TWCA alternatively proposed that the health hazard was so slight that in-state disposal should be allowed. The Oregon Department of Energy and Oregon State Health Division took the position that the sludges were radioactive, but agreed that the health hazards involved were minimal. The legislature resolved the dispute by allowing the disposal in Oregon of "low level" radioactive wastes, such as TWCA's, provided certain disposal conditions were met (ORS 469.375). When it reached its decision to allow disposal of wastes containing "only naturally occurring radioactive isotopes," the legislature had TWCA specifically in mind. In fact, the legislative exemption applies only to such wastes generated before June 1, 1981. This is because TWCA revised its manufacturing process in 1980-81 so that all subsequent radioactive byproducts were concentrated sufficiently to allow their shipment to and disposal at the Hanford, Washington site. Since 1980-81, therefore, TWCA has produced no radioactive wastes sought to
be disposed of in Oregon and subject to the legislative disposal ban. Its pre-June, 1981 wastes, however, still contained radioactive isotopes and were required to be licensed for continued disposal in Oregon.

On January 18, 1982, TWCA submitted to the EFSC a notice of intent to file a site certificate application, which application was filed in June, 1982. A formal contested case hearing was conducted over three months, and the Final Order and Site Certificate was issued December 15, 1982. It contains 58 pages of background, findings and conclusions, with a 12 page appendix containing site conditions and requirements. The EFSC approved TWCA's application to enhance its current disposal site, but further ordered that, as a preferred alternative, the sludge be moved approximately one mile north to another TWCA disposal site if groundwater studies proved favorable. The purpose of the alternative site was to remove these wastes from the 500-year flood plain - the current disposal site is only approximately 400 feet from the Willamette River. Both TWCA and its opponents before the EFSC (proponents of Measure 9 here) have appealed the EFSC order to the Oregon Supreme Court. TWCA still contends that its sludge is not radioactive, and further has argued that the EFSC had no power to order movement of the waste. The current Measure 9 proponents argued before the Supreme Court that, among other things, neither the proposed nor alternative disposal sites met the siting requirements imposed by current Oregon law. The case is still awaiting decision by the Oregon Supreme Court. (4)

III. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURE

The Committee heard the following arguments advanced in testimony: (5)

1. Measure 9 would assure that existing and future radioactive disposal sites are controlled and not ignored. A real potential danger is that unless the sites are adequately protected, future generations might not realize that such locations exist and subsequently might use contaminated material improperly.

2. Measure 9 is necessary because the TWCA site has a high hazard ranking based on the U.S. Environmental Protection Agency's scoring of hazardous waste sites in the United States.

3. Measure 9 would prevent improper storage of naturally occurring isotopes which emit radiation into the air and groundwater.

4. Measure 9 would clarify where radioactive waste can be stored and requirements needed for a suitable storage facility. Current statutes provide inadequate site requirement guidelines to the Oregon Energy Facility Siting Council.

5. Measure 9 would require companies responsible for the generation and disposal of such waste to pay for clean-up.

6. Measure 9 is necessary because health hazards exist from release of radiation from wastes containing "naturally occurring radioactive isotopes." State agencies responsible for measuring such hazards have not performed any health studies nor conducted an independent and complete environmental impact analysis of the TWCA waste disposal site.
7. Measure 9 is necessary because physicians supporting this Measure are concerned with the possible health effects associated with low level releases of radiation and are alarmed by the inadequate analysis conducted by state agencies at the TWCA waste disposal site.

8. Measure 9 is necessary because radiation exposure is cumulative and subject to biological concentration. Storage requirements for existing and future waste disposal sites do not protect the public from radiation exposure.

9. Measure 9 is workable. Disposal sites can be identified within Oregon which meet the clarified guidelines for safe waste storage. The measure is not a geological ban on waste storage. Requirements for establishing that no better site exists within the state nor that any better technologies exist in the world do not constitute a total ban.

10. Measure 9 is necessary because radium levels monitored at the existing TWCA site are approximately ten times greater than background levels. These high readings indicate an incremental danger to public health and are elevated by the continuing decay of uranium in the sludge with subsequent "ingrowth" of radium.

11. Measure 9 is necessary because rain water and groundwater have carried radioactive and other chemical contaminants from the existing TWCA storage site into the underground water table. The extent of this leaching has not been determined by the studies already performed.

12. Measure 9 is necessary due to the fact that the TWCA site is within the 500-year flood plain. If such a flood occurred, the site would be inundated by water five feet over the top of the waste repository. This measure would prevent disposal in a 500-year flood plain.

13. Measure 9 is necessary because independent geologists report that insufficient footing exists at the TWCA site. In the opinion of these geologists, the perimeter material holding the pond in place may not adequately control erosion nor prevent leaching into the environment.

14. Measure 9 would require that "following closure of the site, there will be no release of radioactive materials or radiation from the waste." This requirement is distinguished from the present "cost-benefit" release standards which do not adequately protect the population.

15. Measure 9 would stop the unsafe disposal of uranium mine overburden and uranium mill tailings which are radioactive and a significant health hazard if improperly disposed. This measure was not designed solely to affect TWCA's disposal of radioactive waste and does not interfere with medical use and disposal of radioisotopes.
IV. ARGUMENTS ADVANCED AGAINST THE MEASURE

The Committee heard the following arguments advanced in testimony:

1. Measure 9 is unnecessary because TVCA wastes have been extensively studied and have been found by all appropriate state regulatory agencies to pose no health hazards as long as the conditions contained in the current Oregon laws are met.

2. Measure 9 would unnecessarily increase costs of doing business, projecting an anti-business image. This would cost Oregon existing and future jobs.

3. Measure 9 proponents have distorted facts and played to the public's fears of anything labeled radioactive.

4. Measure 9 would add new, unnecessary and unworkable requirements for the disposal of these materials which would effectively ban their disposal in Oregon. The language employed would be impossible to interpret without major, expensive controversy.

5. Measure 9 is unnecessary because the range of background radiation readings in the Willamette Valley is just slightly less than the average radiation found in the sludge. (According to TWCA-16 picocuries per gram versus background range of 1-7 picocuries per gram.) Many commercial products such as cement and naturally occurring deposits found in granite have higher readings.

6. Measure 9 is unnecessary because the 1981 Oregon Legislature intended that TVCA's existing waste disposal be exempt from unreasonable disposal requirements.

7. The public safety of Oregonians is not the issue. Measure 9 is an obvious and direct assault on TWCA intended to disrupt the company and cause it unreasonable financial burden. There are no other identified facilities which come within the category of such waste created prior to 1981. Uranium mining and mill waste come under federal regulations.

8. Even if there were potential sites in Oregon which could meet all of the location and technology requirements of Measure 9, site applicants would have to establish that no better site existed within the boundaries of the state and that there was no better technology in the world. These requirements would result in a total ban on any waste disposal in Oregon.

9. Measure 9 would require that a "zero" discharge standard be met. Such a standard is impossible if for no other reason than that radioactive emanations are a natural part of the environment.

10. Measure 9 is unnecessary because TVCA has complied with reasonable standards regarding waste site design and public safety and actively leads the research on measurement and storage of such waste.
11. Measure 9 is unnecessary because most of the radium 226 in the sludge is not dangerous to adjacent lifecycles. It is in an insoluble form due to prior alkaline treatment. Water standing in the sludge has an activity of 5 picocuries per liter, which is well below the allowable health standard of 30 picocuries per liter.

12. The U.S. Environmental Protection Agency's hazard measurement was based upon a number of factors, and only identified TWCA as a site for further study. The measurement did not reflect the level of radioactivity involved, merely its presence.

13. Measure 9 is unnecessary because current law requires perpetual maintenance, monitoring, bonding, and deed restrictions, all at the expense of the applicant. It adequately ensures that a site remains protected and that future generations do not use the site or its contents improperly.

14. Readings of 70 picocuries per gram can be verified only if the solids are exposed to extreme laboratory conditions of heat and drying; these conditions would be impossible to duplicate in any disposal situation. To compare these extreme conditions with normal background is comparing apples and oranges. TWCA's readings of 16 picocuries per gram reflect the solids as generated and in the form in which they will be disposed of and will remain.

15. Measure 9 is unnecessary because the DEQ study of the material concluded that even if it were all to be carried at once into the Willamette River, water quality standards would not be exceeded. The Oregon State Health Division concluded that discharge of the material into the Willamette River on a worst case basis would not affect public health and safety. There is therefore no danger of radioactive pollution of the river.

16. Measure 9 is unnecessary because the TWCA site, as designed, can withstand the worst flood or other wind or water erosion to be expected without any increase in the concentration of radioactivity either at or outside the site. This finding is based upon the reports of the independent engineering firm of Dames & Moore, and the U.S. Army Corps of Engineers.

V. DISCUSSION AND EVALUATION OF BALLOT MEASURE 9

Measure 9 seeks to address a relatively straightforward question: How should naturally occurring radioactive waste be disposed of in Oregon? In order to assess the effectiveness of Measure 9, this Committee has considered the following issues:

1. What environmental and health hazards are posed by naturally occurring radioactive waste, including the sludge currently disposed of at the TWCA site?

