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REPORT
ON
CONSTITUTIONAL AMENDMENT:
$96 MILLION BONDS FOR
STATE - COUNTY PRISON BUILDINGS
Report on
CONSTITUTIONAL AMENDMENT: $96 MILLION
BONDS FOR STATE-COUNTY PRISON BUILDINGS
(State Measure No. 5)

Question: "Shall the constitution allow $96 million state bond debt and additional county debts to establish joint state-county prisons?"

Explanation: "Constitutional amendment: Authorizes a $96 million state general obligation bond debt to establish a fund to finance joint state-county prisons. Also allows counties to incur debts for the same purpose. Laws may be passed to govern the way in which the amendment will be carried out by the state and counties. State bonds will be paid from funds appropriated by the legislature or by property taxes. Refunding of state bonds allowed."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

Oregon shares with the remainder of the United States a serious problem of overcrowding in our jails, prisons, and other correction facilities. (1) Federal judges in several jurisdictions, including Oregon, have ruled that overcrowding must be discontinued and that substandard facilities must be improved either by expansion of facilities, by release of prisoners, or by closing outdated facilities. At least 17 counties in Oregon are under court orders relating to prison overcrowding.

Ballot Measure 5 was authorized by the 1985 Oregon legislature when it passed House Joint Resolution 36. The measure, if passed, would authorize the State of Oregon to issue general obligation bonds in an amount not to exceed $96 million for the purpose of creating a fund to be known as the State-County Corrections Building Fund. (2) The Fund would be used to provide financing for designing, acquiring, constructing, equipping or improving facilities to be used jointly for the imprisonment of both state and county inmates.

The measure provides that the bonds and interest thereon may be paid from any state funds so designated for that purpose by the legislative assembly; however, if no funds are designated for that purpose, the measure

1. The term "prisons" refers to state corrections facilities; "jails" refers to county corrections facilities.

2. The state has a constitutional limit on the amount of general obligation debt it may incur. Therefore, a constitutional amendment is required before the state may issue additional bonds.
requires the legislature to levy an annual ad valorem tax on taxable property in the state to provide for payment. The measure also includes a broad supersedeas clause. (3) There is no provision in the measure for operating costs associated with the new facilities.

The 1985 legislative assembly also passed House Bill 2982. (4) That bill will become effective only if Ballot Measure 5 is passed. HB 2982 establishes the procedure by which agreements are to be negotiated between the state and participating counties for siting and operating regional state-county correction facilities. The bill divides the state into four regions (5) and provides that at least one state-county corrections facility shall be established by the State of Oregon through the Corrections Division in each of the four regions (but only upon agreement with the governing body of the county in which the facility is to be located, and with such other counties within the region as wish to participate), and that one additional facility may be established in each region. The bill further provides that the Corrections Division shall lease a portion of bed space in the facilities to the counties of the regions in which the facilities are established and shall reserve a portion for state use. (6) The cost to the counties for leasing the bed space will be established as part of the agreement between the Corrections Division and the participating counties. Two of the regional facilities would be established by conversion of the Oregon State Correctional Institution (in Region Two) and the Eastern Oregon State Correctional Institution (in Region Four).

HB 2982 also creates the Corrections Facility Financing Authority ("CFFA"). The CFFA will consist of seven members: the state treasurer or
designee, the administrator of the Corrections Division or designee, and five members appointed by the governor. The CFFA shall have the authority to approve or disapprove any agreement entered into to establish state-county correction facilities under the measure and to administer the State-County Corrections Facility Building Fund, as well as to issue the bonds authorized by the measure.

HB 2982 also provides for a sinking fund to provide for the payment of the principal and interest upon bonds issued under the proposed amendment. Each year the Department of Revenue shall determine the amount of revenues and other available funds to fund the sinking account and the amount of taxes, if any, that should be levied to meet the requirements for repayment. The bill also allows a sentencing judge to order that a convicted felon pay $40 and a convicted misdemeanant pay $20 toward retirement of the bond debt.

II. HISTORY AND BACKGROUND

A. Existing Corrections Facilities

Adult corrections in Oregon are administered on state and local levels. On the state level, the Corrections Division is responsible for the supervision of all persons convicted of a felony by the circuit courts who either are placed on probation or confined to one of Oregon's correctional institutions. The Corrections Division also is responsible for the administration and operation of state correctional facilities. Counties are responsible for the incarceration and supervision of misdemeanants (although selected misdemeanants also may be assigned to the supervision of the Corrections Division). Counties also are responsible for housing pre-trial prisoners and pre-sentence convicts, both felons and misdemeanants.

The Corrections Division operates four state prisons and three minimum security correctional facilities, and provides four special treatment wards at the Oregon State Hospital in Salem. State correctional facilities housed 3,705 inmates as of February 7, 1986 (see chart, below). The four state prisons are the Oregon State Penitentiary (OSP), the state's only maximum-security correctional facility located on a 22-acre site in the middle of residential Salem; the Oregon State Correction Institution (OCI), a medium-security prison located in a semirural setting six miles east of Salem; the Oregon Women's Correctional Center (OWCC), the state's only state-operated security facility for women located adjacent to the OSP; and the Eastern Oregon State Correctional Institution (EOCI), presently under final development on the outskirts of Pendleton. In 1985, an inmate's average length of stay was 18 months at OSP, 20.4 months at OCI, and 14.4 months at OWCC.

