

ANNOTATED MINUTES

*Tuesday, September 27, 1994 - 1:15 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

SPECIAL MEETING

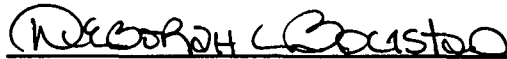
Vice-Chair Tanya Collier convened the meeting at 1:17 p.m., with Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present, and Chair Beverly Stein excused.

S-1 Request for Approval of a RESOLUTION of the Board of County Commissioners of Multnomah County, Oregon, Awarding the Sale of General Obligation Library Bonds, Series 1994B; in the Aggregate Principal Amount of \$9,000,000

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF S-1. DAVID BOYER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. HOWARD RANKIN COMMENTS. RESOLUTION 94-184 UNANIMOUSLY APPROVED.

There being no further business, the meeting was adjourned at 1:22 p.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**



Deborah L. Bogstad

*Thursday, September 29, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:35 a.m., with Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present, and Vice-Chair Tanya Collier excused.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-12) WAS

UNANIMOUSLY APPROVED.

AGING SERVICES DIVISION

- C-1 *Ratification of Intergovernmental Agreement Contract 100145 Between Multnomah County and Tri-Met, Providing an Estimated 73,147 Door-to-Door Rides for Frail Elderly Persons to Go to Medical Appointments, Obtain Other Needed Services and to Attend Meal Sites, for the Period July 1, 1994 through June 30, 1995*

COMMUNITY AND FAMILY SERVICES DIVISION

- C-2 *RESOLUTION in the Matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person Into Custody*

RESOLUTION 94-185.

- C-3 *Ratification of Intergovernmental Agreement Contract 103345 Between Multnomah County and the City of Portland, Providing Funds for Youth Employment and Empowerment Project (YEEP) Services, for the Period July 1, 1994 through June 30, 1995*
- C-4 *Ratification of Intergovernmental Agreement Contract 103445 Between Multnomah County and Parkrose High School District Number 3, Providing Child and Adolescent Mental Health Services, for the Period September 1, 1994 through June 30, 1995*
- C-5 *Ratification of Intergovernmental Agreement Contract 103465 Between Multnomah County and Centennial School District Number 28J, Providing Child and Adolescent Mental Health Services, for the Period September 1, 1994 through June 30, 1995*
- C-6 *Ratification of Intergovernmental Agreement Contract 103475 Between Multnomah County and Barlow-Gresham Union High School District Number U2-20 JT, Providing Child and Adolescent Mental Health Services, for the Period September 1, 1994 through June 30, 1995*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-7 *ORDER in the Matter of the Execution of Deed D951063 Upon Complete Performance of a Contract to Robert L. Golden*

ORDER 94-186.

- C-8 *ORDER in the Matter of the Execution of Deed D951064 Upon Complete Performance of a Contract to Palmer O. Peterson*

ORDER 94-187.

- C-9 *ORDER in the Matter of Contract 15770 for the Sale of Certain Real Property to Mary A. Harper, 1/2 and Glenn E. Harper, 1/2*

ORDER 94-188.

- C-10 *Ratification of Intergovernmental Agreement Contract 301085 Between the Oregon Department of Transportation and Multnomah County, Providing Preliminary Engineering and Construction Financing for the NE 207th Avenue Connector/Units 2 & 3, and Authorizing the County's Share of the Project to be Deposited in the State Local Government Pool When Requested*

DEPARTMENT OF HEALTH

- C-11 *Ratification of Intergovernmental Agreement Contract 200875 Between Multnomah County and Oregon Health Sciences University, Providing Obstetrical and Gynecological Consultation Services to County Clients, for the Period November 1, 1994 through October 31, 1995*

NON-DEPARTMENTAL

- C-12 *Ratification of Intergovernmental Agreement Contract 500105 Between the Oregon Emergency Management Division and Multnomah County, Establishing a Work Plan to Receive Federal Grant Monies through the Federal Emergency Management Assistance Program, for the Period October 1, 1994 through September 30, 1995*

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 *PROCLAMATION in the Matter of Proclaiming October 23 through October 31, 1994 as RED RIBBON WEEK in Multnomah County, Oregon*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-1. GARY SMITH READ PROCLAMATION AND INVITED BOARD TO PARTICIPATE IN OCTOBER 7TH RED RIBBON KICK OFF CELEBRATION. PROCLAMATION 94-189 UNANIMOUSLY APPROVED.

SHERIFF'S OFFICE

- R-2 *First Reading of a Proposed ORDINANCE Amending MCC 5.10.020(A) to Change the Liquor License Application Fees to Conform with the Fee Limitations Set by ORS 471.210(4)*

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF THE FIRST READING. BOB BARNHART EXPLANATION AND RESPONSE TO BOARD QUESTIONS. NO ONE WISHED TO TESTIFY. FIRST READING UNANIMOUSLY APPROVED. SECOND READING SCHEDULED FOR THURSDAY, OCTOBER 6, 1994.

DEPARTMENT OF HEALTH

- R-3 *Budget Modification MCHD 2 Requesting Authorization to Increase the Homeless Children Program Budget to Reflect Receipt of a Family Planning National Priority Grant for Additional Outreach Worker Time Targeted at Increasing Hispanic/Latino Male Involvement in Family Planning and Sexually Transmitted Disease Prevention in Northeast Portland***

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. CONSUELO SARAGOZA EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-4 *Budget Modification MCHD 3 Requesting Authorization to Move Positions to Correct Organizations, Reflect Changes in Job Classifications Following Personnel Actions Since Budget Submission, and Reconcile Reduced Revenue Projections from the Substance Abuse Program Medicaid Revenues***

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-4. TOM FRONK EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-5 *Request for Approval of a Notice of Intent to Apply for Implementation Phase Funding of the Robert Wood Johnson Foundation "Making the Grade" Grant for the Expansion of School Based Health Centers***

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-5. DIANE RUMINSKI EXPLANATION AND SUBMITTAL OF REVISED MEMORANDUM. NOTICE OF INTENT UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

- R-6 *RESOLUTION in the Matter of Relinquishing Responsibility for the Multnomah County Fair to the Friends of the Multnomah County Fair***

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-6. BETSY WILLIAMS EXPLANATION AND RESPONSE TO BOARD QUESTIONS. SANDI HANSEN TESTIMONY ADVISING THAT ALL CONDITIONS METRO/MERC HAD WITH COUNTY FOR 1994 COUNTY FAIR WILL BE CONTINUED FOR 1995 FAIR, ALLOWING THE FAIR PROVIDERS FREE USE OF THE FACILITY. CHAIR STEIN THANKED METRO AND MERC FOR THEIR CONTRIBUTIONS TO THE FAIR. GREG FLAKUS, FRANK KNAPP AND RICK PAUL TESTIMONY IN OPPOSITION TO BOARD APPROVAL OF RESOLUTION PENDING FRIENDS OF FAIR REVIEW OF FINANCIAL STATUS AT MEETING SCHEDULED FOR OCTOBER 6, 1994. MR. FLAKUS AND MR. PAUL RESPONSE TO BOARD QUESTIONS. MS. WILLIAMS RESPONSE TO TESTIMONY AND BOARD QUESTIONS. BOARD COMMENTS AND DISCUSSION REGARDING COUNTY PAYING 1994 FAIR DEFICIT AND BEGINNING OPERATING BALANCE FOR 1995 FAIR. BOARD CONSENSUS TO WITHDRAW MOTION AND SECOND. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY APPROVED THAT R-6 BE CONTINUED TO THURSDAY, OCTOBER 13, 1994.

PUBLIC COMMENT

R-7 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

The meeting was recessed at 10:21 a.m. and reconvened at 10:30 a.m.

*Thursday, September 29, 1994 - 10:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

BOARD BRIEFINGS

B-1 Ballot Measures That Will be Voted on at the 1994 General Election With Major Impacts on Multnomah County Government: Measure 5 (Requiring Voter Approval of Tax and Fee Changes), Measure 13 (Prohibiting Legislating Protection for Homosexuals), Measure 15 (Mandating State Funding Level for Schools), and Measure 20 (Substituting a Transaction Tax for All Other Taxes and Governmental Revenues). Presented by Dave Boyer, Barry Crook, Larry Kressel and Dave Warren.

**BARRY CROOK, DAVE BOYER, LARRY KRESSEL, KEN
UPTON AND DAVE WARREN PRESENTATION AND
RESPONSE TO BOARD QUESTIONS AND DISCUSSION.**

B-2 *Early Childhood Development/Ready to Learn Benchmark Plan, Parents as Teachers Program. Presented by Multnomah Commission on Children and Families, Pauline Anderson, Cornetta Smith and Helen Richardson.*

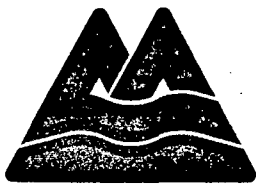
**RESCHEDULED FOR 10:30 AM, TUESDAY, OCTOBER 11,
1994.**

There being no further business, the meeting was adjourned at 11:05 a.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**



Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN •	CHAIR	• 248-3308
DAN SALTZMAN •	DISTRICT 1	• 248-5220
GARY HANSEN •	DISTRICT 2	• 248-5219
TANYA COLLIER •	DISTRICT 3	• 248-5217
SHARRON KELLEY •	DISTRICT 4	• 248-5213
CLERK'S OFFICE •	248-3277	• 248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

SEPTEMBER 26, 1994 - SEPTEMBER 30, 1994

Tuesday, September 27, 1994 - 1:15 PM - Special Meeting Page 2

Thursday, September 29, 1994 - 9:30 AM - Regular Meeting Page 2

Thursday, September 29, 1994 - 10:30 AM - Board Briefings Page 4

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen by Paragon Cable subscribers at the following times:

*Thursday, 6:00 PM, Channel 30
Friday, 10:00 PM, Channel 30
Saturday, 12:30 PM, Channel 30
Sunday, 1:00 PM, Channel 30*

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

Tuesday, September 27, 1994 - 1:15 PM

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

SPECIAL MEETING

- S-1 Request for Approval of a RESOLUTION of the Board of County Commissioners of Multnomah County, Oregon, Awarding the Sale of General Obligation Library Bonds, Series 1994B; in the Aggregate Principal Amount of \$9,000,000 (1:15 PM TIME CERTAIN, 10 MINUTES REQUESTED.)*
-

Thursday, September 29, 1994 - 9:30 AM

*Multnomah County Courthouse, Room 602
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REGULAR MEETING

CONSENT CALENDAR

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PUBLIC COMMENT

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Thursday, September 29, 1994 - 10:30 AM

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

BOARD BRIEFINGS

- B-1 *Ballot Measures That Will be Voted on at the 1994 General Election With Major Impacts on Multnomah County Government: Measure 5 (Requiring Voter Approval of Tax and Fee Changes), Measure 13 (Prohibiting Legislating Protection for Homosexuals), Measure 15 (Mandating State Funding Level for Schools), and Measure 20 (Substituting a Transaction Tax for All Other Taxes)*

and Governmental Revenues). Presented by Dave Boyer, Barry Crook, Larry Kressel and Dave Warren. (30 MINUTES REQUESTED.)

B-2 *Early Childhood Development/Ready to Learn Benchmark Plan, Parents as Teachers Program. Presented by Multnomah Commission on Children and Families, Pauline Anderson, Cornetta Smith and Helen Richardson. (15 MINUTES REQUESTED.)*

MEETING DATE SEP 29 1994

AGENDA NUMBER B-1

AGENDA PLACEMENT FORM

SUBJECT: Briefing on Ballot Measures Proposed for the 1994 General Election

BOARD BRIEFING: Date Requested: September 29

Amount of Time Needed: 30 minutes

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: _____

DEPARTMENT: Nondepartmental DIVISION Budget & Quality / Finance / County Counsel

CONTACT: Barry Crook, Dave Boyer, Larry Kressel, Dave Warren TELEPHONE : 248-3883

BLDG/ROOM: _____

PERSON(S) MAKING PRESENTATION: Barry Crook, Dave Boyer, Larry Kressel, Dave Warren

ACTION REQUESTED

☒ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Briefing on ballot measures that will be voted on at the 1994 General election with major impacts on Multnomah County government: Measure 5 (requiring voter approval of tax and fee changes), Measure 13 (prohibiting legislating protection for homosexuals), Measure 15 (mandating state funding level for schools), and Measure 20 (substituting a transaction tax for all other taxes and governmental revenues).

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Devolby Steen jr

OR

DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

BOARD OF
COUNTY COMMISSIONERS
1994 SEP 22 PM 12 45
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

PLANNING & BUDGET
PORTLAND BUILDING
1120 S.W. FIFTH - ROOM 1400
P. O. BOX 14700
PORTLAND, OR 97214
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: September 22, 1994

REQUESTED PLACEMENT DATE: September 29, 1994

SUBJECT: Briefing on Proposed Ballot Measures of Major Import to the County

I. Recommendation / Action Requested:

Briefing

II. Background / Analysis:

Attached is a brief memorandum summarizing all the measures.