2. How effective is current law, regulation and procedure in minimizing or eliminating such hazards?
3. How effective would Measure 9 be, if approved, in further minimizing or eliminating such hazards?

4. Would Measure 9 affect, if passed, any sites or facilities other than TWCA?

A. Hazards Under Current Law

The Committee attempted to ascertain the level of environmental and health hazards associated with "low level" radioactive wastes which are the subject of Measure 9. In doing so, it studied the environmental and scientific reports prepared for the Oregon Legislature and EESC, as well as certain health/medical/scientific materials gained from other sources (see Appendix C). The Committee determined that it would assist analysis of Measure 9 to compare the radiation levels found to be involved with the TWCA wastes with such levels normally found in more commonly encountered materials. This comparison, by no means complete or all-inclusive, is attached as Appendix E.

Some radiation release from "low-level" radioactive wastes is to be expected and is reasonable if sufficient requirements and conditions relating to site location and storage methodology are imposed by the state and federal regulatory agencies. The Committee feels that current laws and procedures, and specifically present health and safety standards, are quite adequate to protect the health, environment and welfare of Oregon and its citizens. To require that "no release" from the waste be permitted is a physical impossibility - every material, including the human body, releases some radiation into the environment. The suggestion that a "no release" requirement is necessary to protect the health, safety and welfare of Oregon citizens is inaccurate and misleading.

The measure's proponents have a wide base of support, including members of the medical and scientific community. The measure's supporters believe that too much doubt exists concerning acceptable levels of radiation, that too little information is available concerning the effects of same, and that not enough study has been conducted in order to definitively establish the risk factors involved in "low level" radioactive materials. They believe that Oregonians are entitled to the freedom to choose whether or not they will accept radiation exposure, however minimal the exposure or health hazards may be.

Although it has been difficult for the Committee to determine the precise level of radioactivity release from the TWCA site (because of the variance involved in radioactivity readings and the fact that so many readings have been taken at TWCA over the past few years), the Committee has concluded that the radioactive release, while of concern, is not sufficient to constitute a health hazard under the siting conditions and requirements imposed by the EESC in its December, 1982 Final Order.

The proponents of Measure 9 point out that, in addition to the TWCA problem, the measure is intended to deal with uranium mine and mill waste locations in Oregon. Near Lakeview, in Southern Oregon, there is an abandoned uranium mine and a substantial quantity of mining waste. Because the 1979 Oregon Legislature also exempted uranium mine and mill wastes from
the complete ban on disposal of radioactive wastes in the state, such residue may also be subject to the requirements of Measure 9 if passed by the voters. The measure's proponents did not so testify, perhaps because the Lakeview site is under federal jurisdiction and clean-up procedures. However, Measure 9 proponents fear the entry into this state of other uranium mining concerns and the prospect that such mining processes would result in disposal of substantial quantities of uranium mine and mill waste in Oregon. The Committee did not explore the level of radioactivity emanated by the Lakeview waste, nor the potential radioactivity level resulting from future uranium wastes which might be disposed of in Oregon, nor the risks therefrom. Such uranium waste would, however, be subject to the same EFSC site certification process as is the TWCA waste. The Committee, therefore, concluded that the EFSC procedures and laws currently governing potential uranium waste disposal are reasonable and will adequately protect the health, safety and welfare of Oregonians. Accordingly, Measure 9 is not seen as a useful addition to current laws as applied to either the TWCA wastes or to future uranium mine and mill waste.

Testimony offered to the Committee revealed that none of the three radioactive disposal sites in this country will accept the TWCA waste, because of its low radioactive character and the great quantity needed to be stored. This leads to a question which the Committee could not answer: If Measure 9 were to pass and would result in a total ban of disposal of the TWCA waste in Oregon, and if it could not be disposed of anywhere else in the country, what would have to be done to it? (1) This is the quandry faced by the Measure 9 opponents in their analysis of Measure 9. On the other hand, the Measure 9 proponents have testified that passage of Measure 9 would not result in a total ban of disposal in this state, although it would require more stringent siting considerations. It is clear to the Committee, however, that the Measure 9 provisions would, at best, require substantially more expense to all concerned in the EFSC siting process (including the state's taxpayers) in dealing with the added considerations and prohibitions. In view of the minimal hazards seen by the Committee to be involved, neither a total disposal ban nor the additional burden to the EFSC and state taxpayers appear justified.

The U.S. Environmental Protection Agency (EPA) provided testimony to the Committee concerning a program known as "Superfund" (The Comprehensive Environmental Response, Compensation and Liability Act of 1980). This is an EPA - administered, nation-wide effort to identify, study and ultimately clean up sites found to present hazards to health, safety and welfare. TWCA was ranked by the EPA as one of some 500 identifiable sites, as were two other sites in Oregon (with two more sites just proposed for inclusion). However, the "matrix" used to determine EPA's "hazard" ranking: (1) involved a number of factors, including chemical exposure, radioactive exposure, proximity of population, number of workers at the site, etc.; (2) did not involve measurement of level of radioactivity, just its presence; and (3) cannot be justifiably relied upon to conclude that the TWCA ranking is equivalent to designation as a health hazard. If the EPA study of the TWCA waste site reveals that clean-up is called for, the EPA can require TWCA to perform this clean-up, or it can have it privately contracted and seek reimbursement from TWCA, under federal law. This means that, irrespective of the conditions and requirements imposed upon TWCA by the EFSC, and whatever impact Measure 9 would have on TWCA, additional clean-up procedures may be imposed by the federal government.
In conclusion, the Committee has determined that, while there are minimal environmental and health hazards associated with the TWZA site and future uranium mine and mill waste deposits, they are not unreasonable in view of the effectiveness of current law and regulation as applied by the Oregon State Health Division, the Oregon Department of Energy and the EFSC. The studies performed under the auspices of the EFSC on the TWCA site revealed that no identifiable health hazards would be present under the conditions and requirements imposed by the Site Certificate and Final Order. The Committee is satisfied with those conclusions, with the integrity of the certification process which is required of all disposal applicants, and with the effectiveness of current Oregon law and procedure to deal with such radioactive waste disposal issues.

B. Effect of Ballot Measure 9

The Committee next sought to determine what effect Measure 9 would have on the environmental and health hazards found to exist in the "low level" radioactive wastes which are its focus. The Committee also sought to address how the additional requirements of Measure 9 would be applied by the EFSC in its waste disposal site certification process.

Measure 9 adds three major factors to existing law (ORS 469.375) which would need to be addressed before issuance of a site certificate authorizing disposal of "low level" radioactive waste in this state. The first is a set of absolute prohibitions against a disposal site being located in or adjacent to areas subject to: river or creek erosion; 500-year flood plain of a river; active fault or an active fault zone; ancient, recent or active mass land movement; ocean erosion; or volcanic activity within the last two million years.

Although these appear to be reasonable criteria at first glance, they could eliminate most, if not all, of Oregon. The scope of the criteria seems to ignore, in effect, the ability of modern engineering design to substantially reduce the effects of these natural risks which exist in Oregon's environment. For example, all buildings, bridges and dams constructed in the Willamette River Valley are subject to potential erosion, flood, earthquake and volcanic activity. However, modern-day engineering and construction practices are able to meet substantially all of these risks. In fact, they must do so in order to gain permits or funding from the state and federal authorities. The major shortcoming this Committee finds in Measure 9 is that it could prohibit siting of "low level" radioactive waste disposal in much or all of the state without consideration of the ability of engineering design and construction to withstand the specified risks set forth in the measure.

The Committee heard testimony from the state officials involved in the EFSC proceedings concerning TWCA's site application. These officials testified that all of the criteria set forth in Measure 9 were argued and considered, with factual findings and legal conclusions rendered as to each in the Final Order. In fact, their testimony was that: (1) the EFSC considered wind erosion potential at TWCA, a criterion not mentioned in Measure 9; and (2) the EFSC went further than it was required to under current law in protecting the environment and public by ordering movement
of the TWCA sludge to another location (subject to favorable study reports), and by imposing certain other conditions of disposal contained in its Final Order and Site Certificate.

In addition, the Committee concluded that some of the wording contained in the measure is too vague, too general and may be subject to widely differing interpretations. For example, the definitions of "active fault zones," "active mass movement" and "volcanic activity" need clarification. In testimony presented to the Committee, a public official seriously questioned whether the Oregon Department of Energy could advise the EFSC that any site in Oregon was able to meet the criteria established by Measure 9 with its present wording. He testified that Measure 9 would effectively preclude the EFSC from conducting a meaningful evaluative process prior to issuing any site certificate.

Another provision of Measure 9 would establish what the Committee believes is a second absolute prohibition against issuing any site certificate. It would require the EFSC to find that:

"(2) There is no available disposal technology and no available alternative site for disposal of such wastes that would better protect the health, safety and welfare of the public and the environment."