7. Based upon their seriousness, crimes are classified as either misdemeanors or felonies. A misdemeanor is a less serious crime with a maximum prison term of one year. ORS 161.545. A felony is a more serious crime for which a person may be sentenced to a maximum prison term of more than one year. ORS 161.525.
OSP, first built in 1866, was rebuilt extensively in 1968 following a serious riot. It now has a single-cell capacity of 1,067 (8), with two of four cell blocks currently double-celled and an additional building converted to dormitory space because of overcrowding.

OCI opened in 1959 with a single-cell capacity of 476 (9), but nearly all cell space is now double-celled, and every dayroom has been converted to housing because of overcrowding. As a matter of policy, first-time convicted male offenders are sent to OCI, but overcrowding forces immediate transfer of many of those offenders to OSP. If Ballot Measure 5 is passed, HB 2982 provides that OCI shall be converted to a state-county correction facility in its region.

OWCC, a medium-security facility, was opened in 1964 with a single-cell capacity of 76 (now increased to 80). (10) All of the cells presently are doubled because of crowding.

EOCI, formerly the Eastern Oregon State Hospital, is in the process of being converted for use as a medium-security prison with a single-cell capacity of 350. Although EOCI will not formally be opened until June 1, 1986, it already has 124 beds in use. If Ballot Measure 5 is passed, HB 2982 provides that EOCI shall be converted to a state-county corrections facility in its region.

The "minimum-security" facilities operated by the Corrections Division allow inmates to move about outside their facility without constant supervision. Oregon's oldest minimum security facilities, the Farm Annex, located on a 2,089-acre farm five miles southeast of Salem, and the Tillamook Forest Camp, located 80 miles from Salem in Tillamook County (11), are under direct supervision of the OSP. The Farm Annex has a capacity of 200, and the Tillamook Forest Camp, originally designed for 65, currently houses 100 inmates in rudimentary cabins. Male inmates at the Forest Camp work on long-range reforestation projects or are trained to combat major forest fires throughout the state. The Corrections Division Release Center (CDRC), opened east of Salem in 1977, is another minimum-security facility. CDRC and its auxiliary Women's Release Unit (WRU), on the grounds of the Oregon State Hospital, accept men and women within 10 months of intended release to engage in community reintegration programs. CDRC capacity is 290; WRU capacity is 50.

8. Actual capacity, including 373 "special beds," was 1,704 on February 7, 1986 (see chart, below).

9. Actual capacity, including 60 "special beds," was 1,007 on February 7, 1986 (see chart, below).

10. Actual capacity, including 4 "special beds," was 119 on February 7, 1986 (see chart below).

11. The Farm Annex was begun in the early 1900s, and the Tillamook Forest Camp was established in 1951.
The Corrections Division's primary facility for treatment of special problems is located at the Oregon State Hospital (OSH), with a capacity of 117 beds. (A 48-bed special handling unit within OSP handles those who pose too great a security risk for transfer to OSH.) Admission is selective to one of four programs that treat alcohol and drug abusers, mentally and emotionally disturbed persons, sex offenders, and mentally retarded persons.

Among the Corrections Division's other responsibilities are the supervision of offenders who have been placed on probation or on parole from a state institution, the supervision of release services and work furloughs, the supervision of aid to counties participating in the Community Corrections Act, and inspection of juvenile and adult detention facilities. Currently, the Corrections Division has responsibility for supervision of more than 30,000 offenders, mostly male (12)—about one out of every 39 adult males living in the State of Oregon. (13)

The overall average operating cost of maintaining an inmate in an Oregon prison today is $40.50 per day, or $14,783 per year. (The figures exclude amortization of capital investment.) The chart below shows the number of individuals and the actual cost for each day and year per individual housed by each state correctional facility. (14)

The primary source of operating revenue for the state corrections programs is the state's General Fund. The General Fund allocation for the Corrections Division in the 1985-87 biennium is $163 million. A number of programs and staff positions have been reduced or eliminated because of the loss of federal funds, reallocation of funds within the Corrections Division, and a decrease in spending power due to inflation. (Ballot Measure 5 does not provide for any operating funds.)

Once EOCI is fully open, the design capacity of state institutions (i.e., the intended capacity when the facilities were designed), will be 2,659 beds with one bed per cell and 473 beds for special needs, e.g., serious disciplinary or medical cases (see chart above). Felons convicted of less serious offenses, misdemeanants sentenced to incarceration, those accused of crimes who are awaiting trial, and convicted criminals awaiting sentencing are held in local jails. On February 11, 1986, Oregon's city and county jails had a capacity of 2,380 inmates. (15) However, a total of 2,621 inmates actually were incarcerated on that date—1,945 felons (75%) and 676 misdemeanants (25%).