There are four ballot measures that the Board has not previously discussed that also appear to have major impacts on Multnomah County. They will be the focus of the briefing.

Measure 5 -- restricting increases in taxes and fees without a vote,
Measure 13 -- prohibiting state or local government from legislating protections for homosexuals,
Measure 15 -- requiring the Legislature to preserve revenue available to schools at the 1993-95 level,
Measure 20 -- substituting a 2% transaction tax for all other taxes and fees of government.

A fuller packet of information about these measures, from State agencies, financial advisers, and others, is being put together and photocopied. It should be in the hands of the Board by Monday, September 26.

III. Financial Impact:

We will discuss this in the briefing.

IV. Legal Issues:

We will discuss these during the briefing

V. Controversial Issues:

The measures are all controversial.

VI. Link to Current County Policies:

Measure 5 will make it difficult to implement the policy on user fees which envisions using these fees to offset the cost of providing services

Measure 13 runs counter to personnel and training policies.

VII. Citizen Participation:

N/A

VIII. Other Government Participation:

N/A



MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

BUDGET & QUALITY
PORTLAND BUILDING
1120 S.W. FIFTH - ROOM 1400
P. O. BOX 14700
PORTLAND, OR 97214
PHONE (503)248-3883

TO: Board of County Commissioners
FROM: Barry Crook, Budget and Quality Manager
DATE: September 22, 1994
SUBJECT: Review of the Ballot Measures Proposed for November 1994

Measures 1 and 2 do not exist. In accordance with a new law, measures will be numbered consecutively until the number reaches 99, when the numbering will begin again. The hope was to avoid people voting for Measure 5 at election after election.

Measure 3 -- A constitutional amendment that changes from twenty to sixty-one days the length of time before a general election that a position must become vacant to be filled at that general election. **No negative fiscal impact on the County.** The infrequency with which this occurs leads to the conclusion that the potential savings will also be rare and small.

Measure 4 -- A constitutional amendment that causes a legislator who is convicted of a felony to be removed from office and prohibits someone serving a sentence for a felony from being elected or serving in the legislature. **No negative fiscal impact on the County.** As with Measure 2, such occurrences are unusual enough that the potential costs will also be rare and small.

Measure 5 -- A constitutional amendment that requires all new or increased taxes and most new or increased fees and charges to be approved by voters. **Although the immediate fiscal impact on the County will be small, the measure presents administrative problems in attempting to keep fees at a level sufficient to support services.** This measure will increase the length of time it takes to increase fees or throw fee decisions off the budget cycle, thereby increasing the complexity associated with maintaining the ratios of cost recovery. Should voters not approve the fee increases, these ratios will degrade and General Fund support will, of course, have to be increased -- or force the Board to consider dropping the service the fees were designed to support. County Counsel and the Attorney General have opined on the complexities of the issue. Several other background analyses have been prepared by financial advisors. Finance has contracted with David M. Griffiths and Associates, Ltd. to review fees it may be worthwhile to consider raising before this measure takes effect, and their preliminary recommendations will be available by September 29.

Measure 6 -- A constitutional amendment that restricts the ability to make campaign contributions to residents of the district for which a candidate seeks office. **No major negative fiscal impact on the County.**

Measure 7 -- A constitutional amendment that prohibits a government from denying equal protection of the laws due to race, color, religion, gender, age, or national origin. **No major negative fiscal impact on the County.**

Measure 8 -- A constitutional amendment that eliminates "employer pick-up" of six percent contribution to pension plans. **No negative fiscal impact on the County.** The County could realize financial savings if the measure is passed at the expense of reducing employees' net compensation by 6%-8% (depending on whether the employee contribution is considered taxable income). The savings for all funds on a full year basis would be approximately \$8 million; the savings in General and Levy funds would be roughly half that amount. About half of these savings would occur in 1994-95.

Measure 9 -- A statutory amendment that limits contributions to candidates from individuals, PAC's, and other organizations. **No major negative fiscal impact on the County.**

Measure 10 -- A constitutional amendment that requires a 2/3 vote of the legislature to reduce a criminal sentence that has been established by voters. **No immediate negative fiscal impact on the County.** In the long run, the tendency of such a requirement will be to put serious pressure on the State to find sufficient prison beds. This requirement could have a secondary impact on the County if other services are cut at the State level to fund prison operations. It could also be the case that the State will be forced to release greater numbers on probation, possibly without adequate funding, in order to make room for felons that cannot be released. It is also possible that the State, as another way of finding bed space for those who must be held, could require local governments to house sentenced offenders who are now a State responsibility.

Measure 11 -- A statutory amendment that sets mandatory minimum prison sentences without early release for murder, manslaughter, assault, kidnapping, rape, sodomy, unlawful sexual penetration, sexual abuse, robbery. **Potential costs if the State is required to increase prison beds. The probability is that probation funding would be at risk of reduction to cover these increased State institutional costs.** The amount is difficult to estimate. As the implementing legislation based on Measure 10, this would be the first set of crimes with sentences determined by voters. Whether the crimes of minors that will be tried in adult court under this measure would increase or decrease prosecution costs is also unknown

Measure 12 -- A statutory amendment that repeals statutory requirements that hourly wages paid by contractors and subcontractors on public works be equivalent to the prevailing wage in the same trade and locality. **No negative fiscal impact on the County.** Estimates of **potential** savings, *over time*, range from 10% to 15% of construction costs on building projects (which could be as high as \$300,000-450,000 in General Fund construction at the 1994-5 level). Road and Bridge project savings are far more difficult to estimate. However, in the short run construction climate in the metropolitan area, lower costs are not likely; too many projects are chasing too few contractors.

Measure 13 -- A constitutional amendment that declares homosexuality wrongful sexual behavior, forbids establishing homosexuality as a protected status, prohibits public spending promoting or approving homosexuality. **No major negative fiscal impact on the County.** The Library would have to segregate and control access to "adult books about homosexuality." This will be especially difficult in branch libraries where no separation is now practiced between adult and children's' collections. Personnel issues may conceivably arise; section (2) (c) of the measure allows governments to "generally consider private lawful sexual behaviors as non-job

related factors, provided such factors do not disrupt the work place..." The County's diversity training and the policies it supports may be subject to scrutiny and potential revision as well.

Measure 14 -- A statutory amendment that imposes additional environmental restrictions on mining operations. **No negative fiscal impact on the County.**

Measure 15 -- A constitutional amendment that requires the legislature to support schools and community colleges at a level that guarantees them the same revenue (adjusted for inflation and enrollment) as they received in the 1993-95 biennium. **The measure is likely to present the legislature with a very severe long term requirement that will reduce their ability to sustain social and justice programs they have traditionally contracted with counties to perform.** This has the potential to require cuts in the 1995-97 biennium at the high end of the scale.

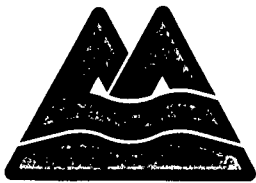
Measure 16 -- A statutory amendment that allows physician-assisted suicide. **No immediate negative fiscal impact on the County.** The County's medical client base is generally primary care patients. OHSU may experience legal difficulties either by prescribing "drugs to end life" or refusing to do so; because they are a primary partner with the County in CareOregon, this possibility could result in additional liability to the County.

Measure 17 -- A constitutional amendment that requires state prison inmates to work forty hours per week. **The measure might create potential costs if the State is required to increase work programs. The probability is that probation funding would be at risk of reduction to cover these increased State institutional costs.** This requirement will press the State to fund work crews and find suitable employment experiences. This requirement could have a secondary impact on the County if other services are cut at the State level to fund prison operations. It could also trickle down to us by either putting political pressure on us to do the same or to provide work opportunities the State can access.

Measure 18 -- A statutory amendment that restricts the legal methods of hunting bears and cougars. **No negative fiscal impact on the County.**

Measure 19 -- A constitutional amendment that excludes obscenity and child pornography from the category of constitutionally protected speech. **No negative fiscal impact on the County.**

Measure 20 -- A constitutional amendment that eliminates all existing taxes and governmental fees, imposes a 2% tax on "the gross value of all property, goods, and services at the time of transfer of ownership, title, or custody, whether by sale, vending, rental or lease, exchange by barter or other form of transfer, including installment purchases and whether the property is real or personal, tangible or intangible. The Purchaser of services and labor shall be liable to pay the Equal Tax on the gross amount paid for those services." The measure limits the revenue from the tax to the total revenue received in fiscal year 1992 adjusted for growth in population and inflation, permits an additional 1% equal tax at the local level for five years if approved by 60% of voters, requires a 60% vote to increase or repeal, and goes into effect January 1995. **Potential major immediate fiscal impact on the County. If it had been in place this fiscal year, it appears that it would have restricted the 1994-95 revenue of the County to approximately \$549 million, about \$41 million less than the Adopted Budget.** Its impact on the second half of 1994-95 is difficult to estimate, putting it into effect by January will be very difficult for the State. The ongoing revenue limit is also subject to many different legal interpretations. For example, the estimate above assumes that recoveries from the Federal government, including mixed Federal and State sources such as CareOregon, will continue at the 1994-95 level. If some of these sources are also subject to the measure, that is if the County or State cannot bill for those programs, or if changes in State resources impact match requirements at that level the revenue loss will be greater.



MULTNOMAH COUNTY OREGON

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1530
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN, CHAIR
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

MEMORANDUM

TO: Dave Warren, Manager
Budget Office (106/1430)

FROM: Laurence Kressel (106/1530)
County Counsel

DATE: August 30, 1994 *LK*

SUBJECT: Proposed Taxpayer Protection Initiative
(Proposed Measure 5)

COUNTY COUNSEL
LAURENCE KRESSEL
CHIEF ASSISTANT
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ASSISTANTS
J. MICHAEL DOYLE
SANDRA N. DUFFY
GERALD H. ITKIN
H.H. LAZENBY, JR.
STEVEN J. NEMIROW
MATTHEW O. RYAN
JACQUELINE A. WEBER

Among the measures on the November ballot will be the Taxpayer Protection Initiative (Measure 5). Known by some as "Son of 5," this constitutional amendment will have far reaching impacts on state and local government if it passes. Unfortunately, the measure uses many undefined terms that are likely to trigger confusion and litigation.

You asked a series of questions about the measure. Before answering, I think it would be useful to quote a recent summary of the measure by the Attorney General. Here it is.

I. The Proposed Measure.

The Measure, which its sponsors entitled the "Taxpayer Protection Initiative," would amend the Oregon Constitution to require voter approval of new taxes and of increases in taxes. The preamble to the measure states that the Measure's purpose "is to ensure that tax increases, which further deprive citizens of income and property, are hereafter directly approved by the people."

Paragraph 1 of the Measure would add a new Section 32a to Article I of the Oregon Constitution. The portion of this new section that would establish the voter approval requirement for the levy or increase of a tax states:

Notwithstanding any other provision of this Constitution, any new taxes or tax increases shall require approval by the people, as follows:

(1) No new tax shall be levied and no tax or tax rate shall be increased, by the state or by any local government or district, unless such tax or tax increase is first approved by a majority of the voters voting on the question. The question submitted to voters shall clearly describe the proposed new tax or increase and the reasonably estimated dollar amount of the proposed new tax or increase.

(2) Any elimination or reduction of tax exemptions, credits, deductions, exclusions, or cost-of-living indexing shall be considered a tax increase. Any extension of an expiring tax shall be considered a tax increase.

Proposed Art. I, sec. 32a, subsec. (1) and (2).

The measure contains no specific definitions of the terms "tax" or "taxes." Instead it identifies a limited series of revenues that are not to be considered taxes or tax increases for purposes of the Measure. This subsection provides:

(3) The following revenues shall not be considered taxes or tax increases for the purposes of this section: user fees charged by Peoples' Utility Districts or port districts; school, college, or university tuition and fees; incurred charges and local improvements as defined by Article XI Section 11b of this Constitution; other user fees paid voluntarily for specific services that are not monopolized by government; increases in charges for monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control; fines or forfeitures for violations of law; and earnings from interest, investments, state lottery proceeds, donations, or asset sales.

Proposed Art. I, sec. 32a, subsec. (3). By providing that the above revenues shall not be considered "taxes" or "tax increases," this subsection sets out the primary exceptions to the voter approval requirements of the Measure.

The Measure then would establish a broad residuary clause which states:

(4) Any state or local government fee or other charge not listed in subsection (3) shall be considered a tax for the purposes of this section.

Proposed Art. I, sec. 32a, subsection. (4). Consequently, the Measure would require voter approval for the levy or increase of **any** taxes or governmental fees or charges not listed in subsection (3), or otherwise specifically excepted under the Measure.