This provision would require the EFSC to study and eliminate, by necessity, all alternative sites and technologies. Measure 9 seems to add to the duties of the EFSC the near-impossible burden of considering even hypothetical disposal sites and technologies. The Committee believes that this provision would create an impossibility of proof, resulting in the probability that no site could be established as the "best." Therefore, no disposal could take place in Oregon.

The third requirement added by Measure 9 is:

"(5) That following closure of the site, there will be no release of radioactive materials or radiation from the waste."

This would contradict existing law, which provides that some release of radiation or radioactive materials is allowable provided that it remains within the limits imposed by the EFSC, which are based upon health standards established by the federal government and adopted by the Oregon State Health Division. Since "no release" is a physical impossibility, this provision of Measure 9 acts as a third absolute prohibition upon siting, in the view of the Committee.

The Committee concluded that, although the proponents of Measure 9 are to be commended in their efforts directed at protecting the state's environment and citizens, the measure is seriously flawed in both its concept and wording. The Committee determined that, in all probability, the effect of Measure 9 would be to absolutely prohibit disposal of such wastes in Oregon. This was not deemed reasonable or advisable in the Committee's judgment. Further, the Committee found that the wording employed by the measure is in serious need of clarification and should best
be addressed by the measure's proponents in a future legislative or initiative/referendum process, and not be left to administrative rule-making or future judicial challenge (which would be extremely expensive to the public). (6)

C. Other Sites Affected By Ballot Measure 9

The Committee finally attempted to ascertain whether Measure 9 would impact any sites or facilities other than TWCA. As discussed earlier, the abandoned Lakeview uranium mine and mill waste location would probably not come within the jurisdiction of the EFSC (nor Measure 9) because the federal government is already dealing with that situation. Future uranium mines in Oregon would be subject to the Measure 9 requirements, however. Furthermore, future investigation may reveal other sites or facilities which would come under the definition of a "waste disposal facility" subject of EFSC certification requirements, although none has been brought to the attention of the Committee at this time.

The Committee also attempted to determine whether Measure 9 would have any effect on the Trojan nuclear power facility located near Rainier, Oregon. Neither the measure's proponents nor opponents expressed an opinion on this issue. According to a Portland General Electric Company spokesman, Measure 9 would have no immediate impact on Trojan because it is not considered to be a "waste disposal facility" within the statutory definition, as is a federally and state licensed thermal power plant. The possibility that Trojan might lose or give up its operating license and be considered a "waste disposal facility," thereby subject to Oregon's waste disposal law (including Measure 9, if passed) was too speculative for this Committee to consider further.

VI. SUMMARY OF CONCLUSIONS

1. Environmental and health hazards associated with the radioactive wastes that are the subject of Measure 9 have been adequately studied by state regulatory authorities, and the Committee agrees with their finding that no unreasonable risks to the public exist under current disposal requirements and conditions imposed in accordance with present Oregon law and regulation.

2. Current federal and Oregon law and regulation appear adequately suited to ensure safe control and disposal of such radioactive wastes. State and federal regulatory authorities are sufficiently performing their statutory duties in order to protect the public and the environment.

3. Measure 9, as written, is vague, would be difficult to interpret or implement, and would probably lead to a complete ban on the disposal of such wastes in this state, whereas no alternative disposal sites are known to exist in this country.

4. The Committee has found no current sites in Oregon (other than TWCA) which at this time would be affected by Measure 9, if passed. The potential of the measure to affect the Trojan facility is too speculative for further consideration now.
VII. RECOMMENDATION

The Committee recommends a NO vote on Ballot Measure 9 at the November, 1984 general election.

Respectfully submitted,

Dennis Agamczyk
Olive Barton
Dr. Marshall Cronyn
Catherine F. Holland
Julie Kawabata
Dr. C.H. Mattersdorff
Dr. Clinton E. Sayler
Douglas Seymour
Gary I. Grenley, Chairman

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APPENDIX A

References

1. For definition, see Appendix D.
2. For definition, see Appendix D.
3. For definition, see Appendix D.
4. A number of legal issues which could affect the scope of Measure 9 are before the Supreme Court. The most important, in view of the Committee, is the jurisdictional issue: should the Supreme Court find that the TWCA sludge is not "radioactive", then the EFSC would have no jurisdiction over it and, in all likelihood, Measure 9 would have no effect upon the siting of its disposal. A further issue, not before the Supreme Court, is whether Measure 9 could affect an application for site certification filed prior to the effective date of the measure. Neither the proponents nor opponents of the measure have expressed a definitive opinion on this issue, and the Committee considers this question unresolved.
5. City Club research rules require that reports include all arguments advanced to the Committee. The Committee does not vouch for the accuracy of these arguments.
6. The difficulties such wording would impose upon the regulatory agencies of this state would be nearly insurmountable. For example, does "no release" of radiation mean absolutely no release or no release above background levels?
APPENDIX B

Witnesses Interviewed

Dr. Larry Church, Analytical Scientist, Material Characteristics, Laboratory, Tektronix, Inc.
Jim Denham, Public Affairs Coordinator, Teledyne Wah Chang, Albany
Bill Dixon, Administrator for Siting Regulation, Oregon Department of Energy
Lynn Frank, Director, Oregon Department of Energy
Dr. Gary Gates, Director of Nuclear Medicine, Good Samaritan Hospital
Mike Gearheard, Director, Oregon Office, U.S. Environmental Protection Agency
Don Godard, member, Northwest Power Planning Council; formerly Administrator for Siting and Regulation, Oregon Department of Energy, and Co-Hearings Officer, Energy Facility Siting Council (TWCA hearing)
Dr. John W. Gofman, former Associate Director of the Livermore National Laboratory, California
Al Goodman, Hazardous Materials Coordinator, Oregon Office, U.S. Environmental Protection Agency
Michael Kay, Director, Nuclear Reactor Facility, Reed College
Nick Lewis, Director, Washington State Energy Facility Siting Council
Lloyd Marbet, Forelaws on Board
Richard Kent Mathiot, consulting hydro geologist
Tom Nelson, Manager of Environmental Control, Teledyne Wah Chang Albany
Frank Ostrander, General Counsel, Northwest Power Planning Council; formerly Assistant Attorney General, State of Oregon, and Co-Hearings Officer, Energy Facility Siting Council (TWCA hearing)
Ray Paris, Manager, Radiation Control Section, Oregon State Health Division
Dr. Marshall Parrott, formerly Manager of Radiation Control, Oregon State Health Division
Roger Redfern, consulting environmental and engineering geologist
Dick Sandvik, General Manager, Environmental & Analytical Services, Portland General Electric
Dr. Karen Steingart, Environmental Health Specialist, Oregon Health Sciences University
David A. Stewart-Smith, Health Physicist, Radiation Control Section, Oregon State Health Division
Stanley G. Sturges, Senior Environmental Consultant, Oregon Department of Environmental Quality
George Toombs, Supervisor, Environmental Radiation Surveillance Program, Oregon State Health Division
Bill Young, Director, Oregon Water Resources Department; formerly Director, Oregon Department of Environmental Quality
APPENDIX C

Bibliography

Books and Technical Reports


Legal Documents


"Regulation of Energy Facilities," ORS 469.300 through 469.621.

Miscellaneous Publications

Arguments supporting and arguments opposing Ballot Measure 9, as submitted for inclusion in the 1984 General Election Voters' Pamphlet. Teledyne Wah Chang Albany brochures (2).

Vote Yes on Measure 9 brochure and supplemental information.

APPENDIX D

Definitions

1. Naturally Occurring Radioactive Isotopes:

All nuclides with the atomic number (Z) greater than 82 are radioactive because they possess an unstable number of protons and neutrons. Many of these are naturally occurring. There are also instances of naturally occurring radionuclides of lesser atomic number, such as potassium 40, carbon 14 and sulfur 30.

2. Waste Disposal Facility:

"means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid." ORS 469.300(24)

3. Low Level Radioactive Wastes:

"ORS 469.300(17) (a). 'Radioactive Waste' means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.604. The term does not include those radioactive materials identified in ORA 345-50-020, 345-50-025, and 345-50-035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety."

"OAR 345-50-35. 'Pathway Exemption.' Naturally occurring radioactive materials shall be exempt from the provisions of rule 345-50-006 (or ORS 469.525) if it can be demonstrated that accumulation of material will not result in exposures exceeding 500 millirem of external gamma radiation per year, nor in the release of effluents to air and water in annual average concentrations exceeding the values in Table 3. An evaluation of potential radiation exposures and effluent releases shall be performed using the following premises:

"(1) The material shall be considered in the form in which it exists when it is removed from the users' equipment, systems, or
settling ponds prior to any dilution or remedial action designed to reduce radiation levels.

"(2) No consideration shall be given to the ameliorating effects of land use restrictions, maintenance operations, or overburden at the disposal site.

"(3) Accumulations of materials over the reasonably projected period of waste generation shall be evaluated.

"(4) External gamma radiation exposures shall be based on actual measurement and allowance may be made for the degree of equilibrium and for self-shielding.