12. On February 1, 1986, 87.5% of such offenders were male and 12.5% were female.

13. In 1987, approximately 35% of the criminals under the Corrections Division's authority actually were in prison. In 1985, only 22% were incarcerated.


15. As defined by court order and by corrections officials.
<table>
<thead>
<tr>
<th>FACILITY</th>
<th>DESIGN CAPACITY</th>
<th>SPECIAL BEDS*</th>
<th>OCCUPANCY 2/7/86</th>
<th>COST/DAY</th>
<th>COST/YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>OSP Main Plant</td>
<td>1,067</td>
<td>373</td>
<td>1,704</td>
<td>$36.60</td>
<td>$13,359</td>
</tr>
<tr>
<td>Farm Annex</td>
<td>200</td>
<td>220</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forest Camp</td>
<td>65</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OCI</td>
<td>476</td>
<td>60</td>
<td>1,007</td>
<td>44.77</td>
<td>16,341</td>
</tr>
<tr>
<td>OCCI General</td>
<td>314</td>
<td>36</td>
<td>100</td>
<td>57.48</td>
<td>20,980</td>
</tr>
<tr>
<td>(when open)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OWCC</td>
<td>80</td>
<td>4</td>
<td>119</td>
<td>66.41</td>
<td>24,240</td>
</tr>
<tr>
<td>CDRC</td>
<td>290</td>
<td>310</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WRU</td>
<td>50</td>
<td>27</td>
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<td>37.02</td>
<td>13,512</td>
</tr>
<tr>
<td>OSH Wards</td>
<td>117</td>
<td>117</td>
<td>118</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Housing</td>
<td>2,659</td>
<td>473</td>
<td>3,705</td>
<td>$40.50</td>
<td>$14,783</td>
</tr>
</tbody>
</table>

* Special beds are those used for discipline, administrative segregation, special handling, and medical purposes.

It is difficult to estimate the cost per bed of constructing new facilities, since there are so many variables in site location, size, and degree of security. The Corrections Division estimates the cost per cell in 1986 dollars to construct maximum, medium and minimum security facilities to be about $85,000, $65,000, and $37,000, respectively. Those estimates, however, include only the costs of constructing and equipping a new facility, not the cost of operating it. Experts estimate that the costs of operating a medium or maximum security facility will match the initial construction costs every four or five years.

B. Crowding in Oregon's Prisons

Oregon's crowding problem became severe in the mid-1970s, when several trends in corrections and criminal justice resulted in more offenders being sentenced to prison and detained longer. First, the number of young men in Oregon aged 15 to 29 rose sharply. That number—known as the prison risk population—historically has been the most reliable predictor of future prison population available to Oregon correctional officials. Second, the public and the legislature began adopting a harder line toward convicted felons, demanding tougher policies. Mandated minimum sentencing (the matrix system) was adopted by the legislature in 1977 and resulted in longer prison terms. The range of prison terms is defined in the matrix system by means of a grid that takes into account both the severity of a crime and the risks involved with a criminal's release. Third, Oregon's police began giving a larger share of their attention to violent offenses against persons and doubled the rate of arrests in such cases.
The end result was that the total amount of time served by the average offender under the Corrections Division's authority—whether on probation, in prison, on furlough, or on parole—approximately doubled. Prison populations soared; state facilities became severely crowded. The State of Oregon enacted policy changes that added beds in already occupied cells and in areas not designed for housing, attempted to divert offenders from prison commitment, accelerated movement through the system to speed release, and finally created additional space by opening three more wards at the Oregon State Hospital, by opening the Corrections Division Release Center and its auxiliary Women's Release Unit, and by authorizing creation of the Eastern Oregon State Correctional Institution.

Suit was brought against the state by the Prisoners' Legal Services of Oregon contending, in part, that double-celling was unconstitutional. (16) On August 22, 1980, U.S. District Court Judge James M. Burns ruled in favor of the prisoners and ordered the state to reduce the combined population at OSP, OCI and the Farm Annex by 750 men by March 31, 1981. Through earlier parole of the less serious offenders and extensive use of a new 90-day work furlough, the Parole Board and the Corrections Division took steps to comply with the court order while the state appealed the decision in higher courts.

By February 1, 1981, the population had been cut back substantially and showed promise of nearing the Burns quota. At that time, the U.S. Supreme Court suspended the Burns order, pending the outcome of an Ohio case involving double-celling. In August 1981, the Ninth Circuit Court of Appeals remanded the Oregon prison overcrowding case back to Judge Burns in light of a California case decided by the Ninth Circuit Court and the Supreme Court. That case ruled that double-celling is not necessarily "cruel and unusual punishment" in violation of the U.S. Constitution. A new trial was set, and was resolved on December 30, 1982 when Judge Burns issued an opinion that the number of persons housed did not violate the Constitution although it did, in his opinion, constitute "penological lunacy."