The Measure contains only two other provisions excepting increases of certain types of government revenue from the voter approval requirements. These state:

(7) This section shall not require a vote of the people when increases in government revenue occur solely due to changes in federal tax law, increases in income, increases in real market property values, or other changes in the circumstances of individual taxpayers.

(8) A tax base increase of no more than 6%, as allowed by Article XI, Section 11 of this Constitution, shall not require voter approval under this section.

Proposed Art. I, sec. 32a, subsec. (7) and (8).

Or. Atty. Gen. Op. No. 8229 (August 4, 1994) (Hereafter "Atty. Gen. Op.")

Now on to your questions.

QUESTION 1. The measure requires a vote to approve any new tax or increased tax rate. Would this impact multiple year serial levies, such as our jail and library levies, which have a fixed rate but an increased receipt?

ANSWER TO QUESTION 1.

No.

If the measure passes, additional voter approval would not be needed for an existing, fixed rate serial levy that produces increased revenue due to increases in property value.

First, the voter approval requirement in the proposed measure is redundant of existing law. That is, the voters have already approved the serial levies. ORS 280.060. Reapproval is unnecessary. See my answer to Question 3.

In any event, Proposed Measure 5 expressly exempts this type of revenue increase. Section 32 a (7) of the initiative states:

This section shall not require a vote of the people when increases in government revenue occur solely due to changes in federal tax laws, increases in income, increases in real market property values, or other changes in the circumstances of individual taxpayers. (emphasis added).

Given the emphasized language, a fixed rate serial levy would be unaffected by the proposed initiative. Any increase in revenue from this type of tax after passage of Proposed Measure 5 would be attributable to increases in real market property values. See Atty. Gen. Op. at 16.

QUESTION 2. Would the measure have an impact on a fixed amount serial levy (the same amount every year) which would have varying tax rates to produce the same dollar amount?

ANSWER TO QUESTION 2.

Possibly.

Proposed Measure 5 could have a potential impact on a fixed amount levy. The initiative imposes requirements on the wording of such a levy.

According to the Attorney General, there is a "tax" under Proposed Measure 5 whenever there is an increase in the tax burden on any individual taxpayer. Where government increases a tax for some payers but lowers it for others, so that total revenues are unchanged, a tax increase has still taken place (voter approval required; notice must be given). The initiative warrants that conclusion because (1) the preamble states that "any" tax increases

shall require approval by the people and section 32a(1) and (2) of the measure prohibit increases in any tax rate. See Atty. Gen. Op. at 41-42.

The Attorney General states:

If the overall tax liability imposed does not increase, but some payers of the tax must pay more, there is an increase in taxes for those taxpayers. Notwithstanding that the change in the tax structure causes a reduction in the tax burden of some (or even a majority) of the taxpayers, from the perspective of the adversely affected taxpayer, a "tax or tax rate [has been] increased." Atty. Gen. Op. at 42.

In the case of a fixed amount levy, as opposed to a fixed rate levy, the overall tax rate could vary in different years, depending on changes in county-wide property values. Thus, there is a potential that some taxpayers would pay more in one year than in prior years. For example, a taxpayer whose property value does not change in a year the County increases the rate (due to a county-wide reduction on property values) will pay more that year. I read Proposed Measure 5 to require that voters be advised of this possibility.

To comply with the initiative, the county measure submitted to the voters would have to "clearly describe the proposed new tax or increase and the reasonably estimated annual dollar amount of the proposed new tax or increase." Section 32(a)1.

QUESTION 3. Does passage of a levy by a vote of the people override any further question about annual changes in rate or amount that result when the levy is actually applied? (You inform me that the County's current levies are both fixed rate levies.)

ANSWER TO QUESTION 3.

As explained above (Question 1), an existing fixed rate levy would not present further questions under Proposed Measure 5. On the other hand, the initiative would impose notice requirements for a measure submitting a fixed amount levy to voters. (Question 2).

QUESTION 4. Does a fee or tax that has a cost of living increase factored into its rate prior to passage of this initiative require voter approval if the measure passes? (If we had language in our ordinances and orders charging fees that indexed the amount of the charge to a 1994 amount plus the growth in CPI for urban

earners, for example, would voters have to approve these fees after the measure passed?)

ANSWER TO QUESTION 4.

Yes. A future fee increase pursuant to a cost of living index adopted before Son of 5 becomes law would require voter approval.

As a general rule, a constitutional amendment amends existing laws that are inconsistent with it. The Attorney General states, "[T]hus, the Measure would add a new constitutional condition, voter approval, to existing laws that create new taxes or increase taxes after the effective date of the Measure." Atty. Gen. Op. 15 53. (Note: Voter approval would be required for the post-Son-of-5 increase, not for the taxes imposed before passage of the initiative.)

Section 32a(2) states that "any elimination or reduction of tax exemptions, credits, deductions, exclusions or cost of living indexing shall be considered a tax increase. Any extension of an expiring tax shall be considered a tax increase." (emphasis added.)

Although this provision literally covers only "elimination or reduction" of tax relief provisions (credits, deductions, etc.), the Attorney General concludes that the measure also covers an indexing feature that increases taxes. See, e.g., ORS 468.315 (pollution permit fee adjusted according to CPI). The Attorney General states:

No provision in the measure affirmatively authorizes an increase in a tax, fee, charge or tax rate, without voter approval, in response to a change in a cost of living index. Accordingly, if the increase would otherwise be subject to the measure's voter approval requirement, the fact that it is triggered by a change in the cost of living index provides no insulation from that requirement. The effect of the measure would be to add a voter approval requirement to any automatic upward adjustment in the tax or charge based upon a cost of living index. Atty. Gen. Op. at 54¹

¹ As previously pointed out, if voter approval is required under Proposed Measure 5, the county measure must "clearly describe the proposed new tax or increase and the reasonably estimated annual dollar amount of the proposed new tax or increase." Section 32(a)1. (continued...)

QUESTION 5. After the measure passed, could fees or taxes including such cost of living indexes be presented once to the voters and, if they passed, remain in effect in perpetuity?

ANSWER TO QUESTION 5.

Yes.

In his recent opinion, the Attorney General answers this question affirmatively. He phrases the questions as "* * * whether the voters may approve an increase in a tax, but extend the effective date of that increase to some date in the future." He opines that Proposed Measure 5 would permit this "delayed increase" approach, subject to the requirement that the question put to the voters must "clearly describe the proposed * * * increase and the reasonably estimated annual dollar amount of the proposed * * * increase." Atty. Gen. Op. at 65-66. I concur in this conclusion.

QUESTION 6. If we wished to swap one kind of exemption for another after the measure passed, would such a swap require a vote of the people?

ANSWER TO QUESTION 6.

Probably.

As noted, section 32a(2) characterizes as a tax increase "any elimination or reduction of tax exemptions, credits, deduction, exclusions or cost of living indexing." The language is broad. The measure covers "any elimination" of an exemption. That being so, courts are likely to say that a "swap of exemptions" would trigger the voter approval requirement unless no taxpayer suffers an increased tax burden as a result of the "swap." On this point, The Attorney General states:

We also note that proposed Article I section 32a subsections (1) and(2), prohibit increases in any "tax rate" or "[a]ny elimination or reduction of tax exemptions, credits, deductions or exclusions. Each of these items may affect only a portion of the taxpayers subject to a particular tax, and each is the subject of occasional adjustment, up or down, by taxing units.

¹(...continued)

Satisfying that requirement for an indexed fee or charge could be challenging.

Adjustment of these and similar features of a tax is the method likely to be employed by a governmental unit seeking to adjust taxes paid by some taxpayers without affecting overall revenue from the tax. Yet, the Measure expressly prohibits increases in the tax rate or elimination or reduction of tax credits, exemptions, deductions, etc. without voter approval. The Measure appears to focus on preventing governmental action that results in increased taxes payable by any taxpayer, without a vote, except as provided in the Measure.

If the overall tax liability imposed does not increase, but some payers of the tax must pay more, there is an increase in taxes for those taxpayers. Notwithstanding that the change in the tax structure causes a reduction in the tax burden of some (or even a majority) of the taxpayers, from the perspective of the adversely affected taxpayer, a "tax or tax rate [has been] increased." Atty. Gen. Op. at 41-42.

QUESTION 7. Section 32a(3) exempts "other user fees paid voluntarily for specific services that are not monopolized by government" from the limitations of the measure. Does this mean that increases in fees charged for clinic services in health or mental health programs would be exempt from the voting requirement?

ANSWER TO QUESTION 7.

Yes (probably).

This question brings into focus some key problems in applying the initiative. When read as a whole, Proposed Measure 5 suggests that exemptions from the vote requirement will be narrowly construed. Therefore, each word or phrase in an exemption is likely to get close scrutiny in contested situations.

The exemption in question is for (1) a user fee, (2) paid voluntarily, (3) for specific services (4) not monopolized by government.

Clinic fees probably fit within the exemption. They are user fees.² They are paid voluntarily, because citizens are not required by law to seek treatment. Finally, this type of service

² User fees are generally understood to include charges paid voluntarily in exchange for a particular government service that benefits the payor. 44 Atty. Gen. Op. 85, 218 (1984)

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is "not monopolized by government" because county clinics are not the only providers of care in the community.³

There are contrary arguments. It could be argued that low income patients in fact have no health-provider choices, and that therefore county clinics have a "monopoly." However, I doubt this position would prevail.

In looking at how courts might interpret this exemption, the Attorney General contends that the objective existence of some option to choose a non-governmental source of a service is the touchstone of the determination whether a user fee is "paid voluntarily for * * * services that are not monopolized by government." Atty. Gen. Op. at 20. The Attorney General adds that "[I]ndividual circumstances, such as a person's having sufficient money to exercise a legally available choice, do not appear to be a factor." Id. at 31. If that premise is correct, the user fee exemption would apply to county clinic fees, so long as non-county providers of the same services exist in the area.

QUESTION 8. Would a fee to recover the cost of cleaning up a nuisance defined by law or ordinance, such as mowing a lawn or towing an abandoned vehicle, be exempt from the voting requirement?

ANSWER TO QUESTION 8.

Yes.

This type of fee seems to fall squarely within the exemption for "fines or forfeitures for violations of law." Section 32a(3). This is a rare example of a clear answer to a question under Proposed Measure 5.

QUESTION 9. Would changes in admission fees to the County Fair require a vote?

ANSWER TO QUESTION 9.

No (probably).

The exemption that arguably fits is the one mentioned previously for clinic fees: "user fees paid voluntarily for specific services that are not monopolized by government." Section

³

There may be exceptions to this statement. I do not know whether some clinics provide unique services.

32a(3). Again there is room for debate about whether the Fair is a specific service "not monopolized by government."

The dictionary defines "monopoly" as:

1. Exclusive control of a commodity or service that makes possible the manipulation of prices.
2. The exclusive possession or control of something.
3. Something that is the subject of such control, as a commodity or service.
4. A company or group that has such control.
5. The market condition that exists when there is only one seller.

(Random House Webster's Electronic Dictionary and Thesaurus College Edition.)

Obviously, there is only one Multnomah County Fair. If the "service" for purposes of the proposed measure is defined as the county fair, we have a monopoly. (That would rule out the exemption for user fee increases.) However, if the service is instead defined more broadly as "fair entertainment", or entertainment generally, the exemption would apply because alternatives, such as other government fairs or similar events, are available.

The Attorney General takes a broad view of "service" in his recent opinion on the proposed measure, although he concedes his reading is not free from doubt. Discussing whether transit fare increases would be exempt from the measure, he says:

We regard a definition of the "service" as "public transportation" to be unrealistically restrictive. A constitutional amendment should be construed in accordance with its "broad general lines" to accomplish its policy objectives. (citation omitted). Among the objectives underscored by the Measure is to except charges from the voter approval requirement if the taxpayer has substantial choice to control the payer's payment to government by controlling the extent of the payer's use of the service. In many geographical areas of the state, the individual has a broad range of choice in deciding when and whether to use government-provided transportation. Atty. Gen. Op. at 31.

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Since transportation choice exists (personal autos, taxis), the Attorney General concludes that user fees for public transit would be exempt under proposed measure 5. Id.

Following the lead of the Attorney General, I believe an increase in the admission fee for the county Fair would be an exempt user fee under section 32a(3). As noted above with respect to clinic fees, the test is whether the taxpayer has substantial choice to control payment to government by controlling the extent of use of the service. There is choice in the marketplace. Citizens are under no compulsion to attend the county fair.

QUESTION 10. Section 32a also exempts increases in charges for "monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control." Does the phrase "state or local government labor cost" have a narrow meaning (the costs which we agree to through collective bargaining) or a broad meaning (any cost of employees, whether we have discretion or not in the amount). For example, if the State required Multnomah County to increase the percentage of payroll that we pay to PERS, would Multnomah County be prohibited from passing that increase through to users by increasing a fee because the PERS rate is a labor cost, or would a fee increase be possible because the PERS rate is a cost not under Multnomah County's control?