"(5) In computing radon concentrations in the air above a disposal site containing radium-226, the following additional premises shall be used:

"(a) Any house built on ground contaminated with radium-226 is assumed to have an 8-foot high ceiling on the first floor, to have one complete air change per hour, and to have a foundation constructed so as to meet the Structural Specialty Code (State of Oregon Uniform Building Code) effective at the time of adoption of these rules. No consideration will be allowed for any special construction or treatments designed to reduce radon diffusion into the structure.

"(b) The relation between radon-emanation rate and radium concentration will be based upon experimental measurements on material intended for disposal."

4. Picocuries:

The radiation from one-trillionth of a gram of radium (10\textsuperscript{-12} gram) (0.0000000000001 gram).

APPENDIX E

Radiation Level Comparisons

The range of 13-91 picocuries of radium radiation found in the TWCA sludge (dry weight basis) must be compared with the background of radium radiation which is found everywhere in the environment. Samples of soil taken from around the state, including the headwaters of the Bull Run water works, show levels of radium 226 and 228 at 1-2 picocuries per gram. The range of the TWCA readings is minimal in view of the fact that the Hanford, Washington disposal site will not accept radioactive waste measuring less than 2,000 picocuries per gram.

There are zircon sands naturally occurring at Coos Bay, Oregon. Zircon sands are also used as refractors by several companies in this state, in addition to the zircon sands imported from Australia and used by TWCA. These sands typically analyze at 80-100 picocuries of radium per gram. Other common sources of radium in the environment are cement, granite and
fertilizer. For example, commercial phosphate fertilizer contains approximately 14 picocuries of radium per gram, synthetic rock wool insulation measures at approximately 26 picocuries per gram, the granite facade at the Willamette Center in Portland is approximately 33 picocuries per gram, and coal ash is approximately 40 picocuries per gram.

The radium in the sludge at TWCA has an extremely low water solubility. Testimony before the Committee, from both private and public sources, revealed that the relative insolubility of the TWCA sludge radium was one of the most important factors in determining that it did not present a health hazard. Water samples taken directly from the sludge ponds were found to contain no more than approximately 5 picocuries of radium per liter, which is well below federal and state health standards of not more than 30 picocuries per liter. It was further found by the state health authorities that if this water was to drain directly into the Willamette River, the additional radioactivity could not even be detected. State officials further testified before the Committee that the chemical pollutants involved in the TWCA sludge, especially the salts, presented substantially greater health concerns than did the radioactive content of the waste.

Finally, it must be noted that every human being contains naturally occurring radioactive materials. A typical 70 kilogram adult (155 pounds) contains approximately 100 picocuries of radium, most of it in the bones. In addition, an adult carries about 115,000 picocuries of potassium 40 and approximately 80,000 picocuries of carbon 14. A typical liver contains approximately 27 picocuries of polonium 201, which has emission characteristics similar to radium.

In order to test the level of radon gas emission from the TWCA sludge which might possibly involve contact with humans, Battelle Pacific Northwest Laboratories built a house on dispersed sludge according to Oregon State Building Codes. The radon gas concentration to which the occupants would be exposed was then measured. This was the only measurement found (among measurements of groundwater, surface water and air contamination) which could, under certain circumstances, indicate a potential hazard. However, the level of exposure was so minimal that the health hazard measured would be approximately the same as if the occupants of the test house had smoked one pack of cigarettes a year. This is about the same level of health hazard as is currently experienced by residents of Eastern Washington, Eastern Oregon and Idaho who live in certain mineralized areas of those states. Further east, toward the Continental Divide, there is even higher exposure to levels of radioactivity from the rocks and soils naturally found in those areas.

If all the TWCA sludge wastes were distributed over several hundred acres of farm land as a lime-containing fertilizer, at the ratio of approximately 0.5% - 1.0% of the soil into which it would be mixed, the radium radioactivity in the soil would not be clearly discernible above the level of activity which is already present as background. Generally, background radiation can range from approximately 5 to 100 picocuries per gram, depending upon locations.
Report on
RECOMMENDATIONS OF MULTNOMAH COUNTY
CHARTER REVIEW COMMITTEE
(Multnomah County Measures 10 – 27)

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

This report encompasses 18 separate ballot measures which propose changes in the Multnomah County Charter. The Background section below sets out the history of the current Charter, amendments adopted to it, and the process through which these 18 proposed changes have come before the voters. After the Background section, each measure is analyzed separately and a separate recommendation is made on each one.

II. BACKGROUND

The current Multnomah County Home Rule Charter was adopted by the voters in 1966 and became effective on January 1, 1967. In 1976, an initiative petition resulted in a number of changes to the original charter. An initiative petition to repeal the 1976 amendments and establish a Charter Review Committee was approved in a special election held in November of 1977. The original 1967 Charter was thus re-established and a commitment was made to do a comprehensive review of the Charter.

In 1978, a Charter Review Committee recommended that several measures amending the Charter be placed on the ballot. In response, the County Commissioners placed five measures on the November, 1978 ballot. One of the five measures called for establishment of another Charter Review Committee to be appointed in 1983 to consider possible amendments to be placed on the 1984 general election ballot. This measure, adopted by the voters, required the new Charter Review Committee to include a study of the auditor's office in its considerations; beyond that it gave no clear direction to the Committee. Committee members were to be appointed by the State Senator and State Representatives from each senatorial district which has a "majority of its voters residing within Multnomah County."

Since the 1978 election establishing the Charter Review Committee, a number of citizen initiatives making changes in the Charter have been presented to the voters. In the primary election of 1982, the voters passed a single initiative measure making numerous changes in the Charter. Because of the legal confusion caused by some of these changes, the County Commissioners placed a proposed repeal of the entire measure back on the ballot in a special election in September of 1982. However, the voters did not vote to repeal the changes and those changes remain part of the Charter today.

Beginning in May of 1983, the Charter Review Committee began the study mandated in 1978. The Committee held 41 public meetings around the County and took testimony on a variety of issues, a number of which concerned the changes made to the Charter by the 1982 initiative and whether those
changes ought to be preserved. The Committee reviewed the history of the Charter and examined the changing role of the County caused by the recent and proposed annexations of unincorporated areas of the County. Many of the Committee's recommendations for changes in the Charter were made in anticipation of the shrinking role of County government. The Committee completed its work in August and recommended 18 changes in the Charter. According to testimony of Committee members, none of the votes on proposed changes were close votes and several proposals for changes were recommended unanimously.

Your City Club Committee feels that it is important to point out that although some of the 18 recommended changes do address amendments made to the Charter in the 1982 election, all of the changes are being recommended as part of a planned review process put in place by the voters six years ago. This current Charter Review process was not initiated to countermand decisions made by the voters in earlier elections.

III. PROPOSED CHARTER AMENDMENTS

Ballot Measure 10 - Governing Body

Question: "Shall four Commissioners elected from districts and a board chair elected at large constitute the County's governing body?"

Purpose: "This measure will amend the County Charter: to eliminate the position of County Executive; and, to provide for a Board of four Commissioners elected from districts and a chair of the Board elected at large. The chair will preside and vote at Board meetings, but will not have veto power. The chair will be chief executive officer and personnel officer of the County. Boundaries of the four new Commissioner districts are established."

1. Arguments Advanced in Favor of the Measure

   a. Separation of powers between the executive and legislative branches hinders the effective operation of County government.

   b. The measure will improve communication and organizational effectiveness by requiring the chairperson to work more closely with the County Board than has occurred with the County Executive form of government.

   c. Implementation will help streamline the County government and start preparing it for an expected reduction in future responsibility and authority as more sections of the County are annexed to cities.

   d. The County Executive system will have been in effect for nine years when this measure goes into effect (1987). This is long enough to determine its effectiveness.

   e. This measure reduces the number of Commissioners by one and will reduce expenditures.
2. Arguments Advanced Against the Measure
   a. The chairperson of the new board may lose some objectivity due to a possible need to "trade votes" on various issues. (The County Executive currently has no voting power, only a veto. If approved, the new chairperson would have one vote out of the five on the Commission).
   b. The County Executive form of government needs to be continued past 1987 in order to determine its effectiveness.
   c. The County Executive position has an appropriate amount of power relative to that of the Commissioners.
   d. This measure moves the county in the proper direction, but a County chairperson and three-member Board would be as effective and further reduce costs.

3. Discussion and Conclusions

   The 1977 Charter Review Committee recommended, and the voters approved, a Charter amendment that eliminated the County chairperson position and created the position of "County Executive." At the time the change was enacted, the County was serving as the municipal government for the citizens residing in the County's unincorporated areas and was active in providing traditional County services such as roads, jails, police, courts, and libraries. The position of County Executive was created to provide a stronger administrator than existed under the County chair form of government.

   Since the change to County Executive, there have been many changes in the services and scope of County government. The City of Portland and the City of Gresham have aggressively annexed large portions of the previously unincorporated areas in the County. The County, due to budgetary considerations, eliminated many of the municipal services it had provided to areas which remained unincorporated. Under the statewide court consolidation system, the County no longer has authority over or financial responsibility for the district and circuit courts. Together, these changes have reduced the need for a strong County administrator.