Oregon was making an effort to address problems with its criminal justice system long before the double-celling litigation came to a head in the early 1980s. In October 1975, Governor Straub appointed a task force to study and address Oregon's corrections problems, specifically the overcrowding of state facilities and the inadequacy of local jails. The result was the implementation of the Community Corrections Act, passed in the Oregon legislature in 1977. The stated purposes of the Act were to provide appropriate sentencing alternatives and to improve local services for offenders. The Act made funds available from the General Fund and the Corrections Division's Field Services budget to counties that wanted a local program of alternatives to incarceration in state institutions.

16. "Double-celling" is putting more than one person in a cell designed for single capacity. Overcrowding becomes a legal issue if it allegedly deprives prisoners of constitutional guarantees.
When it became clear that the Community Corrections Act and other policy changes were insufficient to resolve the overcrowding problem, a second task force, the Governor's Task Force on Regional Corrections Facilities, was formed. The Task Force report in February 1980 found that crowding constituted an absolute crisis in corrections and recommended construction of two 750-bed regional prisons to house felons in the custody of the State Corrections Division. The 1980 special session of the legislature authorized referral of an $85 million bond measure to the voters; in November 1980, the measure was defeated by a 60,000 vote margin. The defeat was attributed to the lack of an organized campaign by elected officials, a lack of detail as to how the funds would be used, a panic response to a federal mandate, and too high a cost. Two years later, the 1981 legislature again addressed the prison crowding problem and referred a $60 million bond measure to the voters. In March of 1982, that measure, too, was defeated. Local measures, most notably Multnomah County Measure No. 5 for $15,451,000 in November 1984, met with similar results.

Other efforts have been made over the past several years by the legislature to avoid the necessity of building new prisons and to solve the overcrowding problem. Those include: mandatory presentence reports for all felons; pretrial diversion into community service or participation in self-enhancement programs; retroactive application of redefined drug offenses to reduce sentences; enactment of the 90-day work furlough or "terminal leave," later expanded to 180 days; changes in parole procedures and increases in probation and parole staff; authorization of warehouse conversion to dormitory space at OSP; and authorization of Eastern Oregon State Hospital conversion to medium-security prison housing.

Despite those efforts, the crowding problem—on both state and local levels—continues. On January 1, 1975, 2,001 inmates were held in state facilities; 11 years later, on January 1, 1986, the number was 3,714 (an 86% increase). In 1975, 6,688 offenders under Corrections Division supervision were participating in alternative programs (diversion, probation, furlough, parole); 11 years later, the number had grown to 24,049 (a 260% increase). At least 17 of Oregon's 36 counties currently are under court order to restrict the population of their jails.

In Multnomah County, the county jail (70-bed capacity) and the Clare Argow Center (60-bed capacity) were closed in 1982 when the county opened the Justice Center in downtown Portland. Designed to hold a maximum of 476 inmates, the Justice Center was 70 persons over capacity in December 1985. A major reason for the overcrowding in Multnomah and other county jails is the pretrial detention of individuals. Sixty-nine percent of the jail population in Multnomah County alone is awaiting trial or sentencing.

17. Such overcapacity is normally short-term, usually occurring just before the weekend when the courts are closed. The Multnomah County Commissioners have approved funding for a proposal to reopen the county jail in the Multnomah County Courthouse one weekend a month to relieve the overcrowding.
C. Ballot Measure 5

Sponsored by State Representative Jim Hill of Salem, Ballot Measure 5 is a response to the perceived concerns that Oregonians have about prison overcrowding, the high rate of crime in the state and inadequate incarceration of criminals. If passed, the measure would authorize $96,000,000 for the construction of an estimated 1,200 additional medium-security beds to help relieve the overcrowding problem in Oregon's state prisons and local jails. (18)

The estimated number of 1,200 additional beds has no particular significance in itself. The extent of the actual need for additional space is unknown. Currently, construction costs per medium-security bed are estimated to be about $65,000. Allowing for inflation, it is estimated that by 1990, the cost will have risen to $80,000 per bed. Representative Hill and backers of the measure felt it unlikely that voters would approve any measure for more than $100 million. (Twelve hundred is the nearest round number that, when multiplied by $80,000, comes closest to $100 million without reaching it.)

III. ARGUMENTS IN FAVOR OF THE MEASURE

1. The need for additional prison/jail space is critical at the state level and in many of the counties. Ballot Measure 5 would provide more beds.

2. Convicted offenders and people awaiting trial, many of them dangerous to society, are being released for lack of space.

3. Ballot Measure 5 and HB 2982 would provide a mechanism to coordinate the relative need of counties and the state for space. Their provisions are flexible and allow counties and the state to develop and operate a broad range of corrections facilities, ranging from minimum to maximum security.

4. New facilities would be constructed or provided on an "as needed" basis. A county need only lease additional space from the state to the extent of its actual needs. Counties not requiring facilities do not have to engage in the program.

5. Ballot Measure 5 would give individual counties the option of obtaining corrections facility space without an initial outlay of capital funds.