ANSWER TO QUESTION 10.

Before answering, it bears notice that this exemption covers only charges for products monopolized by government (e.g., water, electricity). It does not cover government services. I do not know the extent to which the County charges fees for monopolized products.

The phrase "state or local government labor costs" in this exemption probably would be construed to encompass pension mandates. That construction of the initiative would limit the scope of the exemption. The county would thus need voter approval to pass through the costs of a PERS mandate.

Your question requires a qualified answer because key phrases are not defined in the Measure. The exemption allows government to pass-through a limited class of costs ("wholesale inputs"). Labor costs, and other costs within the charging government's control, are expressly outside the class. Unfortunately, we do not know from the measure what "wholesale inputs" means or what the scope is of "labor costs."

One could argue back and forth over whether PERS assessments are part of "labor costs" (not exempt) or fit into the general category "costs not otherwise under the charging government's control" (exempt). On one hand, the phrase "charging government's control" suggests that a PERS mandate could be passed through, because the County has no control over PERS. On the other hand, most taxpayers probably feel that pension benefits, even though not locally controlled, are part of the compensation package given government workers. That would translate into a conclusion that a PERS assessment is a "labor cost" that cannot be passed through to citizens without a vote under Proposed Measure 5. I think this latter view is likely to prevail. See Ecuminical Ministries v. Oregon State Lottery Comm., 318 Or 551, 560-62 (1994) (words of common usage which are not defined in a measure typically are given their "plain, natural and ordinary meaning").⁴

The intent of this exemption seems to be to allow government to pass-through only a limited category of costs, and only for a government-made "product." Probably what the drafters had in mind were the increasing costs of raw materials or costs of plant maintenance, faced by government-run utilities, such as water or electric utilities. OLCC's costs for alcoholic beverages might be another example. The costs you ask about fall outside this realm. They seem more like labor costs. But there is room for debate on this point.

QUESTION 11. Section 32a(3) exempts "fines or forfeitures for violations of law from the voting requirement. Does "law" mean statute, or does an ordinance qualify as a law?

ANSWER TO QUESTION 11.

An ordinance is a local law. A fine for an ordinance violation would be exempt from the voting requirement.

QUESTION 12. Would imposition of an ordinance fining someone for an act or an omission require a vote?

Note that the measure expressly exempts increased government revenue due to changes in federal tax law, thereby allowing pass-throughs of various federal mandates on employers. Section 32a(7). But there is no comparable provision for state law mandates. The implication is that PERS mandate is not the kind of increase that local government can pass-through.

ANSWER TO QUESTION 12.

Under the initiative, fines for violations of law are not taxes. Section 32a(3). The initiative does not limit this exemption to fines for acts made unlawful before passage of the initiative. Therefore, an ordinance imposing a fine would not require a vote, regardless of the date of passage.

QUESTION 13. Would imposition of a fine for violation of an ordinance be exempt from the requirement for a vote if the ordinance was previously in place but no fine was previously imposed.

ANSWER TO QUESTION 13.

Same answer as above.

QUESTION 14. Section 32a(6) allows combination of multiple tax and fee changes into a single measure submitted to the voters. Could Multnomah County put on the ballot a measure that combined renewal of the library levy, renewal of the jail levy, and increases in all county originated fees?

ANSWER TO QUESTION 14.

Yes.

Section 32a (6) of the initiative states:

A government may combine requests for multiple tax and fee changes into a single measure submitted to voters. Such a combined measure shall be considered to embrace one subject.

This provision would override the apparently contrary requirement of ORS 280.090, which requires several serial levies to be voted on separately. (Howard Rankin, the county's bond counsel, agrees.) Constitutional amendments preempt or override conflicting statutes. Ladd & Tilton Bank v. Frawley, 98 Or 241, 252-53, (1920).

Assuming ORS 280.090 is overridden, there would be no impediment to the combination described in your question, other than the word limitations for ballot measures set forth in other state statutes. A multi-pronged measure combining serial levies with various fee increases would present a real challenge to the drafter of the ballot title (10 word caption, 20 word question, 175 word explanation) See ORS 310.390.

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I hope the above answers are helpful despite the array of caveats. I am not attaching the Attorney General's lengthy opinion on Proposed Measure 5 (77 pages), but I am attaching his summary (20 pages). I will make one copy of the summary available with the Board Clerk. She can make copies available to others on request. The AG opinion deals mainly with various state taxes, fees and charges, but it also touches on the impact this Measure will have on local government.⁵

cc Board of Commissioners
Sheriff
Auditor
District Attorney
Department Managers
(Clerk of the Board
Dave Boyer, Finance Admin.
Lorenzo Poe, Child & Family Services Division

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⁵ Among the conclusions affecting local government are:

1. An increase in professional or occupational licensing fees would require a vote;
2. An increase in building permit and land use planning fees would require a vote;
3. New or increased systems development charges would require voter approval (except in some instances);
4. Increases in public transit fees probably do not require a vote;
5. Charges imposed by one government against another do not require a vote;
6. An increase in the charge for public records would not require a vote unless the increase passes through increased labor costs.

SUMMARY OF ATTORNEY GENERAL'S OPINION
Ballot Measure 5
August 4, 1994

NOTE: This summary was prepared for convenience purposes only. It is a brief but not definitive statement of the conclusions in the opinion. For the complete legal analysis, refer to Opinion No. 8229.

INTRODUCTION

- This 77-page legal opinion concerns an initiative measure that will appear on the November 8, 1994 general election ballot as Measure 5. This measure would amend the Oregon Constitution to require voter approval of new taxes and of increases in taxes or tax rates.
- The opinion was requested by Senate President Bill Bradbury, on behalf of the Senate Revenue Committee.
- This is the ninth occasion since 1966 when the Attorney General was asked to review proposed tax initiatives.

CONSTRUING AN INITIATIVE MEASURE (pages 10-11)

- Our objective in construing an initiative measure is to determine the intent of the voters who pass on the measure.
- "The best evidence of the voters' intent is the text of the provision itself." However, the meaning of the terms in the measure cannot be assessed in isolation from the context in which the measure's drafters used those words.
- Because we examined the Measure before publication of the Voters' Pamphlet and any explanatory material or arguments concerning the Measure, the legal analysis cannot extend significantly beyond the Measure's text and context. The possibility remains that discourses about the Measure in the Voters' Pamphlet could yet create an additional "legislative history" on the meaning of the Measure that has the potential of materially affecting the conclusions stated in the opinion.
- The Measure includes a number of critical, but undefined, terms which sometime appear to overlap in meaning or not to contemplate the large variety of taxes, fees and charges that appear to be subject to the Measure. The opinion attempts to give common sense meaning to these terms, but we acknowledge that court may reach a different conclusion with regard to any particular tax, fee or charge.

- **THE EXCEPTIONS**

- Subsection (3) sets out the primary exceptions to the voter approval requirements. These exceptions are:

- ▶ user fees charged by Peoples' Utility District or port districts
- ▶ school, college, or university tuition and fees
- ▶ incurred charges and local improvements (as defined by Article XI section 11b of the constitution)
- ▶ other user fees paid voluntarily for specific services that are not monopolized by government
- ▶ increases in charges for monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control
- ▶ fines or forfeitures for violations of law
- ▶ earnings from interest, investments, state lottery proceeds, donations, or asset sales

- Subsection (7) exempts from the voter approval requirement:

- ▶ increases in government revenue that occurs solely due to changes in federal tax law
- ▶ increases in income, increases in real market property values, or other changes in the circumstances of individual taxpayers

- Subsection (8) exempts a tax base increase of no more than 6%, as allowed by Article XI, Section 11 of the constitution.

► For example, if the value of a parcel of property increases due to improvements made by the owner or adjacent development that enhances the property's value, the tax on the property could increase and voter approval is not required.

○ Increases in the Motor Vehicle Use Fuel Tax ("gasoline tax")

► The "gasoline tax" also falls within the class of core taxes that the typical voter would regard as a tax.

► The gasoline tax is not a user fee. Thus, it may not be increased with the approval of the voters.

○ Imposing or increasing a professional or occupational license fee

► This question calls for an examination of the Measure's impact on the licensing authority's ability to increase license fees charged to offset the cost of governmental activities to protect consumers. These fees cover the costs of proficiency exams, certification of minimum educational qualifications or experience, background checks or other verifications prior to issuing a license. The fees also cover the on-going regulation and investigation of licensees.

► Neither the exception for user fees or the exception for monopolized products would apply.

An individual does not have the option to choose a non-governmental source for these licensing services.

To extend the term "products" so far as to include a government agency's provision of all aspects of a licensing program would, in our opinion, stretch well beyond the ordinary meaning of the term.

○ Imposing or increasing local building permit or land use planning fees

► Local government bodies have authority to establish varying systems of fees for the review and approval (or denial) of building permit applications and requests for changes in land use.

► The fee discussed here pertains to a fee structure imposed either on a flat rate basis or some means of apportionment.

○ Imposing or increasing system development charges - *Qualified*

▶ Government units may impose charges designed to assure both that users bear their fair costs of establishing water, waste water disposal, drainage, transportation and parks systems, and that they help pay for future improvements to expand those systems' capacities.

▶ A property developer or owner becomes responsible for payment of the system development charge upon the commencement of activity that causes additional use of, or an increased burden on, a system or set of systems of public capital improvements.

▶ Systems development charges do not fall within the exemptions for "local improvements", "incurred charges", or "user fees for non-monopolized services" exemptions.

▶ However, *if* the charge is restricted to capital improvements for water and sewer services and is metered so that the payer could control the amount of the charge by regulating its use of the system and the charges do not exceed the actual costs of providing goods or services, voter approval would not be required.

○ Lowering a tax or charge temporarily and then restoring it to its prior level

▶ Even though a tax or fee may be lowered by a public body, any subsequent upward adjustment of the tax or rate of the tax would constitute a "tax increase" under the literal terms of the Measure and would require voter approval.

○ Increasing a tax or charge from some payers, but lowering it for others, so that the total taxes do not increase

▶ If a change in a tax rate or structure results in an increase in taxes on any individual taxpayer or taxpaying entity, the Measure would require voter approval of that change. This would be true even if that same change decreases the taxes paid by other taxpayers.

▶ The Measure provides that any tax increases shall require approval by the people. If the overall tax liability imposed does not increase, but some taxpayers must pay more, there is an increase in taxes for those taxpayers.

Congress may not, however, "commandeer" state legislatures by directly compelling states to enact and enforce a federal regulatory program. Congress may give states the option to regulate an activity according to federal standards or have the state law preempted by federal regulation, but it may not force state government to implement congressional legislation.

► Because the Federal Unemployment Tax Act and the Clean Air Act each allow the state the option of not participating, there is no irreconcilable conflict between the federal statutes and the voter approval requirements of the Measure. Accordingly, the federal statutes would not preempt the Measure.

► *Federal Unemployment Tax Act (FUTA)*: This act requires employers to pay payroll taxes to the federal government, but allows employers an offset of up to 90% against the tax if they are paying taxes under an approved state unemployment compensation law. The primary incentive for states to participate in the system and to maintain a tax rate sufficient to pay for benefits is the credit against the federal tax. Any employer subject to FUTA but not to a federally approved state unemployment tax program would be liable for the full federal tax with no offset.

In Oregon, the state employer payroll tax schedules contain an array of tax rates designed to keep the state unemployment compensation fund solvent. The level of the state's fund determines which tax schedule will be in effect for a given year. When the fund is low, a schedule containing relatively higher rates goes into effect.

Although there is no express federal requirement setting the level of funding that a state must maintain in its unemployment compensation trust fund, it is inevitable that if the state pays more in benefits than it collects in taxes, the fund will eventually be depleted.

This situation would occur in Oregon if the state were unable to use a higher tax schedule or to increase the statutory schedules as necessary to maintain the funding level. That, in turn, would eventually render the state's unemployment compensation program out of compliance with federal law and Oregon employers would have to pay the full federal unemployment payroll tax.

The Oregon Employment Department estimates that under current conditions, the loss of the offset credit would cost Oregon employers almost \$400 million annually.