   Under the County Executive system, the legislative powers are vested in the Commissioners and administrative powers are vested in the County Executive position. The Executive has no vote on the Commission, but has veto power over legislation, subject to an override by four of the five Commissioners. The County Executive has the traditional responsibilities of administration, including submitting a budget to the Commission for its consideration, signing contracts, bonds and other documents, hiring and firing department heads, serving as chief personnel officer, recommending legislation, and executing County policies and ordinances. The appointment of department heads is subject to approval by the Commission. The Commission has a strictly legislative function.
The proposed change would reunite the legislative and administrative functions in the County chair, who would be a voting member of the Commission and serve as its presiding officer. The number of district-elected Commissioners would be reduced by one, thereby resulting in substantial savings to the County by reducing overhead costs for staff salaries and benefits. The Charter Review Commission recommended the change in the belief that the separation of legislative and administrative functions had resulted in a break down of internal communication and an increase in intragovernmental discord. Although the separation was beneficial during the period of rapid change in County government, the Review Commission believed that the separation of functions, with its additional costs, would be unnecessary in light of the reductions in scope of County services. Your Committee agrees with the analysis of the Review Commission.

Although your Committee supports the proposed change, it should be noted that none of the individuals interviewed believed that the change would be substantial. The administrative duties and responsibilities of the County chair would be identical to those now exercised by the County Executive. The proposal would give the administrator a vote on the Commission and would eliminate the veto power of the Executive. Your Committee does not anticipate that these changes would have a significant impact upon the legislative process. Although the Chair would only need two votes to pass his proposals, instead of the three currently necessary, the impact should not be substantial since the Chair will not have a veto power.

Your Committee is convinced, as was the Charter Review Committee, that the proposal would result in minimal functional change. However, the enhanced intragovernmental communication and cooperation offer sufficient potential benefits to merit the proposed change. The County Executive form of government has been effective and appropriate during a time of rapid change and growth in Multnomah County. The County Chair form of government, which has a voting Executive as a member of the Commission, appears to be a more appropriate structure to deal with the issues facing the County in coming years.

RECOMMENDATION: YES

Ballot Measure 11 - Election Procedures

Question: "Shall County election procedures be amended to change the date for altering Commissioner district boundaries, and to delete ballot slogans?"

Purpose: "If this measure is approved, the County Charter election procedures will be amended: (1) to change the date by which the auditor must prepare a plan for modifying boundaries of Commissioner districts to conform them to federal census data; and (2) to conform the Charter to state law by deleting ballot slogans."
1. Arguments Presented in Favor of the Measure
   a. This is a housekeeping measure which brings the County into conformance with federal census results and recent changes in state law regarding ballot slogans.

2. Arguments Presented Against the Measure
   a. None were presented

3. Discussion and Conclusions
   This is a noncontroversial and appropriate housekeeping measure.

**RECOMMENDATION:** YES

**Ballot Measure 12 - Surety Bonds**

Question: "Shall the County maintain a corporate surety bond for its employees and holders of elective office?"

Purpose: "If this measure is approved the County Charter will be amended to require the County to obtain a corporate surety bond for its employees and holders of elective office. The existing Charter requires only holders of elective office to be bonded, and may require individual, rather than 'blanket' surety bonds."

1. Arguments Presented in Favor of the Measure
   a. This is a housekeeping measure in that all non elective County personnel are currently covered by a "blanket" surety bond. Elected officials would be placed under the blanket coverage with a possible reduction in overall costs.

2. Arguments Presented Against the Measure
   a. None were presented.

3. Discussion and Conclusions
   This is a noncontroversial and appropriate housekeeping measure.

**RECOMMENDATION:** YES

**Ballot Measure 13 - Compensation**

Question: "Shall a salary commission recommend adjusted compensation, if any, for holders of elective office to the voters?"

Purpose: "If this measure is adopted, the County Charter will be amended to require the auditor to appoint a five member salary commission to review compensation for holders of elective office every two years; the commission may recommend increases or
decreases to the voters. Changes in compensation may be approved only at a primary election."

1. Arguments Presented in Favor of this Measure

a. The current process whereby elected officers present recommended salary changes affecting them to the voters ignores political reality; elected officers are afraid to do so and have not proposed increases in four years. The result is that elected officers' salaries are not competitive with those of comparable positions elsewhere in government or private industry. If this situation continues, qualified candidates will become uninterested in running for County office.

b. This measure while imperfect, is a step forward in that the proposed change avoids having County officials recommend their own salary changes to voters.

2. Arguments Presented Against the Measure

a. The current system should be continued because elected officials are held more accountable to voters, i.e., keep it in the "election process."

b. Salaries should not be subject to direct voter approval. Elected officials should have the intestinal fortitude to set their salaries.

3. Discussion and Conclusions

The Charter Review Committee believes that the current process does not foster reasoned salary adjustment, and serves to drive qualified candidates away from positions in County government. Current salaries, although greater than those of many voters, are lower than those paid elsewhere in state and local government and in private industry in the Portland area. Politicians live in fear of political backlash when they vote themselves increased salaries, particularly in difficult economic times. Multnomah County Commissioners have not raised their compensation since 1981.

Comparisons between the City of Portland and Multnomah County salaries are telling. The Mayor of Portland currently earns $60,424.00 per year, while the County Executive, responsible for administering all County agencies, earns only $43,180.00 per year. City Commissioners earn $48,443.00 per year, while County Commissioners earn $33,345.00 per year. The result is the creation of a sort of an A League and a B League in local politics, with major league candidates gravitating toward the A League. This puts Multnomah County at an extreme disadvantage at a time when the County's future in local government is in doubt and the highest level of analytical and pragmatic skills are required on the County Commission. Against this background, the departure of a City Commissioner and the Zoo Director for higher-than-City salaries elsewhere is especially illuminating.
There has been substantial disagreement among those interviewed as to the best solution for the problem of County salaries. Some feel that the Commissioners should suggest a dollar figure increase themselves, which would then be subject to voter approval. Others feel that the Commissioners should be able to set their salaries without the need for voter approval. Still others feel that an independent committee should determine county salaries without subsequent review by the voters. The proposed measure is a compromise, which would have the auditor's committee submit salary changes to the voters for approval. While this would take the heat off the members of the County Commission, it would leave salary increases in a political forum. This is not an ideal solution, but is a step in the right direction, which should produce some progress in providing adequate compensation for current Commissioners and in attracting well-qualified candidates in the future.

RECOMMENDATION: YES

Ballot Measure 14 - Vacancies

Question: "Shall procedures for filling vacancies in elective office be changed, and appointees allowed to seek that office?"

Purpose: "If this measure is adopted, the County Charter will be amended to require vacancies of one year or more to be filled by election, vacancies of less than one year (but 90 days or more) to be filled by appointment, and vacancies of less than 90 days to remain unfilled. This measure repeals the requirement that all vacancies be filled by appointment, and removes the prohibition on appointees immediately becoming candidates."

1. Argument Presented in Favor of the Measure
   a. This amendment simplifies the process for filling vacancies in elected office. By allowing an appointee to run for the office in the next election, more qualified appointees can be expected to apply for available offices.

2. Arguments Presented Against the Measure
   a. None were presented.

3. Discussion and Conclusions

   This measure is an improvement over the current situation in that it simplifies the process for filling vacancies. It also should encourage a larger number of qualified candidates to apply for appointment.

RECOMMENDATION: YES

Ballot Measure 15 - Administrative Departments and Functions

Question: "Shall the charter's description of administrative departments and functions be amended to delete outdated provisions?"
Purpose: "If this measure is approved, the County Charter will be amended to delete references to existing and outdated departments, and to simplify the language describing the Commissioners' power to establish and abolish administrative departments. All existing administrative departments would be continued until altered by the Board of County Commissioners."

1. Arguments Presented in Favor of the Measure
   a. This measure is for housekeeping purposes in that it simplifies the process for establishing, altering, or abolishing administrative departments. It would delete references to eight outdated administrative departments currently listed in the Charter. The sheriff's department is not affected by this measure.

2. Arguments Presented Against the Measure
   a. It would diminish the authority of the sheriff.
   b. Appointed rather than elected officials would make decisions about changes in administrative department.

3. Discussion and Conclusion

Although the charter lists eight administrative departments by specific title, the County Commissioners have had the authority by Charter since 1978 to add, delete, combine or reorganize County departments. The County now has four administrative departments, none of which bear the same title as those listed by name in the Charter. Measure 15 deletes listings of outdated County administrative departments and continues all administrative departments in existence on January 1, 1985. These departments will then continue to exist until the County Commissioners alter or abolish them.

Some witnesses before your City Club Committee expressed the belief that this change will affect the sheriff's office and that the authority and autonomy of that office will somehow be diminished. We found no basis for this concern because the sheriff's office is established by a separate provision in the Charter which is not being changed. The sheriff will continue to be an elected official, as he has been since the 1982 Charter amendment, and will continue to have complete authority over the operations of the sheriff's office.

Your Committee also found no basis for the concern that appointed bureaucrats will make the decisions regarding creating or abolishing an administrative department. The Charter specifically states that this is the responsibility of the elected County Commissioners.