6. The commission that would be created by HB 2982 to implement the use of the bonds authorized by Ballot Measure 5 and to oversee the construction of new facilities could be a vehicle to help bring about efficient reorganization of Oregon's criminal justice system. The close cooperation that would be created between the state and counties would promote a more unified statewide system.

18. According to Bob Moore, Oregon's Deputy State Treasurer, an additional $96 million in the state's bonded indebtedness would not have a significant impact on the state's bond rating.
7. Additional prison/jail space would provide judges with sentencing alternatives they insist they need for an effective system of criminal justice.

8. Crime in Oregon results in annual losses to the public estimated to be significantly greater than the annual cost of servicing the proposed debt. Ballot Measure 5 could provide space for the incarceration of criminals at a significantly lower cost to society. The additional jail/prison space would be cost effective when compared with the alternative cost to society and to the victims of crime.

9. Additional space in jails and prison would remove more criminals from society, perhaps reducing the rate or amount of crime.

IV. ARGUMENTS AGAINST THE MEASURE

1. The entire state criminal justice system is in need of substantial reformation and reorganization. Ballot Measure 5 is not part of a comprehensive solution to the jail/prison problem. Fundamental questions surrounding our whole justice system should be addressed before more jail space is built. (See Section V(B)(2)(a), below.) At best, additional space would provide a temporary relief to overcrowding without solving the underlying problems.

2. There are no reliable data regarding the nature and extent of the need for additional jail and prison space. There is no process for coordinating the use of existing jail/prison space. Until Oregon can develop a more accurate risk assessment method and a coordinated punishment/risk management sentencing policy, reliable statewide decisions cannot be made.

3. Measure 5 does not provide funding for operating expenses associated with new facilities. Those funds must come either from the state and county operating funds or from the imposition of additional taxes at the state and/or county level.

4. Not every county in the state has an overcrowding problem. Under the existing system, some existing county facilities may be underutilized while state or other county facilities may be overcrowded. The fragmented nature of the criminal justice system is not affected by the measure. Building of regional facilities may not necessarily be the answer.

5. Ballot Measure 5, when examined in context, is misleading and may be perceived to provide much more than it actually does. Legislators and voters may be unwilling to authorize the other steps and procedures that will be necessary to provide the additional space or to consider other alternatives that may be more cost-effective.

6. Ballot Measure 5 provides only for the construction of new security facilities. Counties may more effectively and efficiently resolve overcrowding problems by use of non-incarcerative options, such as fines, community service orders, restitution programs, and halfway houses.
7. HB 2982 provides that a sinking fund must be established as soon as the bonds are issued to guarantee payment of principal and interest. The sinking fund must be fully funded each year. If there are not enough general funds available to do so, an ad valorem property tax must be levied to make up the difference.

8. Public funding may not be the appropriate vehicle to fund the construction of new facilities. Other methods of creative financing, as well as private funding, may provide more prudent and less costly ways to construct additional jail space.

9. Passage of this measure is likely to have little, if any, effect on the rate or amount of crime.

10. The supersedeas clause of Ballot Measure 5 is far too broad.

V. DISCUSSION

Your Committee agrees that the arguments identified above, both pro and con, fairly present both sides of Ballot Measure 5. Your Committee further agrees generally that the arguments on each side are valid and should be considered by the voter. Therefore, although the committee is split on the conclusions and recommendations that should be drawn from the arguments, the majority and minority have prepared an integrated discussion.

A. Is There a Need for Additional Jail/Prison Space in Oregon?

Although there are those who believe additional space is not the most efficient and effective use of available funds, the overwhelming consensus is that Oregon's present criminal justice system needs more space. The need is critical at the state level and in many of the counties. In February 1986, state correction facilities were at 140% of design capacity. In 1975, there were 2,001 inmates incarcerated in state facilities, while in 1986 there are 3,714. The only state facility built in the last 20 years is EOCI. In the last 11 years, the number of convicted criminals in alternative sentencing programs has increased 260%. (19)

Overcrowding is a county issue as well as a state issue. At least 17 of 36 counties currently are under orders to restrict their number of new inmates or to alleviate overcrowded conditions. Multnomah County, while not under such an order, had 1,069 jailbeds and 9,405 felony convictions in 1971. In 1985, it had 662 jailbeds and 15,941 felony convictions. (20)


20. One criminal may be convicted of more than one felony.
Those accused of crimes, both misdemeanors and felonies, are held in county jails before trial. Those convicted of crimes are kept in county jails until they are sentenced by a judge. Due to overcrowding, many persons accused of crimes and awaiting trial are released either for lack of jail space or for substandard jail conditions. Those so released often include repeat offenders with several prior arrests and convictions. At the other end, convicted criminals frequently are placed on parole or probation prematurely in order to relieve overcrowding. Judges sometimes are unable to send a convicted felon to state prison because there is no room.

A convicted criminal may be sentenced to a maximum of one year in a county jail. Longer sentences may be served only in state facilities. However, a criminal sentenced to one year in jail often serves more time than a criminal sentenced to a significantly longer time in prison due to overcrowding. As judges sentence more criminals to jail rather than prison to ensure they serve time, the county jails experience an even greater crowding problem.