- ▶ Although it is clear that Congress intended to use a potent array of carrots and sticks to induce states to meet the Clean Air Act requirements, the requirements for state fees would not preempt the Measure's requirement for voter approval to increase the fees.
 - ▶ The Measure's exemption for changes in "federal tax law" do not apply because the Clean Air Act is not a federal tax law.
 - ▶ Except where there is a specific exemption (such as increases in fines), increases in fees or taxes associated with these cooperative federal-state programs would require a vote of the people.
 - ▶ If the voters declined to approve the increase, the resulting noncompliance with federal requirements would result in substantial loss of monetary benefits to the state or its citizens. But the severity of the consequences does not alter the conclusion that the federal statutes would not supersede the proposed Oregon constitutional provision requiring a vote of the people before tax or fee increases could become effective.
- A law or administrative act adopting federal changes to the Internal Revenue Code or its regulations after federal changes have been made.
- ▶ Presently, the Oregon Constitution permits the Oregon legislature to link state income tax laws to the federal income tax statutes and regulations, and to automatically incorporate into state income tax law any future changes that may occur in federal income tax provisions, absent affirmative action by the Oregon legislature to modify or reject those changes.
 - ▶ The legislature has implemented this provision of the constitution by the current statute incorporating the federal income tax provisions "as they are amended on or before December 31, 1992."
 - ▶ Only one of the Measure's voter requirement exceptions might apply to subsequent acts of the legislature incorporating changes to the federal income tax laws into Oregon income tax laws.

Subsection (7) states that the Measure "shall not require a vote of the people when increases in government revenue occur solely due to changes in federal tax law."

► The Measure specifically exempts "user fees charged by Peoples' Utility Districts." It does not specifically exempt other government-operated utilities.

► However, three other exemptions may apply: user fees, monopolized products, and incurred charges exemptions.

User fees: The key to determining whether a user fee is "paid voluntarily for specific services that are not monopolized by government" is whether the individual has the option to obtain the service from a non-governmental source. If the customer has reasonable access to at least one non-governmental source for such services, an increase in the user fee charged would not require voter approval.

Monopolized products: The Measure would exempt "increases in charges for monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control." The terms "services" and "products" are not mutually exclusive.

Incurred charges: There are three conditions in the definition of "incurred charges." They are charges that (1) limited to charges on property, (2) can be avoided or controlled by the consumer through the consumer's decisions whether to obtain the service or to limit the quantity of services consumed, and (3) do not exceed the actual costs of providing the service.

► The electric power provided by a municipal electric utility may be considered a product. If so, and if the municipal utility monopolizes the supply of electric power in a locality so that its customers do not have a readily available alternative, then the utility's charge could be increased without voter approval, but only to the extent that the increase is to pass through increased costs of wholesale inputs that are not state or local government costs and not otherwise under the municipal utility's control.

► In the case of a household's or businesses' consumption of electric power, the consumer has freedom to make choices and directly control the quantity of the power consumed. If charges for electric service and water service are imposed on property and based on the amount used by the customer, or the services are provided only on specific request, then these charges are regarded as "incurred charges."

- Imposing or increasing a local improvement district assessment.
 - ▶ To come within the exception for "local improvements," any assessment levied must "not exceed the actual costs incurred by the governmental unit in designing, constructing and financing the project" and such costs must be assessed "in a single assessment upon completion of the project."
- Imposing or increasing SAIF premiums for workers' compensation coverage.
 - ▶ SAIF competes with private insurance organizations and insurance has been held to constitute a service. For that service, a user fee is paid in the form of a premium.
 - ▶ SAIF premiums fall within the "other user fees paid voluntarily for specific services that are not monopolized by government" and imposing or increasing premium rates would not require voter approval.
- Imposing or increasing a charge by one government body upon another government body.
 - ▶ An example of this is a charge by the Oregon Department of Transportation to a county or road district for the construction or repair of a road or highway under a cooperative agreement.
 - ▶ The Measure would not require voter approval when a government entity imposes or increases charges to other government bodies, *unless* the charges would affect private taxpayers and government bodies alike, such as the motor vehicle use fuel tax or unemployment taxes. *If* such a charge also fell upon private taxpayers, voter approval would be required (unless another exception applies).
 - ▶ The Measure is apparently intended to apply only to charges on private citizens and their legal entities, such as private corporations.

The Measure bears a telling indication that it does not intend to require voter approval of intergovernmental or interagency charges when the Measure specifically gives an "Oregon resident or legal entity doing business in Oregon" standing to bring suit to enforce the Measure. However, in providing for the reimbursement of the successful plaintiff's costs and attorney fees, the Measure explicitly states that "no government units shall be entitled to attorney's fees, costs or expenses."

EFFECT OF MEASURE ON EXISTING LAWS

(pages 52-63)

- Because the Measure would amend the Oregon Constitution, it would add a condition, voter approval to any existing statutes that increase a tax or authorize an administrative increase in a tax after the Measure's effective date.

- The Measure would repeal by implication, or amend, any inconsistent provisions of earlier statutes. To the extent an existing statute imposes a tax schedule with higher rates, unless approved by the voters. The Measure would condition the use of the new schedule.

- However, with respect to statutes that require automatic increases and decreases in tax rates, such as unemployment insurance, the Measure would have one significant, additional effect. Because the Measure would not invalidate those portions of such statutes that lower the tax rates, over the long term, the effect of the Measure is likely to be that tax rates would be pushed lower and lower.

- No provision in the Measure affirmatively authorizes an increase in a tax, fee, charge or tax rate, without voter approval, in response to a change in the cost-of-living index. Accordingly, if the increase would otherwise be subject to the Measure's voter approval requirement, the fact that the increase is triggered by a change in the cost-of-living index provides no insulation from that requirement. The effect would be to void any automatic upward adjustment in the tax or charge based on a cost-of-living index.

- The Measure's effect on existing laws is not certain, however. The courts could determine that its intent was not to affect existing laws that impose new taxes or taxes increases after the effective date of the Measure.

- The Measure would repeal any existing statutes that sunset a tax credit or exemption after the Measure's effective date, unless approved by the voters.

- The Measure states: "Any elimination or reduction of tax exemptions, credits, deductions, exclusions, or cost-of-living indexing shall be considered a tax increase."

- A law that sunsets a tax credit or exemption eliminates that credit or exemption.

- ▶ The Measure does not appear to have contemplated fees of this character, which allow the government to recover its costs for activities that are unique to a particular individual but also within the exclusive jurisdiction of the government body.
- ▶ While the opinion analyzed and discussed three possibilities with respect to these types of fees, it did not predict how a court would view this issue.
- Similar to EFSC fees, a public body's charge for making public records available probably could not be increased without voter approval, *except* for increases in the costs of the actual copies of the records if the copies may be obtained only from the a government body, and then only to the extent that the increases are solely to pass though increased costs of wholesale inputs that are not labor costs and not otherwise under the public body's control.

HOW THE EFFECT OF AN ACT IS TO BE JUDGED

(pages 64-65)

- The Measure states that questions submitted to the voters "shall clearly describe the proposed new tax or tax increase and the reasonably estimated annual dollar amount of the proposed new tax or increase.
- If no increase in taxes could "reasonably" be predicted, then there would be nothing to submit to the voters. If, however, the government body reasonably foresees that an act will increase taxes, voter approval is required, whether the increase is immediate or at some later date.
- It may be possible to "reasonably estimate" that some increase will occur, but not to estimate with any sense of certainty the amount of the increase. In context, the estimated amount is intended to be that which can be determined from the information reasonably available, by the method or methods which are reasonable, given such considerations of reliability, cost and relevance to the nature of the information that is to be the basis for the prediction.
- The fact that the estimate later proves to be incorrect does not void the enactment, provided that the original estimate was reasonable.

BALLOT MEASURE BRIEFING,

SEPTEMBER 29, 1994

SUPPLEMENTARY INFORMATION



Budget & Quality Office

September 26, 1994

BALLOT MEASURE BRIEFING, SUPPLEMENTARY INFORMATION

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MULTNOMAH COUNTY OREGON

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1530
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN, CHAIR
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

COUNTY COUNSEL
LAURENCE KRESSSEL

CHIEF ASSISTANT
JOHN L. DU BAY

ASSISTANTS
J. MICHAEL DOYLE
SANDRA N. DUFFY
GERALD H. ITKIN
H.H. LAZENBY, JR.
STEVEN J. NEMIROW
MATTHEW O. RYAN
JACQUELINE A. WEBER

M E M O R A N D U M

TO: Dave Warren, Manager
Budget Office (106/1430)

FROM: Laurence Kressel (106/1530)
County Counsel

DATE: August 30, 1994

SUBJECT: Proposed Taxpayer Protection Initiative
(Proposed Measure 5)

Among the measures on the November ballot will be the Taxpayer Protection Initiative (Measure 5). Known by some as "Son of 5," this constitutional amendment will have far reaching impacts on state and local government if it passes. Unfortunately, the measure uses many undefined terms that are likely to trigger confusion and litigation.

You asked a series of questions about the measure. Before answering, I think it would be useful to quote a recent summary of the measure by the Attorney General. Here it is.

I. The Proposed Measure.

The Measure, which its sponsors entitled the "Taxpayer Protection Initiative," would amend the Oregon Constitution to require voter approval of new taxes and of increases in taxes. The preamble to the measure states that the Measure's purpose "is to ensure that tax increases, which further deprive citizens of income and property, are hereafter directly approved by the people."

Paragraph 1 of the Measure would add a new Section 32a to Article I of the Oregon Constitution. The portion of this new section that would establish the voter approval requirement for the levy or increase of a tax states:

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Notwithstanding any other provision of this Constitution, any new taxes or tax increases shall require approval by the people, as follows:

(1) No new tax shall be levied and no tax or tax rate shall be increased, by the state or by any local government or district, unless such tax or tax increase is first approved by a majority of the voters voting on the question. The question submitted to voters shall clearly describe the proposed new tax or increase and the reasonably estimated dollar amount of the proposed new tax or increase.

(2) Any elimination or reduction of tax exemptions, credits, deductions, exclusions, or cost-of-living indexing shall be considered a tax increase. Any extension of an expiring tax shall be considered a tax increase.

Proposed Art. I, sec. 32a, subsec. (1) and (2).

The measure contains no specific definitions of the terms "tax" or "taxes." Instead it identifies a limited series of revenues that are not to be considered taxes or tax increases for purposes of the Measure. This subsection provides:

(3) The following revenues shall not be considered taxes or tax increases for the purposes of this section: user fees charged by Peoples' Utility Districts or port districts; school, college, or university tuition and fees; incurred charges and local improvements as defined by Article XI Section 11b of this Constitution; other user fees paid voluntarily for specific services that are not monopolized by government; increases in charges for monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control; fines or forfeitures for violations of law; and earnings from interest, investments, state lottery proceeds, donations, or asset sales.

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Proposed Art. I, sec. 32a, subsec. (3). By providing that the above revenues shall not be considered "taxes" or "tax increases," this subsection sets out the primary exceptions to the voter approval requirements of the Measure.

The Measure then would establish a broad residuary clause which states:

(4) Any state or local government fee or other charge not listed in subsection (3) shall be considered a tax for the purposes of this section.

Proposed Art. I, sec. 32a, subsection. (4). Consequently, the Measure would require voter approval for the levy or increase of any taxes or governmental fees or charges not listed in subsection (3), or otherwise specifically excepted under the Measure.

The Measure contains only two other provisions excepting increases of certain types of government revenue from the voter approval requirements. These state:

(7) This section shall not require a vote of the people when increases in government revenue occur solely due to changes in federal tax law, increases in income, increases in real market property values, or other changes in the circumstances of individual taxpayers.

(8) A tax base increase of no more than 6%, as allowed by Article XI, Section 11 of this Constitution, shall not require voter approval under this section.

Proposed Art. I, sec. 32a, subsec. (7) and (8).

Or. Atty. Gen. Op. No. 8229 (August 4, 1994) (Hereafter "Atty. Gen. Op.")

Now on to your questions.

QUESTION 1. The measure requires a vote to approve any new tax or increased tax rate. Would this impact multiple year serial levies, such as our jail and library levies, which have a fixed rate but an increased receipt?

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ANSWER TO QUESTION 1.

No.

If the measure passes, additional voter approval would not be needed for an existing, fixed rate serial levy that produces increased revenue due to increases in property value.

First, the voter approval requirement in the proposed measure is redundant of existing law. That is, the voters have already approved the serial levies. ORS 280.060. Reapproval is unnecessary. See my answer to Question 3.

In any event, Proposed Measure 5 expressly exempts this type of revenue increase. Section 32 a (7) of the initiative states:

This section shall not require a vote of the people when increases in government revenue occur solely due to changes in federal tax laws, increases in income, increases in real market property values, or other changes in the circumstances of individual taxpayers. (emphasis added).

Given the emphasized language, a fixed rate serial levy would be unaffected by the proposed initiative. Any increase in revenue from this type of tax after passage of Proposed Measure 5 would be attributable to increases in real market property values. See Atty. Gen. Op. at 16.

QUESTION 2. Would the measure have an impact on a fixed amount serial levy (the same amount every year) which would have varying tax rates to produce the same dollar amount?

ANSWER TO QUESTION 2.

Possibly.

Proposed Measure 5 could have a potential impact on a fixed amount levy. The initiative imposes requirements on the wording of such a levy.