RECOMMENDATION: YES
Ballot Measure 16 - District Court Clerk

Question: "Shall the office of district court clerk be abolished?"

Purpose: "If this measure is adopted, the County Charter will be amended to repeal the requirement that the County provide an office of district court clerk, and the requirement that the district court clerk be elected. The State of Oregon operates the district courts, and state law does not require the County to provide a district court clerk."

1. Arguments Presented in Favor of the Measure
   a. This measure is a housekeeping amendment which brings the County Charter into conformance with changes in the organization of the state court system.

2. Arguments Presented Against the Measure
   a. None were presented.

3. Discussions and Conclusions
   Recent changes in the state court system bring the district court under the administration of the state court administrator. As a result, the office of district court clerk has no duties or responsibilities.

RECOMMENDATION: YES

Ballot Measure 17 - Elective County Clerk

Question: "Shall the County Charter be amended to repeal the requirement that the county clerk be elected?"

Purpose: "If this measure is approved, the County Charter will be amended to repeal the requirement that the county clerk be elected. The county clerk presently administers elections for the County."

1. Arguments Presented in Favor of the Measure
   a. The position requires a great deal of technical knowledge which can only be gained through years of on-the-job experience. Elected clerks do not normally have this experience and are thus highly dependent upon their staffs to properly perform the duties of the office. Inexperienced elected clerks are unnecessary and costly political "figureheads".
   b. The office is managerial in nature and has no significant policy making power. Duties and procedures are mandated by the state and the County Commissioners set the budget.
   c. An experienced professional appointee serves the public better than a politician inexperienced in the duties of the office.
1. Arguments Presented Against the Measure
   
   a. This measure asks voters to repeal a twice-approved provision creating the elective office of county clerk.

   b. The office has other duties under Oregon law than being elections officer. These other duties relate primarily to the recording of records.

   c. An elected official is more responsive to the voters than an appointed official. An appointed official may be more responsive to those who appointed that person than to the electorate.

   d. An elected official has more freedom to lobby the state legislature on matters affecting the office.

3. Discussion and Conclusions

   The duties and procedures of this office are prescribed and closely controlled by the State of Oregon, thus the position is primarily managerial in nature and has no significant policy-making authority. Substantial experience in the office is required if the clerk is to be anything other than a figurehead. The Committee believes that the interests of the County's citizens would be better served by an experienced professional manager who was appointed than by a politician inexperienced in the duties of the office.

   **RECOMMENDATION:** Yes

**Ballot Measure 1£ - Elective County Assessor**

Question: "Shall the County Charter be amended to repeal the requirement that the County assessor be elected?"

Purpose: "If this measure is adopted the County Charter will be amended to repeal the requirement that the County assessor be elected".

1. Arguments Presented in Favor of the Measure

   a. Arguments favoring this measure are essentially the same as those for appointing the county clerk.

2. Arguments Presented Against the Measure

   a. Arguments against the measure are essentially the same as the those against appointing the county clerk.

3. Discussion and Conclusions

   The assessor's primary functions relate to the assessment of property values and collection of related taxes. The procedures used to accomplish this are closely regulated by Oregon statutes and administrative rules. The State Department of Revenue performs compliance audits. As with the
County clerk, the assessor's office is primarily managerial and has no significant policy-making authority. Thus, it appears that the County's citizens would be better served by a professional manager than by a politician inexperienced in the duties of the office.

RECOMMENDATION: YES

Ballot Measure 19 - Intergovernmental Relations Coordinator

Question: "Shall the County be permitted to employ a coordinator of intergovernmental relations to represent its interests before other governmental bodies?"

Purpose: "If this measure is approved, the County Charter will be amended: to repeal the prohibition of employing or hiring a paid lobbyist; and, to authorize the County to employ a coordinator of intergovernmental relations to represent the County's interests before other levels of government."

1. Arguments Presented in Favor of the Measure
   a. The County has been unable to adequately represent the interests of its citizens before the state and federal governments which mandate services to be provided by the County. As a result, the County may be mandated to provide costly services without receiving the revenue necessary to fund those services. A full-time professional lobbyist can help prevent this situation.
   b. Coordinating elected representatives to provide this function is difficult and getting them to speak with "one voice" is impossible.

2. Arguments Presented Against the Measure
   a. A lobbyist is unnecessary.
   b. Citizens can obtain information concerning legislative matters that affect the County and act as their own lobbyists.
   c. Elected officials are responsible for performing this function as well. If elected officials performed responsibly, this position would be unnecessary.

3. Discussion and Conclusions

One of the changes made by the 1982 initiative was to prohibit the County from having a paid lobbyist. The Charter Review Committee has recommended that this prohibition be lifted and we agree with that recommendation. Multnomah County is the most populous county in the state and has a large stake in the decisions made by other units of government, particularly the state legislature, which affect the revenues, powers or responsibilities of a county.
During a session of the state legislature, it is not at all unusual for bills to be considered and passed which, for example, affect land use planning by the County, location and control of refuse disposal facilities, alter the formula for the sharing of revenues from the gasoline, cigarette or liquor taxes or mandate new election procedures or community corrections programs which must be implemented by the County. Some of the changes which are enacted by the legislature may impose additional costs on the County government, costs which may have to be borne by the taxpayers of the County unless the legislature appropriates state monies to pay for the cost of the changes.

State legislators must have adequate and timely information on how their decisions affect the County before they can be persuaded either to refrain from imposing a costly new responsibility or to appropriate funds to cover the cost. The task of providing that information and coordinating the testimony of the County before a legislative committee cannot be performed adequately either by the individual commissioners or by citizen volunteers. Monitoring the activities in Salem is a full time responsibility and it is not possible for a County Commissioner or citizen volunteer to spend the time necessary to do an adequate job.

The current prohibition on having a paid lobbyist hinders Multnomah County's ability to present a credible and unified position on important issues to the state legislature and thereby reduces its effectiveness in that arena. The property taxpayers of the County cannot afford to have less than the most effective representation in Salem.

RECOMMENDATION: YES

Ballot Measure 20- Limitation on Terms in Office

Question: "Shall the County's elective officers be limited to serving two consecutive four-year terms in any one elective County office?"

Purpose: "If this measure is approved, the County Charter will be amended: to prohibit incumbent and future elected officers from serving more than two full consecutive four-year terms in any one elective county office within any twelve year period; and, to repeal an existing prohibition (which is retroactive to 1976) against elected officials serving more than eight years."

1. Arguments Presented in Favor of the Measure
   a. The language of the current Charter provision is ambiguous. It is unclear whether the current limitation applies to elective county service generally or to any one elective County office.
   b. The proposed measure preserves the limitation on terms in office which is designed to encourage new leadership within elected County offices.
   c. The current eight-year limitation causes problems with appointed officers who are later elected and reelected to four-year terms. They must resign before the final four-year term is completed in
order not to exceed the eight-year limitation. This measure allows eight years of elected service, plus the period of time served by appointment.

d. This is an improvement over the current situation.

2. Arguments Against the Measure

a. Voters twice approved an eight-year limitation on terms in office in 1982.

b. The measure destroys the effectiveness of Section 6.50(4) by gutting, in substance, the eight-year limit and thus permitting the professional politician to remain in the same elective office more than eight years.

c. The question and statement of purpose of the measure is unfair, deceptive, and misleading as a matter of law. It does not state that the purpose is to repeal the restrictive eight-year limit and to impose a less restrictive limit. The question asks the voters whether they wish to impose an eight-year limit, without informing them there already is an eight-year limit.

3. Discussion and Conclusions

The measure clarifies the ambiguous wording of the current Charter and solves the problem of appointed officers who have to resign before a second four-year elected term is complete. The question and statement of purpose of the measure, while perhaps subject to improvement in terms of clarity, do not appear to be unfair, deceptive or misleading to your Committee.

Some members of your Committee strongly favor limitations on terms in office; some do not. All agree, however, that this measure is an improvement over the current Charter provision.

RECOMMENDATION: YES

Ballot Measure 21 - County Auditor

Question: "Shall the auditor be required to perform internal audits, and elected officials be required to respond to the audits?"

Purpose: "If this measure is adopted the auditor will be required to conduct internal audits of all County operations and financial affairs according to generally accepted government auditing standards, and to make reports to the Board of County Commissioners; elected officials will be required to respond in writing to the audit findings. Existing Charter provisions relating to audits, and an obsolete Charter provision relating to the 1966 auditor's election will be repealed."
1. Arguments Presented in Favor of the Measure

a. The current Charter provisions contain no standards for audit reports and require no response to an audit or its findings and recommendations. Putting these provisions into the Charter will foster uniform audit procedures and strengthen the auditor's ability to obtain action on audit recommendations.

b. This measure clarifies the auditor's responsibilities as defined in the Charter.

c. The measure deletes an obsolete passage which refers to nominating procedures used only for the 1966 election.

2. Arguments Presented Against this measure

   a. None were presented.