B. Is Ballot Measure 5 an Appropriate Response to that Need?

1. What Measure 5 and HB 2982 Provide.

Oregon has a need for additional prison space at the state level and for additional jail space in many counties. Ballot Measure 5 will create more space at both levels directly relieving at least a portion of that need. The measure and HB 2982 provide flexibility between the state and the counties in meeting their combined needs in each of the four regions established by HB 2982. A county need only participate in a regional prison/jail project if it has need for such facilities. The decision to participate is made locally. Ballot Measure 5 and HB 2982 also allow coordination of the particular kind of facility needed in each region, i.e., minimum-security, medium-security or maximum-security space.

The cost of the county jail space will be paid for by those counties with the need for space. Counties not requesting facilities do not have to engage in the program. The measure and the house bill do not eliminate other alternatives available to the counties for dealing with accused and convicted criminals, but rather give the counties an additional option to obtain jail space without an initial outlay of capital funds. HB 2982 provides that the cost to counties for space leased in the joint facility may not exceed the actual cost of establishing, maintaining and operating the bed space.

21. For example, prisoners in Lane County filed a suit against the county claiming unfit jail conditions. Earlier this year, a federal court ordered the county to close one of its jails by April. The County was forced to release some prisoners.

22. One in every three state inmates released will return to a state facility. Two-thirds of the present county jail population are repeat offenders.
Additional space at both the county and the state level would give judges more latitude in sentencing criminals. Currently, judges often are limited in the number of criminals they may send to state prison facilities due to lack of space. Further, as discussed above, a judge may be reluctant to send a convicted felon to state prison if a longer sentence actually would be served if the felon were sentenced to county jail. With additional space at the state level, more convicts could be sentenced to prison, relieving some of the overcrowding at the county level.

HB 2982 provides for the creation of a commission, the Corrections Facility Financing Authority ("CFFA"), to implement and supervise the use of the bonds authorized by Ballot Measure 5. Before any bonds can be issued, an agreement must be executed between the state and participating counties. That agreement must set forth the method of financing any proposed expansion or improvement, provide for operations and servicing of the associated debt, as well as designate the siting within the region. Bonds cannot be issued until the CFFA approves the agreement and its terms. Any proposal for additional space will require state and county coordination and mutual approval.

The CFFA could be a vehicle to help bring about efficient reorganization of Oregon's criminal justice system. The state-county facilities would require close cooperation and would promote a more unified statewide system.

2. What Ballot Measure 5 and HB 2982 Do Not Provide.

The major problems with Ballot Measure 5 are that it fails to address a comprehensive plan to meet the needs of our criminal justice system, it fails to provide for operating costs, and, when examined in context, it is misleading.

a. Ballot Measure 5 and HB 2982 Do Not Address a Comprehensive Plan.

Oregon's criminal justice system resembles a patchwork quilt. According to William Probstfield, Sheriff of Washington County, "our system has become the victim." The four components of the justice system—law enforcement, prosecution, courts, and corrections—often work independently of one another. The funding source of each component varies; the cities and counties provide law enforcement through police, the state and counties finance the prosecution and court components, and counties as well as states provide space and funds for corrections. Although there is a perceived need for additional space of some kind, the nature and extent of that need is unknown. There is no clear documentation that up to 1,200
beds or $96 million will solve or resolve the overcrowding situation that now exists in both state and county facilities. (23)

The ballot measure does not address the most central questions of jails/prisons: What are prisons for and who should be incarcerated? There is no policy discussion in the measure; there is no coordination between punishment and risk management. Risk management covers the spectrum of alternatives to incarceration, a major component of our state corrections system. Punishment includes incarceration; yet the state-adopted matrix system as a means for determining who should be incarcerated and for how long does not apply to county jails. Prisons and jails are separate and independent entities whose populations are determined by circuit and district courts. The fragmented nature of the state's criminal justice system is not affected by the measure.

Not every county in the state has an overcrowding problem. Under the existing system (that would not be changed by the measure), some existing county facilities may be underutilized while those of the state or other counties may be overcrowded. Until the justice system as a whole is coordinated, the numbers and needs of offenders documented with reliable data, and a suitable social-sanction model defined, the construction of additional jail/prison space is unwarranted.

b. There Is No Provision For Operating Funds.

Ballot Measure 5 and HB 2982 do not address the critical issue of operating funds. The $96 million in bonds are for "bricks-and-mortar" construction only. Operational funds for new regional facilities will have to come from existing general funds at both the state and county levels or from additional levies and taxes. For operational funds to be allocated from existing general funds, other funded programs will have to be cut or curtailed. Some of those programs, especially in Human Services and Education, may have a direct impact on the crime rate. (24)

23. The three state prison institutions are the most severely overcrowded. Many county jails have sufficient space. Multnomah County alone has two facilities, Clair argow and the county jail with up to a combined 135 available beds, that could be operated immediately if funding by the county was appropriated. Portland businessmen Bill Naito and Melvin "Pete" Mark, Jr. and Gresham dentist Michael McKeel filed an initiative petition on March 18, 1986 to fund operating costs for those two facilities through a .035% business tax increase. The initiative, if 13,916 valid signatures are gathered by mid-July, will appear on the November general election ballot.