According to the Attorney General, there is a "tax" under Proposed Measure 5 whenever there is an increase in the tax burden on any individual taxpayer. Where government increases a tax for some payers but lowers it for others, so that total revenues are unchanged, a tax increase has still taken place (voter approval required; notice must be given). The initiative warrants that conclusion because (1) the preamble states that "any" tax increases

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shall require approval by the people and section 32a(1) and (2) of the measure prohibit increases in any tax rate. See Atty. Gen. Op. at 41-42.

The Attorney General states:

If the overall tax liability imposed does not increase, but some payers of the tax must pay more, there is an increase in taxes for those taxpayers. Notwithstanding that the change in the tax structure causes a reduction in the tax burden of some (or even a majority) of the taxpayers, from the perspective of the adversely affected taxpayer, a "tax or tax rate [has been] increased." Atty. Gen. Op. at 42.

In the case of a fixed amount levy, as opposed to a fixed rate levy, the overall tax rate could vary in different years, depending on changes in county-wide property values. Thus, there is a potential that some taxpayers would pay more in one year than in prior years. For example, a taxpayer whose property value does not change in a year the County increases the rate (due to a county-wide reduction on property values) will pay more that year. I read Proposed Measure 5 to require that voters be advised of this possibility.

To comply with the initiative, the county measure submitted to the voters would have to "clearly describe the proposed new tax or increase and the reasonably estimated annual dollar amount of the proposed new tax or increase." Section 32(a)1.

QUESTION 3. Does passage of a levy by a vote of the people override any further question about annual changes in rate or amount that result when the levy is actually applied? (You inform me that the County's current levies are both fixed rate levies.)

ANSWER TO QUESTION 3.

As explained above (Question 1), an existing fixed rate levy would not present further questions under Proposed Measure 5. On the other hand, the initiative would impose notice requirements for a measure submitting a fixed amount levy to voters. (Question 2).

QUESTION 4. Does a fee or tax that has a cost of living increase factored into its rate prior to passage of this initiative require voter approval if the measure passes? (If we had language in our ordinances and orders charging fees that indexed the amount of the charge to a 1994 amount plus the growth in CPI for urban

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earners, for example, would voters have to approve these fees after the measure passed?)

ANSWER TO QUESTION 4.

Yes. A future fee increase pursuant to a cost of living index adopted before Son of 5 becomes law would require voter approval.

As a general rule, a constitutional amendment amends existing laws that are inconsistent with it. The Attorney General states, "[T]hus, the Measure would add a new constitutional condition, voter approval, to existing laws that create new taxes or increase taxes after the effective date of the Measure." Atty. Gen. Op. 15 53. (Note: Voter approval would be required for the post-Son-of-5 increase, not for the taxes imposed before passage of the initiative.)

Section 32a(2) states that "any elimination or reduction of tax exemptions, credits, deductions, exclusions or cost of living indexing shall be considered a tax increase. Any extension of an expiring tax shall be considered a tax increase." (emphasis added.)

Although this provision literally covers only "elimination or reduction" of tax relief provisions (credits, deductions, etc.), the Attorney General concludes that the measure also covers an indexing feature that increases taxes. See, e.g., ORS 468.315 (pollution permit fee adjusted according to CPI). The Attorney General states:

No provision in the measure affirmatively authorizes an increase in a tax, fee, charge or tax rate, without voter approval, in response to a change in a cost of living index. Accordingly, if the increase would otherwise be subject to the measure's voter approval requirement, the fact that it is triggered by a change in the cost of living index provides no insulation from that requirement. The effect of the measure would be to add a voter approval requirement to any automatic upward adjustment in the tax or charge based upon a cost of living index. Atty. Gen. Op. at 54¹

¹ As previously pointed out, if voter approval is required under Proposed Measure 5, the county measure must "clearly describe the proposed new tax or increase and the reasonably estimated annual dollar amount of the proposed new tax or increase." Section 32(a)1. (continued...)

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QUESTION 5. After the measure passed, could fees or taxes including such cost of living indexes be presented once to the voters and, if they passed, remain in effect in perpetuity?

ANSWER TO QUESTION 5.

Yes.

In his recent opinion, the Attorney General answers this question affirmatively. He phrases the questions as "* * * whether the voters may approve an increase in a tax, but extend the effective date of that increase to some date in the future." He opines that Proposed Measure 5 would permit this "delayed increase" approach, subject to the requirement that the question put to the voters must "clearly describe the proposed * * * increase and the reasonably estimated annual dollar amount of the proposed * * * increase." Atty. Gen. Op. at 65-66. I concur in this conclusion.

QUESTION 6. If we wished to swap one kind of exemption for another after the measure passed, would such a swap require a vote of the people?

ANSWER TO QUESTION 6.

Probably.

As noted, section 32a(2) characterizes as a tax increase "any elimination or reduction of tax exemptions, credits, deduction, exclusions or cost of living indexing." The language is broad. The measure covers "any elimination" of an exemption. That being so, courts are likely to say that a "swap of exemptions" would trigger the voter approval requirement unless no taxpayer suffers an increased tax burden as a result of the "swap." On this point, The Attorney General states:

We also note that proposed Article I section 32a subsections (1) and (2), prohibit increases in any "tax rate" or "[a]ny elimination or reduction of tax exemptions, credits, deductions or exclusions. Each of these items may affect only a portion of the taxpayers subject to a particular tax, and each is the subject of occasional adjustment, up or down, by taxing units.

¹(...continued)

Satisfying that requirement for an indexed fee or charge could be challenging.

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Adjustment of these and similar features of a tax is the method likely to be employed by a governmental unit seeking to adjust taxes paid by some taxpayers without affecting overall revenue from the tax. Yet, the Measure expressly prohibits increases in the tax rate or elimination or reduction of tax credits, exemptions, deductions, etc. without voter approval. The Measure appears to focus on preventing governmental action that results in increased taxes payable by any taxpayer, without a vote, except as provided in the Measure.

If the overall tax liability imposed does not increase, but some payers of the tax must pay more, there is an increase in taxes for those taxpayers. Notwithstanding that the change in the tax structure causes a reduction in the tax burden of some (or even a majority) of the taxpayers, from the perspective of the adversely affected taxpayer, a "tax or tax rate [has been] increased." Atty. Gen. Op. at 41-42.

QUESTION 7. Section 32a(3) exempts "other user fees paid voluntarily for specific services that are not monopolized by government" from the limitations of the measure. Does this mean that increases in fees charged for clinic services in health or mental health programs would be exempt from the voting requirement?

ANSWER TO QUESTION 7.

Yes (probably).

This question brings into focus some key problems in applying the initiative. When read as a whole, Proposed Measure 5 suggests that exemptions from the vote requirement will be narrowly construed. Therefore, each word or phrase in an exemption is likely to get close scrutiny in contested situations.

The exemption in question is for (1) a user fee, (2) paid voluntarily, (3) for specific services (4) not monopolized by government.

Clinic fees probably fit within the exemption. They are user fees.² They are paid voluntarily, because citizens are not required by law to seek treatment. Finally, this type of service

² User fees are generally understood to include charges paid voluntarily in exchange for a particular government service that benefits the payor. 44 Atty. Gen. Op. 85, 218 (1984)

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is "not monopolized by government" because county clinics are not the only providers of care in the community.³

There are contrary arguments. It could be argued that low income patients in fact have no health-provider choices, and that therefore county clinics have a "monopoly." However, I doubt this position would prevail.

In looking at how courts might interpret this exemption, the Attorney General contends that the objective existence of some option to choose a non-governmental source of a service is the touchstone of the determination whether a user fee is "paid voluntarily for * * * services that are not monopolized by government." Atty. Gen. Op. at 20. The Attorney General adds that "[I]ndividual circumstances, such as a person's having sufficient money to exercise a legally available choice, do not appear to be a factor." *Id.* at 31. If that premise is correct, the user fee exemption would apply to county clinic fees, so long as non-county providers of the same services exist in the area.

QUESTION 8. Would a fee to recover the cost of cleaning up a nuisance defined by law or ordinance, such as mowing a lawn or towing an abandoned vehicle, be exempt from the voting requirement?

ANSWER TO QUESTION 8.

Yes.

This type of fee seems to fall squarely within the exemption for "fines or forfeitures for violations of law." Section 32a(3). This is a rare example of a clear answer to a question under Proposed Measure 5.

QUESTION 9. Would changes in admission fees to the County Fair require a vote?

ANSWER TO QUESTION 9.

No (probably).

The exemption that arguably fits is the one mentioned previously for clinic fees: "user fees paid voluntarily for specific services that are not monopolized by government." Section

³ There may be exceptions to this statement. I do not know whether some clinics provide unique services.

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32a(3). Again there is room for debate about whether the Fair is a specific service "not monopolized by government."

The dictionary defines "monopoly" as:

1. Exclusive control of a commodity or service that makes possible the manipulation of prices.
2. The exclusive possession or control of something.
3. Something that is the subject of such control, as a commodity or service.
4. A company or group that has such control.
5. The market condition that exists when there is only one seller.

(Random House Webster's Electronic Dictionary and Thesaurus College Edition.)

Obviously, there is only one Multnomah County Fair. If the "service" for purposes of the proposed measure is defined as the county fair, we have a monopoly. (That would rule out the exemption for user fee increases.) However, if the service is instead defined more broadly as "fair entertainment", or entertainment generally, the exemption would apply because alternatives, such as other government fairs or similar events, are available.

The Attorney General takes a broad view of "service" in his recent opinion on the proposed measure, although he concedes his reading is not free from doubt. Discussing whether transit fare increases would be exempt from the measure, he says:

We regard a definition of the "service" as "public transportation" to be unrealistically restrictive. A constitutional amendment should be construed in accordance with its "broad general lines" to accomplish its policy objectives. (citation omitted). Among the objectives underscored by the Measure is to except charges from the voter approval requirement if the taxpayer has substantial choice to control the payer's payment to government by controlling the extent of the payer's use of the service. In many geographical areas of the state, the individual has a broad range of choice in deciding when and whether to use government-provided transportation. Atty. Gen. Op. at 31.

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Since transportation choice exists (personal autos, taxis), the Attorney General concludes that user fees for public transit would be exempt under proposed measure 5. Id.

Following the lead of the Attorney General, I believe an increase in the admission fee for the county Fair would be an exempt user fee under section 32a(3). As noted above with respect to clinic fees, the test is whether the taxpayer has substantial choice to control payment to government by controlling the extent of use of the service. There is choice in the marketplace. Citizens are under no compulsion to attend the county fair.

QUESTION 10. Section 32a also exempts increases in charges for "monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control." Does the phrase "state or local government labor cost" have a narrow meaning (the costs which we agree to through collective bargaining) or a broad meaning (any cost of employees, whether we have discretion or not in the amount). For example, if the State required Multnomah County to increase the percentage of payroll that we pay to PERS, would Multnomah County be prohibited from passing that increase through to users by increasing a fee because the PERS rate is a labor cost, or would a fee increase be possible because the PERS rate is a cost not under Multnomah County's control?

ANSWER TO QUESTION 10.

Before answering, it bears notice that this exemption covers only charges for products monopolized by government (e.g., water, electricity). It does not cover government services. I do not know the extent to which the County charges fees for monopolized products.

The phrase "state or local government labor costs" in this exemption probably would be construed to encompass pension mandates. That construction of the initiative would limit the scope of the exemption. The county would thus need voter approval to pass through the costs of a PERS mandate.

Your question requires a qualified answer because key phrases are not defined in the Measure. The exemption allows government to pass-through a limited class of costs ("wholesale inputs"). Labor costs, and other costs within the charging government's control, are expressly outside the class. Unfortunately, we do not know from the measure what "wholesale inputs" means or what the scope is of "labor costs."

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One could argue back and forth over whether PERS assessments are part of "labor costs" (not exempt) or fit into the general category "costs not otherwise under the charging government's control" (exempt). On one hand, the phrase "charging government's control" suggests that a PERS mandate could be passed through, because the County has no control over PERS. On the other hand, most taxpayers probably feel that pension benefits, even though not locally controlled, are part of the compensation package given government workers. That would translate into a conclusion that a PERS assessment is a "labor cost" that cannot be passed through to citizens without a vote under Proposed Measure 5. I think this latter view is likely to prevail. See Ecuminical Ministries v. Oregon State Lottery Comm., 318 Or 551, 560-62 (1994) (words of common usage which are not defined in a measure typically are given their "plain, natural and ordinary meaning").⁴

The intent of this exemption seems to be to allow government to pass-through only a limited category of costs, and only for a government-made "product." Probably what the drafters had in mind were the increasing costs of raw materials or costs of plant maintenance, faced by government-run utilities, such as water or electric utilities. OLCC's costs for alcoholic beverages might be another example. The costs you ask about fall outside this realm. They seem more like labor costs. But there is room for debate on this point.