3. Discussion and Conclusions

   The measure clarifies the auditor's responsibilities, establishes uniform standards for audits, requires a response to audit findings, and strengthens the auditor's ability to obtain action on recommendations to improve County operations. Unless a timely response to the auditor's report is required, the report and its recommendations may be ignored. The end result should be a more effective audit function.

   **RECOMMENDATION: YES**

**Ballot Measure 22 - Revenue Bonds**

**Question:** "Shall the County be authorized to issue revenue bonds in accordance with state law?"

**Purpose:** "If this measure is adopted the County Charter will be amended to permit the County to issue revenue bonds without voter approval, but only if sufficient voters do not file a petition requesting a vote. This measure will repeal an existing Charter provision which requires voter approval for all revenue bond issues."

1. Arguments Presented in Favor of the Measure

   a. In situations where public financing is necessary to meet a public need, the Board of County Commissioners should have the flexibility to issue revenue bonds without the undue delay which could result from the necessity of obtaining voter approval. This measure still provides for voter approval if 5% or more of the registered voters submit petitions calling for a vote on the issue.

   b. This measure brings the County into conformance with the authority granted by Oregon law.
c. Revenue bonds are supported by a specific revenue-producing facility. They are not general obligations of the issuing public body nor are they a charge upon the tax revenues of that public body.

2. Arguments Presented Against the Measure
   a. If the revenue bond project should fail and default on the bond obligation, it could affect the overall bond rating and might reflect badly on the community.
   b. The proposal is not made acceptable by the claim that the matter can be referred to the voters, for referral is an expensive and time-consuming process.

3. Discussion and Conclusions

Under the current provision requiring prior voter approval for revenue bonds, the County cannot effectively compete in a timely manner with other local governments for the private projects developed through revenue bonds. The approval requirements could have a chilling effect on the County's ability to negotiate with prospective developers. The benefits to the County of being able to issue revenue bonds without voter approval are demonstrated by Portland's aggressive use of revenue bonding to obtain the Wacker project. That project has resulted in substantial financial benefit to the City through increased employment and training programs for previously unemployed persons. Revenue bonding made the project attractive to Wacker without direct cost to the City's taxpayers. Unlike general obligation bonds, revenue bonds are repaid from the revenue of the project, not from the general fund, and do not obligate the area's property taxpayers.

Since the measure retains a voter approval requirement upon petition of 5% of registered voters, the Commission will have practical limits on its authority to issue revenue bonds. Your Committee believes that this limitation offers sufficient protection, given the limited risk of revenue bonds which do not obligate the County to repay the bonds upon default.

By bringing the County into conformity with its authority under state law, the County will have one more method to encourage appropriate development and industrial diversity.

RECOMMENDATION: YES
Ballot Measure 23 - Primary Elections

Question: "Shall primary elections be required, and a candidate receiving a majority of votes at a primary election be elected?"

Purpose: "This measure will amend the County Charter: (1) to require primary elections for positions by repealing a provision which states that no primary election for a position will be held if only one or two people are candidates; and, (2) to provide that a candidate at a primary election who receives a majority of the votes cast for a position will be elected, and need not run at the general election."

1. Argument Presented in Favor of the Measure
   a. The present mandatory runoff provision unnecessarily prolongs the electoral process and adds to the costs of campaigns and elections.

2. Arguments Presented Against the Measure
   a. None were presented.

3. Discussion and Conclusions
   This measure improves election procedures and reduces costs.

RECOMMENDATION: YES

Ballot Measure 24 - Charter Review Committee

Question: "Shall a Charter Review Committee be created to recommend charter changes to the voters in 1990?"

Purpose: "If this measure is approved, the County Charter will be amended to provide for the appointment of another Charter Review Committee to prepare recommendations to be submitted to the voters at the 1990 primary or general election or both. Procedures for appointing committee members will be changed so that two members come from each senate district having a majority of voters in the County, and one member comes from each district not having a majority."

1. Arguments Presented in Favor of the Measure
   a. Another Charter Review Committee is needed in 1990 to propose changes in County government in order to effectively address the situation existing at that time.
   b. The measure provides for committee voting representation by senate districts having less than a majority of their inhabitants living within Multnomah County.
2. Arguments Presented Against the Measure
   a. None were presented.

3. Discussion and Conclusions

   Given the rapidly changing environment in which the County government is operating, continued revision of the Charter is a must in order to have effective and efficient government. Several Committee members expressed the opinion that, due to the rapid change, another Charter Review Committee should be formed prior to 1990.

   RECOMMENDATION: YES

   Ballot Measure 25 - Citizen Involvement

   Question: "Shall the County Charter require establishment of an office of citizen involvement?"

   Purpose: "If this measure is approved, the County Charter will be amended to establish an office of citizen involvement which will be charged with facilitating direct communication between the citizens and the County Commissioners. The Board of County Commissioners will establish a citizens' committee and a citizen involvement process and be required to appropriate funds for operation of the office and the citizens' committee. The Committee will have the authority to hire and fire its staff."

   1. Arguments Presented in Favor of the Measure
      a. An ongoing citizen involvement program is important to enhance direct communication between the citizens and their Board of County Commissioners.
      b. The citizens involvement program has lapsed in the past when funds were not appropriated to continue the program.

   2. Arguments Presented Against the Measure
      a. This measure does not belong on the ballot. It is a good idea, but it could be accomplished without voter mandate.
      b. If the Commissioners and/or their staffs spent more time communicating with the citizens of their districts, the measure would not be needed.
      c. Elected officials have the responsibility to effectively communicate with their constituents. This office would add an unnecessary and costly organizational layer to government.
      d. Using existing resources to more effectively coordinate existing citizens' advisory boards and task forces would accomplish the same result without necessarily increasing costs.
3. Discussion and Conclusions

Elected officials have a responsibility to communicate effectively with their constituents. Existing resources, if applied properly, could perform this function without necessarily increasing the cost of county government. The measure would force the development of a coordinating structure designed to improve communication. However, it adds an additional organizational layer between constituents and their representatives while unnecessarily increasing costs. Furthermore, it may establish an "official" citizen involvement component inconsistent with maximization of actual citizen involvement. Responsible elected officials can communicate effectively without this added layer.

RECOMMENDATION: NO

Ballot Measure 26 - Running for Office in Mid-term

Question: "Shall the charter be amended to repeal the prohibition against officials running for another office while holding an existing office?"

Purpose: "If this measure is approved, the county charter will be amended to repeal the provision which states that if an elected official runs for another office in mid-term, or files for another office, the elected official will be considered as having resigned from the existing office."

1. Arguments Presented in Favor of the Measure
   a. Prohibiting mid-term filing discourages competent and qualified candidates from running for political office.
   b. Prohibiting mid-term filing creates additional unnecessary work for officeholders and raises the cost of county government due to the need to fill additional vacancies in elective county offices.
   c. The present charter language prohibits filing for office not only in mid-term, but at any time during that term.

2. Arguments Presented Against the Measure
   a. This measure will allow the proliferation of "career politicians" who would have a "preference" over other candidates in as much as they could continue to draw salaries as elected officials and have an office to which to return if they lost.
   b. The current situation encourages more citizens to run for office.
   c. The voters have twice approved the prohibition against running for office in mid-term.
3. Discussion and Conclusions

The Charter was amended through the initiative process in 1982 to prohibit an elected official of the County from running for another office while he or she holds an existing office. The Charter Review Committee recommends the repeal of this prohibition. Your City Club Committee supports this recommendation. However, we recognize that some of the witnesses who testified before our Committee have a valid criticism. Such a system would allow current officeholders to continue drawing a public salary while spending time campaigning for another office instead of performing the job for which they were elected and paid. On balance, however, we feel that the current prohibition does more harm than good by discouraging experienced and qualified incumbents from seeking higher office. It is also important to recognize that the current prohibition applies not only to elected officials who are in the middle of their term of office but also to officials who are at the end of their term of office and who may wish to continue their government service in another elective office. The pool of qualified candidates should not be artificially restricted by the current provision requiring immediate forfeiture of office by an elected official who files for a new office. The voters are capable of defeating a candidate who abuses his or her current elected position by campaigning during normal working hours.

Moreover, the current Charter provision results in a short-term vacancy when an elected official who is at or near the end of the elected term must resign. This causes undesirable disruption in County government. In a recent example, a County Commissioner who filed for a City Commissioner race was required to resign with only three months remaining in the term of office. A "caretaker" Commissioner has been appointed for that short term. This disruptive situation does not appear to serve the interests of the people of Multnomah County.

RECOMMENDATION: YES

Ballot Measure 27 - Concurrence Required for Action

Question: "Shall the County Charter be amended to require a majority of the Board to make decisions?"

Purpose: "If this measure is approved, the County Charter voting procedures will be amended to require that a majority of the Board, not just a majority of those present, vote to make Board decisions."

1. Argument Presented in Favor of the Measure

   a. Under the current Charter, if only three Commissioners are present at a meeting, two votes are sufficient for the Board to act. This measure would require that a majority of the Board vote for an issue before the Board could act.

2. Arguments Presented Against the Measure

   a. None were presented.
3. Discussions and Conclusions

Affirmative votes from three members of the Board of County Commissioners should be required for the board to act.