24. An additional concern that will affect spending levels of General Funds is the reductions in federal aid to the states required by the federal Gramm-Rudman Law. The cost of state and county programs no longer federally funded will have to be absorbed locally if they continue.
In addition to operating costs, it is not clear from the measure and the House bill exactly what construction costs, if any, will be passed on to the counties in the lease agreements. HB 2982 provides that the cost to the counties may not exceed the actual cost of establishing, maintaining and operating the bed space. It is possible that the CFFA may interpret "establishing" to include a portion of, if not all, costs incurred in building, constructing or improving facilities, and to require counties to absorb those costs in the leasing agreements. (25)

c. The Measure Is Misleading.

Ballot Measure 5 is misleading and may be perceived to provide much more than it actually does. As discussed above, it does nothing more than authorize the state to issue bonds to build additional facilities. Operating and maintenance funds at the state level and leasing expenses at the county level will have to come from existing tax revenues or from additional taxes in the future. Legislators and voters may be unwilling to authorize additional expenditures necessary to fund proposed facilities. The bonds may never be issued.

If voters view the passage of Ballot Measure 5 as the "answer" to our current problems, they may reject other suggestions or proposals regarding the criminal justice system. Counties can more effectively and efficiently resolve overcrowding problems by use of nonincarcerative options, such as fines, community services, restitution programs and halfway houses. If the measure is passed, counties may fail to develop and fund such alternatives.

The backers of the measure estimate the bonds would provide an additional 1,200 beds. However, even if bonds are issued and additional space provided, it is possible there will be no net gain of prison beds. As overcrowding continues and existing facilities become inadequate, the additional space may be needed to replace rather than add to existing space, therefore simply retaining the status quo.

Finally, the supersedeas clause of Ballot Measure 5 (see footnote 3), apparently inserted to give counties the authority to enter into the long-term leases authorized by HB 2982, goes much further than that. There is some concern that the broad language potentially could create a whole new spectrum of problems and conflicts for both counties and cities.

25. Section 1(2) of HB 2982 defines "establish" as follows: "to create state-county corrections facilities by purchase, lease, gift, grant, devise, construction, installation, reconstruction, repair and alteration, and to equip, improve or expand any such facilities."
C. Effect of the Additional Space on Oregon's Overall Need and the Effect on the Taxpayer

1. Effect of Additional Space on Oregon's Overall Need

The effect of additional jail space on Oregon's needs depends directly upon how one defines the need. Oregon's criminal justice system has many needs. Those include reduction of crime, appropriate punishment of offenders, apprehension of more criminals, development of more and better alternatives to incarceration, a rational method of allocating expensive prison space, and a reduction of prison overcrowding. Additional prison beds would address some of those needs and would be of questionable or no value to others.

There is controversy over whether or not additional beds would affect the amount of crime or the number of criminals in Oregon. It is possible that more space and longer sentences would be a deterrent to crime. Additional space would remove more criminals from society, preventing them from committing crimes. However, although there is some evidence to the contrary, it appears there is no strong basis to conclude that the addition of more prison beds would have a significant impact on the crime rate or the number of criminals.

2. Effect on the Taxpayer

Passage of Ballot Measure 5 would have no immediate effect on the taxpayer. The measure authorizes, but does not require, the issuance of the bonds. HB 2982 provides that the bonds cannot be issued, in whole or in part, until agreements are in place for the construction location, the financing of the bonds, and the operation of the proposed facilities. If agreements are not reached, no bonds will be issued.

Once bonds are issued, HB 2982 requires that a sinking fund must be established to guarantee payment of principal and interest and must be fully funded each year. Those amounts also must be paid by the taxpayers. As is usual with general obligation bonds, the bill requires the state to levy a property tax to make up the difference should there be insufficient general funds available. However, a property tax is unlikely based upon the state's usual method of budgeting such sinking fund requirements from the General Fund, which derives primarily from income taxes.

In today's market conditions, the annual debt service on $96 million of bonds would be in the range of $10 to $11 million per year over a 20-year period, for a total debt service of $200 to $220 million (assuming all bonds were issued). The annual cost of operating additional facilities with a 1,200 bed capacity is estimated at $16 to $18 million per year. The total annual cost for debt service and operation is therefore estimated to be $26 to $29 million per year. (26)

In addition to state funding for debt servicing, participating counties must arrange to lease their portion of combined facilities. The taxpayer

26. Figures provided by Bob Moore, Oregon Deputy State Treasurer.
therefore may have to pay part of the annual cost at both the local and state level. Although HB 2982 provides that some additional revenues will come from an imposition of a $40 fine on felons and a $20 fine on misdemeanants, it is estimated that those fines would raise only about $1.5 million per year. The additional revenue needed to pay for debt service and operating costs must come either from existing state and local services or from an increase in state and local taxes or a combination thereof. (27) If revenues to pay debt service and operating costs could not be found, the bonds could not be sold.