QUESTION 11. Section 32a(3) exempts "fines or forfeitures for violations of law from the voting requirement. Does "law" mean statute, or does an ordinance qualify as a law?

ANSWER TO QUESTION 11.

An ordinance is a local law. A fine for an ordinance violation would be exempt from the voting requirement.

QUESTION 12. Would imposition of an ordinance fining someone for an act or an omission require a vote?

⁴

Note that the measure expressly exempts increased government revenue due to changes in federal tax law, thereby allowing pass-throughs of various federal mandates on employers. Section 32a(7). But there is no comparable provision for state law mandates. The implication is that PERS mandate is not the kind of increase that local government can pass-through.

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ANSWER TO QUESTION 12.

Under the initiative, fines for violations of law are not taxes. Section 32a(3). The initiative does not limit this exemption to fines for acts made unlawful before passage of the initiative. Therefore, an ordinance imposing a fine would not require a vote, regardless of the date of passage.

QUESTION 13. Would imposition of a fine for violation of an ordinance be exempt from the requirement for a vote if the ordinance was previously in place but no fine was previously imposed.

ANSWER TO QUESTION 13.
Same answer as above.

QUESTION 14. Section 32a(6) allows combination of multiple tax and fee changes into a single measure submitted to the voters. Could Multnomah County put on the ballot a measure that combined renewal of the library levy, renewal of the jail levy, and increases in all county originated fees?

ANSWER TO QUESTION 14.

Yes.

Section 32a (6) of the initiative states:

A government may combine requests for multiple tax and fee changes into a single measure submitted to voters. Such a combined measure shall be considered to embrace one subject.

This provision would override the apparently contrary requirement of ORS 280.090, which requires several serial levies to be voted on separately. (Howard Rankin, the county's bond counsel, agrees.) Constitutional amendments preempt or override conflicting statutes. Ladd & Tilton Bank v. Frawley, 98 Or 241, 252-53, (1920).

Assuming ORS 280.090 is overridden, there would be no impediment to the combination described in your question, other than the word limitations for ballot measures set forth in other state statutes. A multi-pronged measure combining serial levies with various fee increases would present a real challenge to the drafter of the ballot title (10 word caption, 20 word question, 175 word explanation) See ORS 310.390.

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I hope the above answers are helpful despite the array of caveats. I am not attaching the Attorney General's lengthy opinion on Proposed Measure 5 (77 pages), but I am attaching his summary (20 pages). I will make one copy of the summary available with the Board Clerk. She can make copies available to others on request. The AG opinion deals mainly with various state taxes, fees and charges, but it also touches on the impact this Measure will have on local government.⁵

cc Board of Commissioners
Sheriff
Auditor
District Attorney
Department Managers
Clerk of the Board
Dave Boyer, Finance Admin.
Lorenzo Poe, Child & Family Services Division

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⁵ Among the conclusions affecting local government are:

1. An increase in professional or occupational licensing fees would require a vote;
2. An increase in building permit and land use planning fees would require a vote;
3. New or increased systems development charges would require voter approval (except in some instances);
4. Increases in public transit fees probably do not require a vote;
5. Charges imposed by one government against another do not require a vote;
6. An increase in the charge for public records would not require a vote unless the increase passes through increased labor costs.

SUMMARY OF ATTORNEY GENERAL'S OPINION

Ballot Measure 5

August 4, 1994

NOTE: This summary was prepared for convenience purposes only. It is a brief but not definitive statement of the conclusions in the opinion. For the complete legal analysis, refer to Opinion No. 8229.

INTRODUCTION

- This 77-page legal opinion concerns an initiative measure that will appear on the November 8, 1994 general election ballot as Measure 5. This measure would amend the Oregon Constitution to require voter approval of new taxes and of increases in taxes or tax rates.
- The opinion was requested by Senate President Bill Bradbury, on behalf of the Senate Revenue Committee.
- This is the ninth occasion since 1966 when the Attorney General was asked to review proposed tax initiatives.

CONSTRUING AN INITIATIVE MEASURE (pages 10-11)

- Our objective in construing an initiative measure is to determine the intent of the voters who pass on the measure.
- "The best evidence of the voters' intent is the text of the provision itself." However, the meaning of the terms in the measure cannot be assessed in isolation from the context in which the measure's drafters used those words.
- Because we examined the Measure before publication of the Voters' Pamphlet and any explanatory material or arguments concerning the Measure, the legal analysis cannot extend significantly beyond the Measure's text and context. The possibility remains that discourses about the Measure in the Voters' Pamphlet could yet create an additional "legislative history" on the meaning of the Measure that has the potential of materially affecting the conclusions stated in the opinion.
- The Measure includes a number of critical, but undefined, terms which sometime appear to overlap in meaning or not to contemplate the large variety of taxes, fees and charges that appear to be subject to the Measure. The opinion attempts to give common sense meaning to these terms, but we acknowledge that court may reach a different conclusion with regard to any particular tax, fee or charge.

OVERVIEW OF THE PROPOSED MEASURE

(pages 8-10)

- **VOTER APPROVAL REQUIREMENT**

- The Measure, which its sponsors entitled the "Taxpayer Protection Initiative," would amend the Oregon Constitution to require voter approval of new taxes and of increases in taxes. The preamble states that the Measure's purpose "is to ensure that tax increases, which further deprive citizens of income and property, are hereafter directly approved by the people."

- The portion of the Measure that would establish the voter approval requirement states:

"Notwithstanding any other provision of this Constitution, any new taxes or tax increases shall require approval by the people, as follows:

(1) No new tax shall be levied and no tax or tax rate shall be increased, by the state or by any local government or district, unless such tax or tax increase is first approved by a majority of voters voting on the question. The question submitted to the voters shall clearly describe the proposed new tax or increase and the reasonably estimated dollar amount of the proposed new tax or increase.

(2) Any elimination or reduction of tax exemptions, credits, deductions, exclusions, or cost-of-living indexing shall be considered a tax increase. Any extension of an expiring tax shall be considered a tax increase."

- The Measure contains no specific definitions of the terms "tax" or "taxes." Instead, it identifies a limited series of revenues that are not to be considered taxes or tax increases that would require voter approval.

- Any state or local government fee or other charge not specifically listed in Subsection 3 shall be considered a tax that would require voter approval.

• THE EXCEPTIONS

○ Subsection (3) sets out the primary exceptions to the voter approval requirements. These exceptions are:

- ▶ user fees charged by Peoples' Utility District or port districts
- ▶ school, college, or university tuition and fees
- ▶ incurred charges and local improvements (as defined by Article XI section 11b of the constitution)
- ▶ other user fees paid voluntarily for specific services that are not monopolized by government
- ▶ increases in charges for monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control
- ▶ fines or forfeitures for violations of law
- ▶ earnings from interest, investments, state lottery proceeds, donations, or asset sales

○ Subsection (7) exempts from the voter approval requirement:

- ▶ increases in government revenue that occurs solely due to changes in federal tax law
- ▶ increases in income, increases in real market property values, or other changes in the circumstances of individual taxpayers

○ Subsection (8) exempts a tax base increase of no more than 6%, as allowed by Article XI, Section 11 of the constitution.

TYPES OF ACTS COVERED BY THE MEASURE (pages 11-12)

- The Measure would apply both to fees set administratively and to those specified in the constitution.
- The Measure does not distinguish between fees or charges set administratively or by legislative action.
- Unless the Measure exempts a particular fee or charge, it would require voter approval of any legislative or administrative act establishing a new fee or increasing the amount or rate of an existing fee.
- The Measure's "*Notwithstanding any other provision of this Constitution*" language would take precedence over any existing provision in the constitution that otherwise would authorize the levy of a new tax or an increase in a tax or tax rate.

EFFECT OF THE MEASURE ON SPECIFIC ACTS IMPOSING OR INCREASING TAXES, FEES OR CHARGES (pages 12-52)

The second question asked whether a series of specific governmental actions would require a vote of the people, if the Measure is adopted.

- The following governmental actions would require a vote:
 - An increase in the personal income tax or an increase in the rate of the personal income tax
 - ▶ In the context of the Measure, the term "tax" is used in its broadest sense.
 - ▶ However, a vote of the people is not required when increases in an individual taxpayer's taxes or tax rates are "solely due to increases in income."
 - Imposing or increasing an *ad valorem* property tax
 - ▶ The *ad valorem* tax on real property comes within the core of the Measure's subject matter.
 - ▶ However, a vote of the people is not required when increases in government revenue occur "solely due to increases in real market property values, or other changes in the circumstances of individual taxpayers."

► For example, if the value of a parcel of property increases due to improvements made by the owner or adjacent development that enhances the property's value, the tax on the property could increase and voter approval is not required.

○ **Increases in the Motor Vehicle Use Fuel Tax ("gasoline tax")**

► The "gasoline tax" also falls within the class of core taxes that the typical voter would regard as a tax.

► The gasoline tax is not a user fee. Thus, it may not be increased with the approval of the voters.

○ **Imposing or increasing a professional or occupational license fee**

► This question calls for an examination of the Measure's impact on the licensing authority's ability to increase license fees charged to offset the cost of governmental activities to protect consumers. These fees cover the costs of proficiency exams, certification of minimum educational qualifications or experience, background checks or other verifications prior to issuing a license. The fees also cover the on-going regulation and investigation of licensees.

► Neither the exception for user fees or the exception for monopolized products would apply.

An individual does not have the option to choose a non-governmental source for these licensing services.

To extend the term "products" so far as to include a government agency's provision of all aspects of a licensing program would, in our opinion, stretch well beyond the ordinary meaning of the term.

○ **Imposing or increasing local building permit or land use planning fees**

► Local government bodies have authority to establish varying systems of fees for the review and approval (or denial) of building permit applications and requests for changes in land use.

► The fee discussed here pertains to a fee structure imposed either on a flat rate basis or some means of apportionment.

- ▶ This fee is comparable to the professional and occupational license fees. The exemption for user fees for non-monopolized services does not apply because the government body has exclusive authority (subject to review or appeal) to regulate the activity.
- ▶ The definition of "incurred charges" speaks in terms of changes that can be controlled "by the property owner" and the voter approval exception for incurred charges is inextricably bound to the concept of owning property. A building permit or land use application fee is imposed not on the property but on the person submitting the application.
- Imposing a new charge for the "actual cost" of permit review
 - ▶ There is no distinction in the Measure between a charge based upon the public body's actual cost or any other charge or fee imposed by a public body.
- Imposing or increasing a highway lighting district assessment
 - ▶ A highway lighting district is organized for the purpose of lighting the highway abutting the property owners' respective properties.
 - ▶ At first blush, the assessments imposed on the property appears to qualify as traditional assessments for local improvements that especially benefit the real property served.
 - ▶ However, the Measure borrows by reference a different, more restrictive formulation of what constitutes an assessment for a local improvement that is exempt from the voter approval requirement.
- Imposing assessments within diking districts
 - ▶ Diking district assessments constitute taxes for purposes of the Measure, unless one of the exceptions applies.
 - ▶ Exceptions for local improvements, incurred charges and user fees do not apply.

○ Imposing or increasing system development charges - *Qualified*

► Government units may impose charges designed to assure both that users bear their fair costs of establishing water, waste water disposal, drainage, transportation and parks systems, and that they help pay for future improvements to expand those systems' capacities.

► A property developer or owner becomes responsible for payment of the system development charge upon the commencement of activity that causes additional use of, or an increased burden on, a system or set of systems of public capital improvements.

► Systems development charges do not fall within the exemptions for "local improvements", "incurred charges", or "user fees for non-monopolized services" exemptions.

► However, *if* the charge is restricted to capital improvements for water and sewer services and is metered so that the payer could control the amount of the charge by regulating its use of the system and the charges do not exceed the actual costs of providing goods or services, voter approval would not be required.

○ Lowering a tax or charge temporarily and then restoring it to its prior level

► Even though a tax or fee may be lowered by a public body, any subsequent upward adjustment of the tax or rate of the tax would constitute a "tax increase" under the literal terms of the Measure and would require voter approval.

○ Increasing a tax or charge from some payers, but lowering it for others, so that the total taxes do not increase

► If a change in a tax rate or structure results in an increase in taxes on any individual taxpayer or taxpaying entity, the Measure would require voter approval of that change. This would be true even if that same change decreases the taxes paid by other taxpayers.

► The Measure provides that any tax increases shall require approval by the people. If the overall tax liability imposed does not increase, but some taxpayers must pay more, there is an increase in taxes for those taxpayers.