RECOMMENDATION: YES

IV. FURTHER COMMENTS

The Review Committee's Charter as set forth in the 1978 ballot measure was loosely defined. The Review Committee set out to conduct a "comprehensive" (the Committee's term) review of the County Charter. The number of public meetings held and the amount of documentation the Charter Review effort accumulated appear to bear this out.

Of the 18 ballot measures submitted by the Review Committee, your City Club Committee has recommended a yes vote on 17. However, a number of individuals the Committee interviewed felt strongly that the Review Committee's recommendations fail to demonstrate the boldness and creativity that the Review Committee's open mandate would have allowed.

V. SUMMARY OF RECOMMENDATIONS

Measure 10, Governing Body: YES
Measure 11, Election Procedures: YES
Measure 12, Surety Bonds: YES
Measure 13, Compensation: YES
Measure 14, Vacancies: YES
Measure 15, Administrative Departments & Functions: YES
Measure 16, District Court Clerk: YES
Measure 17, Elective County Clerk: YES
Measure 18, Elective County Assessor: YES
Measure 19, Intergovernmental Relations Coordinator: YES
Measure 20, Limitations on Terms in Office: YES
Measure 21, County Auditor: YES
Measure 22, Revenue Bonds: YES
Measure 23, Primary Elections: YES
Measure 24, Charter Review Committee: YES
Measure 25, Citizens Involvement: NO
Measure 26, Running for Office in Mid-term: YES
Measure 27, Concurrence Required for Action: YES

Respectfully submitted,

Stephen C. Bauer
Margaret Campbell-Rivers
Mary D. Condiotte
Karen McMahon
Paul R. Meyer
Mary A. Overgaard
David K. Singer
Robert L. Wolf, Chairman
Approved by the Research Board for transmittal to the Board of Governors. Received by the Board of Governors on October 10, 1984 and ordered published and distributed to the membership for discussion and action on November 2, 1984.

APPENDIX A

Members Of The County Charter Review Committee

Florence Bancroft
Chad Debnam
Penny Kennedy
Leeanne MacColl
Anne Porter, Vice Chair
Rev. Frank Shields, Chair
John Vogl

Tanya Collier
Marlene Johnsen
Marcia Pry
Roger Parsons
Linda Rasmussen
Paul Thalhofer

Staff: Robert J. Castanga, Project Manager
Maribeth McGowan, Secretary

APPENDIX B

Persons Interviewed

Florence Bancroft, Member, Charter Review Committee
Arnold Biskar, County Commissioner
Clyde Brumme, representing Citizens for Fair Government
Dennis Buchanan, County Executive
Don Clark, former County Executive
Vicki Ervin, County Clerk
Rick Gustafson, Executive Officer, Metropolitan Service District
Leeanne MacColl, Member, Charter Review Committee
Gladys McCoy, County Commissioner
Rev. Frank Shields, Chairman Charter Review Committee
Jim Wilcox, County Assessor

Bibliography

* Comments of Gladys McCoy before the Charter Review Committee - 11-2-83
* Letter from Henry Kane dated 8-20-84
* Testimony of Earl Blumenauer before the Charter Review Committee
* Memorandum from E. Blumenauer to Review Committee RE: Philosophical Approach to Charter Review
* Various pamphlets, reports and other papers provided by the Charter Review Committee
* City Club Reports on Measure No. 1 (9-3-82), on Measures Nos. 26-15, 26-16, 26-17, 26-18, and 26-19 (10-20-78), Charter Amendment Revising Elective Officer, Terms, Compensation, and other Matters (Measures No.) (5-5-82).
Information Report on
A THREE-YEAR SERIAL LEVY:
INCREASES JAILS, CORRECTIONS, PROSECUTION, JUVENILE SERVICES
(Multnomah County Measure 28)

Question: "Shall Multnomah County be authorized to levy $5,150,399 outside constitutional limits each year for 3 years commencing in 85/86?"

Explanation: "The measure authorizes Multnomah County to levy $5,150,399 each year for fiscal years 1985/1986 through 1987/1988, totaling $15,451,197. The serial levy would be outside the limitation of Article XI, Section II of the Oregon Constitution. The money would be deposited in a county special revenue fund to be used to supplement other county resources for corrections, juvenile services and the district attorney expense budget."

I. INTRODUCTION

This measure is identical to the Justice Services levy, defeated by the voters in May. The measure was submitted to the voters by the Multnomah County Commission upon the recommendation of the Justice Coordinating Council, a body appointed by the Commission to deal with corrections issues. The measure provides a balanced approach, with substantial amounts being devoted to both jail beds and alternatives to incarceration. As proposed, it is anticipated that the money would be spent as follows:

<table>
<thead>
<tr>
<th>Program</th>
<th>No. Persons Per Year</th>
<th>No. Beds</th>
<th>Start-Up Cost</th>
<th>3-year Operating Cost</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Claire Argow Center</td>
<td>240</td>
<td>60</td>
<td>$79,000</td>
<td>$2,999,000</td>
<td>20%</td>
</tr>
<tr>
<td>2. Courthouse Jail</td>
<td>1260</td>
<td>70</td>
<td>33,000</td>
<td>1,459,000</td>
<td>10%</td>
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<td>3. Work Release / Restitution Center</td>
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<td>60</td>
<td>10,000</td>
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<tr>
<td>4. Mental Health Center</td>
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<td>28</td>
<td>1,000</td>
<td>2,406,000</td>
<td>16%</td>
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<td>5. Alcoholism Treatment Facility</td>
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<td>60</td>
<td>1,000</td>
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<td>6. Pre-Trial Release Supervision</td>
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<td>7. Close Street Supervision</td>
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<tr>
<td>8. Sentencing Sanction</td>
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<td>9. Day Labor / Community</td>
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<td>408,000</td>
<td>3%</td>
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<td>10. Diversion &amp; Prevention Services for Juveniles</td>
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<td>10</td>
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<td>446,000</td>
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<td>11. Youth Sobering Program</td>
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<td></td>
<td>540,000</td>
<td>3%</td>
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<tr>
<td>12. District Attorney Funding</td>
<td></td>
<td></td>
<td></td>
<td>462,000</td>
<td>3%</td>
</tr>
<tr>
<td>13. Non-Collectible Property Taxes</td>
<td></td>
<td></td>
<td></td>
<td>800,197</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>4,645</td>
<td>288</td>
<td>$124,000</td>
<td>$15,327,197</td>
<td>100%</td>
</tr>
</tbody>
</table>

If the levy passes, the annual cost to the taxpayer would be 28.5 cents per thousand dollars of assessed value. An average-priced Multnomah County home having an assessed value of $59,520 would pay an additional $17 per year in property taxes.
In 1972 the Portland City Jail was closed and the Multnomah County Courthouse Jail was refurbished to serve as a centralized booking and pre-arraignment holding facility. At the same time, renovations at Rocky Butte Jail increased capacity at that facility to 425 beds. Additions to the Multnomah County Correctional Institute at Troutdale (MCCI) and the opening of the Claire Argow Women's Detention Center (Claire Argow) in 1973 increased total jail capacity to 673 beds. Court orders in 1979 and 1981 reduced total jail capacity to 525. In November of 1983 the Multnomah County Detention Center (Justice Center) was opened and Rocky Butte, the Courthouse Jail and Claire Argow were closed. The present system, including the Justice Center and MCCI, has a capacity of 664 jail beds.

While the precise figures are not available, it is clear that over the past 10 years the number of offenders convicted of misdemeanors and felonies in the county has substantially increased. There has been no corresponding increase in jail beds. The available number of beds in Multnomah County has actually declined as a result of overcrowding at the state level.

The need for additional jail beds is also affected by recently passed laws requiring mandatory jail terms. Specifically, a Portland City ordinance recently took effect which requires jail sentences for convicted prostitutes. State legislation, effective July 1, 1984, requires that those convicted of Driving Under the Influence of Intoxicants (DUII) must choose between a 48 hour jail term or 80 hours of community service.

In September of 1983, the Multnomah County Commissioners requested that the Justice Coordinating Council make recommendations regarding jail overcrowding. The plan developed by the Council added 278 jail beds to the system and a proposed reduction of bed need by 120 as a result of enhanced alternatives to incarceration for as many as 4,000 offenders each year. The Council's report was a compromise between various factions of the corrections community, and was the basis for the levy. After the report was submitted to the Multnomah County Commissioners, two juvenile programs and additional funding for the District Attorney were added to the plan, as the Council had not been directed to report on those areas. In addition to the plan described in its report, the Council concluded that there is a need in Multnomah County for "additional permanent correctional facilities."

III. PREVIOUS CITY CLUB ACTION

On May 4, 1984, the membership voted to support the City Club Committee's recommended "yes" vote on the Justice Services levy. Because the November measure is identical to the measure defeated in May, the Club's Research Board saw no need for additional research and asked that this summary of the May report be prepared and submitted to the membership for information only. Copies of the full report are available upon request at the City Club office.

Respectfully submitted,
LAW & PUBLIC SAFETY STANDING COMMITTEE
NOTES