Oregonians currently spend over $700 million each year in taxes for our state and local criminal justice system. On the other hand, crime in Oregon results in annual losses to the public estimated to be significantly greater than the annual cost of servicing the debt associated with Ballot Measure 5. (28) Although full funding of Ballot Measure 5 would increase the total expenditures of the criminal justice system by approximately only 4%, there is no way to predict the net impact of additional space on the taxpayer.

Finally, bonds may not be the most cost-effective way to finance additional space. Other forms of creative financing or joint public/private funding options could be considered and analyzed. Many other states have turned to alternative financing for public facilities; in fact, some states contract operations of jails/prisons to third-person private parties.

VI. MAJORITY CONCLUSION

The Majority agrees that the arguments against the measure are valid. However, in evaluating the merits of the measure, the Majority believes that some action in the right direction is better than no action at all. Ballot Measure 5 responds directly to a well-recognized need in Oregon for more prison and jail space. Oregon's criminal justice system is in critical need of reorganization and reformation to define its goals and to make more effective and efficient use of available resources. Although Ballot Measure 5 is not an answer or solution to that need, at least it is a first step toward alleviating our current overcrowding problems and resolving the fragmented corrections system. Ballot Measure 5 is the only show in town. To vote "no" is to do nothing.

27. The state treasurer has estimated that a property tax of 15 cents per $1,000 assessed value would be sufficient to pay the debt service on $96 million. Such a tax would cost the owner of a $70,000 house approximately $10.50 per year.

28. State Representative Jim Hill estimates the annual loss to the public at $250 million.
VII. MAJORITY RECOMMENDATION

The Majority recommends a "Yes" vote on Ballot Measure 5.

Respectfully submitted,

Richard Barasch
Roger Giles
James V. Norlen
John M. Wight
Christine Kitchel, Chair

FOR THE MAJORITY

VIII. MINORITY CONCLUSION

The merits of the measure must be weighed against its failures and the possibility that better and more effective proposals or alternatives addressing an integrated criminal justice system might be precluded. Ballot Measure 5 is an ill-conceived response to fears and concerns about the inadequacy of our criminal justice system. It addresses no comprehensively defined need, makes incomplete provisions for its own implementation, and leaves crucial financial questions unanswered, both obvious and inherent. The "only show in town" is in reality a no-show. To vote "yes" is to abdicate the citizens' right to a coordinated corrections program.

IX. MINORITY RECOMMENDATION

The Minority recommends a "No" vote on Ballot Measure 5.

Respectfully submitted,

Thomas R. Stanwood
Katherine N. Wheeler

FOR THE MINORITY

Approved by the Research Board on April 11, 1986 for transmittal to the Board of Governors. Received by the Board of Governors on April 15, 1986 and ordered published and distributed to the membership for discussion and action on May 2, 1986.
APPENDIX A

I. Persons Interviewed

Don Clark, Director, Central City Concerns
Joyce Cohen, Oregon State Senator
Hazel G. Hays, Chair, Oregon State Board of Parole
Jim Hill, Oregon State Representative
Gretchen Kafoury, Multnomah County Commissioner
Stefan J. Kapsch, Professor, Reed College, and former Executive Director, Oregon Prison Overcrowding Project
The Honorable William J. Keys, Multnomah County District Court Judge
DeeDee Kouns, President, Citizens for Justice/ Crime Victims United
Robert Kouns, Executive Advisor, Citizens for Justice/ Crime Victims United
Mark Kramer, St. Andrews Legal Clinic
Ed Lindquist, Clackamas County Commissioner
DeeDee Kouns, President, Citizens for Justice/ Crime Victims United
Robert Kouns, Executive Advisor, Citizens for Justice/ Crime Victims United
Mark Kramer, St. Andrews Legal Clinic
Ed Lindquist, Clackamas County Commissioner
Hardy Meyers, Chairman, Oregon Prison and Overcrowding Project
Tom Mitchell, Vice President, Investment Division, First Interstate Bank of Oregon
Bob Moore, Oregon Deputy State Treasurer
Wes Myllenbeck, Chair, Washington County Commission
Olmsted Deke, Director, Multnomah County Department of Justice Services
Alan Orr, Lieutenant, Portland Police Bureau, Training Division
Fred Pearce, Sheriff of Multnomah County
William Probstfield, Sheriff of Washington County
Rabbi Emanuel Rose, Chairman, Justice Coordinating Council
Michael D. Schrunk, District Attorney for Multnomah County
Steve Sherburne, Executive Director, Citizens for a Safe Oregon
Robert Skipper, Chief of Corrections, Multnomah County
Paul Snider, Association of Oregon Counties
Thomas G. Toombs, Administrator, Oregon Corrections Division
Martin Winch, Staff Assistant to Multnomah County Commissioner Pauline Anderson.

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