- ▶ Notwithstanding that the change in the tax structure cause a reduction in the tax burden of some (or even a majority) of the taxpayers, from the perspective of the adversely affected taxpayer, a tax or tax rate has been increased.
- Reducing an exemption, if the reduction was part of a larger enactment that otherwise lowered taxes so that the total taxes do not increase
 - ▶ The Measure says any elimination or reduction of tax exemptions shall be considered a tax increase.
 - ▶ An argument may be made that in determining whether an act would effect a tax increase that requires voter approval, the net impact of the enactment is the key. But the unequivocal language of the Measure ("any elimination or reduction of tax exemptions") cannot be ignored.
- Increasing a tax or charge required by federal law when the state has the option of rejecting the entire program - *Qualified*
 - ▶ This question asked if a vote is required for increases in taxes or fees for certain programs administered by the state pursuant to federal standards, specifically the Federal Unemployment Tax and the Clean Air Act.
 - ▶ Although the consequences of not participating in both program are so severe that the state's participation is commonly regarded as mandatory in the practical sense, the state's participation in these programs is not legally mandated.
 - ▶ Each of the federal statutes under consideration creates a different type of federal-state relationship, and for each one, the consequences of noncompliance with federal requirements are different. Despite those differences, the conclusion is the same: the federal law would not preempt any effect that the Measure might have.
 - ▶ The legal principles underlying this analysis:

If the Measure passes, it will become part of the Oregon Constitution. Thus, it would supersede any conflicting Oregon statutes. On the other hand, the Supremacy Clause of the U.S. Constitution overrides state law when there is an actual conflict between the two.

Congress may not, however, "commandeer" state legislatures by directly compelling states to enact and enforce a federal regulatory program. Congress may give states the option to regulate an activity according to federal standards or have the state law preempted by federal regulation, but it may not force state government to implement congressional legislation.

► Because the Federal Unemployment Tax Act and the Clean Air Act each allow the state the option of not participating, there is no irreconcilable conflict between the federal statutes and the voter approval requirements of the Measure. Accordingly, the federal statutes would not preempt the Measure.

► *Federal Unemployment Tax Act (FUTA)*: This act requires employers to pay payroll taxes to the federal government, but allows employers an offset of up to 90% against the tax if they are paying taxes under an approved state unemployment compensation law. The primary incentive for states to participate in the system and to maintain a tax rate sufficient to pay for benefits is the credit against the federal tax. Any employer subject to FUTA but not to a federally approved state unemployment tax program would be liable for the full federal tax with no offset.

In Oregon, the state employer payroll tax schedules contain an array of tax rates designed to keep the state unemployment compensation fund solvent. The level of the state's fund determines which tax schedule will be in effect for a given year. When the fund is low, a schedule containing relatively higher rates goes into effect.

Although there is no express federal requirement setting the level of funding that a state must maintain in its unemployment compensation trust fund, it is inevitable that if the state pays more in benefits than it collects in taxes, the fund will eventually be depleted.

This situation would occur in Oregon if the state were unable to use a higher tax schedule or to increase the statutory schedules as necessary to maintain the funding level. That, in turn, would eventually render the state's unemployment compensation program out of compliance with federal law and Oregon employers would have to pay the full federal unemployment payroll tax.

The Oregon Employment Department estimates that under current conditions, the loss of the offset credit would cost Oregon employers almost \$400 million annually.

► Notwithstanding the major financial loss Oregon employers would sustain if unable to maintain a state unemployment compensation program in conformity with federal requirements, Oregon's participation in the cooperative federal-state unemployment scheme is voluntary.

► If a state's program fails to meet federal standards, ordinarily this failure neither violates federal law nor invalidates the state's law; it forfeits the federal benefit.

► An increase in taxes in order to qualify for the federal benefits of a voluntary program would require voter approval if the Measure is adopted.

► *Clean Air Act (CAA)*: This act requires states to develop a state implementation plan, which becomes federal law when the Environmental Protection Agency approves it. The state plan contains emission standards, limitations and other measures for stationary industrial sources, inspection and testing requirements for motor vehicles, transportation control measures and enforcement provisions. It also requires the state agency to maintain adequate funding to implement its programs.

Requirements in the state plan for stationary industrial sources are to be implemented through an operating permit program in federal law, which contains a number of complex fee requirements, including a requirement that the states show that the program will collect fees from subject sources to cover the cost of the program.

To comply with these requirements, Oregon has established a statutory fee schedule that includes the minimum required base fee, to be adjusted as necessary according to the consumer price index.

Many of the Clean Air Act's directions to states are expressed in mandatory terms. States that do not meet federal requirements face significant sanctions: withholding federal highway funds and increased emission offset requirements for new or modified sources of air pollution.

► Despite the mandatory phrasing of many portions of the Clean Air Act, it does not mandate state fee requirements or even state participation at all.

- ▶ Although it is clear that Congress intended to use a potent array of carrots and sticks to induce states to meet the Clean Air Act requirements, the requirements for state fees would not preempt the Measure's requirement for voter approval to increase the fees.
 - ▶ The Measure's exemption for changes in "federal tax law" do not apply because the Clean Air Act is not a federal tax law.
 - ▶ Except where there is a specific exemption (such as increases in fines), increases in fees or taxes associated with these cooperative federal-state programs would require a vote of the people.
 - ▶ If the voters declined to approve the increase, the resulting noncompliance with federal requirements would result in substantial loss of monetary benefits to the state or its citizens. But the severity of the consequences does not alter the conclusion that the federal statutes would not supersede the proposed Oregon constitutional provision requiring a vote of the people before tax or fee increases could become effective.
- A law or administrative act adopting federal changes to the Internal Revenue Code or its regulations after federal changes have been made.
- ▶ Presently, the Oregon Constitution permits the Oregon legislature to link state income tax laws to the federal income tax statutes and regulations, and to automatically incorporate into state income tax law any future changes that may occur in federal income tax provisions, absent affirmative action by the Oregon legislature to modify or reject those changes.
 - ▶ The legislature has implemented this provision of the constitution by the current statute incorporating the federal income tax provisions "as they are amended on or before December 31, 1992."
 - ▶ Only one of the Measure's voter requirement exceptions might apply to subsequent acts of the legislature incorporating changes to the federal income tax laws into Oregon income tax laws.

Subsection (7) states that the Measure "shall not require a vote of the people when increases in government revenue occur solely due to changes in federal tax law."

- ▶ A law or administrative act that increases taxes by adopting federal changes to the Internal Revenue Code or its regulations after the effective date of the Measure would not come within this exception.
- ▶ In this case, the tax increase would not occur solely due to changes in federal tax law. It would be due to the state law or act incorporating the federal changes. Accordingly, voter approval would be required.
- The following governmental actions would not require voter approval, subject to certain *qualifications*:
 - Increasing the withholdings reserved in connection with the collection of a tax.
 - ▶ The most familiar example of a withholding system in Oregon is the withholding of a portion of an employee's wages or salary for payment of the personal income tax.
 - ▶ Tax withholding is a **collection** function. The function of levying a tax is a separate and distinct function from collecting it.
 - ▶ Increasing the rate of withholding would not constitute a "tax increase" requiring voter approval.
 - ▶ This conclusion is *qualified* with an important warning: an increase in a withholding rate that is so large as to bear little relationship to the amount of the tax liability to be collected, or little relation to sustaining consistent government cash flow based on the actual anticipated tax liability, might be held to constitute the functional equivalent of a "tax increase" that would require voter approval.
 - Imposing or increasing a municipal utility's charge for electrical power, based on the amount used; Imposing or increasing a municipal utility's charge for water service, based on the amount consumed; Imposing or increasing the flat fee portion of charges for water service; Imposing or increasing a fee for discontinuing or changing the water service; Imposing or increasing a municipal charge for sewer services.
 - ▶ This summary combines the analysis to these specific fees or charges because the analysis is virtually identical.

► The Measure specifically exempts "user fees charged by Peoples' Utility Districts." It does not specifically exempt other government-operated utilities.

► However, three other exemptions may apply: user fees, monopolized products, and incurred charges exemptions.

User fees: The key to determining whether a user fee is "paid voluntarily for specific services that are not monopolized by government" is whether the individual has the option to obtain the service from a non-governmental source. If the customer has reasonable access to at least one non-governmental source for such services, an increase in the user fee charged would not require voter approval.

Monopolized products: The Measure would exempt "increases in charges for monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control." The terms "services" and "products" are not mutually exclusive.

Incurred charges: There are three conditions in the definition of "incurred charges." They are charges that (1) limited to charges on property, (2) can be avoided or controlled by the consumer through the consumer's decisions whether to obtain the service or to limit the quantity of services consumed, and (3) do not exceed the actual costs of providing the service.

► The electric power provided by a municipal electric utility may be considered a product. If so, and if the municipal utility monopolizes the supply of electric power in a locality so that its customers do not have a readily available alternative, then the utility's charge could be increased without voter approval, but only to the extent that the increase is to pass through increased costs of wholesale inputs that are not state or local government costs and not otherwise under the municipal utility's control.

► In the case of a household's or businesses' consumption of electric power, the consumer has freedom to make choices and directly control the quantity of the power consumed. If charges for electric service and water service are imposed on property and based on the amount used by the customer, or the services are provided only on specific request, then these charges are regarded as "incurred charges."

► A flat fee charge for water service may be imposed or increased without voter approval *if* it does not exceed "the actual costs of providing the goods or services."

► A fee to change or discontinue existing water service would come within the "incurred charges" exemption because the particular service is "provided only on the specific request" of the customer.

► Sewer services do not fall within "user fee" exemption, nor the "monopolized products" exemption. Frequently, charges for sewer services are based on a measure of water used by consumers. So long as the charges do not exceed the actual costs of providing services, the charges would qualify under the "incurred charges" exemption.

However, if the charges do not satisfy the three conditions in the definition of "incurred charges" (charges against the property, charges that the consumer can control based on use and charges that do not exceed actual costs), then any increase in the charge for sewer service would require a vote of the people.

○ Imposing or increasing transit fares.

► While this conclusion is not free from doubt, transit fares may fall within the exception for "other user fees paid voluntarily for specific services that are not monopolized by government."

► At least in most urban areas, other comparable means to transportation are available, and the transit user has the options of using the transit system, using a personal automobile, or taking a taxi.

► The decision to use a public transit system is voluntary. No law forces the individual to use the service, or consequently, to pay for it.

► In addition, transit fares would come within the "user fee" exemption. Among the objectives underscored in the Measure is to exempt charges from the voter approval requirement if the taxpayer has substantial choice to control the taxpayer's payment to government by controlling the extent of the taxpayer's use of the service.

○ Imposing or increasing a local improvement district assessment.

- ▶ To come within the exception for "local improvements," any assessment levied must "not exceed the actual costs incurred by the governmental unit in designing, constructing and financing the project" and such costs must be assessed "in a single assessment upon completion of the project."

○ Imposing or increasing SAIF premiums for workers' compensation coverage.

- ▶ SAIF competes with private insurance organizations and insurance has been held to constitute a service. For that service, a user fee is paid in the form of a premium.
- ▶ SAIF premiums fall within the "other user fees paid voluntarily for specific services that are not monopolized by government" and imposing or increasing premium rates would not require voter approval.

○ Imposing or increasing a charge by one government body upon another government body.

- ▶ An example of this is a charge by the Oregon Department of Transportation to a county or road district for the construction or repair of a road or highway under a cooperative agreement.
- ▶ The Measure would not require voter approval when a government entity imposes or increases charges to other government bodies, *unless* the charges would affect private taxpayers and government bodies alike, such as the motor vehicle use fuel tax or unemployment taxes. *If* such a charge also fell upon private taxpayers, voter approval would be required (unless another exception applies).
- ▶ The Measure is apparently intended to apply only to charges on private citizens and their legal entities, such as private corporations.

The Measure bears a telling indication that it does not intend to require voter approval of intergovernmental or interagency charges when the Measure specifically gives an "Oregon resident or legal entity doing business in Oregon" standing to bring suit to enforce the Measure. However, in providing for the reimbursement of the successful plaintiff's costs and attorney fees, the Measure explicitly states that "no government units shall be entitled to attorney's fees, costs or expenses."

Therefore, we believe that government units are not included as part of the class of taxpayers who would be protected by the Measure.

○ An act that does not directly increase taxes, but has the incidental effect of doing so. - *Qualified*

▶ Examples of such acts include zone changes or local decisions to annex property into a city.

▶ The government act in question must itself affect taxpayer liability before the Measure applies. The Measure requires voter approval of a "new tax" or a tax or tax rate increase. These are actions that directly affect government revenue and taxpayer liability.

▶ Nothing in the Measure suggests that it was intended to apply to actions that only indirectly may affect taxpayer liability. However, a variety of government actions, not regarded as an exercise of the power to tax, will nevertheless have the effect of enhancing the value of a parcel of property or an individual's ability to earn income.

▶ The Measure's requirement of voter approval for "new taxes" and "tax increases," on the one hand, and the exception for increases in government revenue due to "increases in real market property values," on the other, set out the two ends of the spectrum. Unfortunately, the Measure provides no guidance for situations that fall between.

▶ A legislative act reducing the boundaries of an exclusive farm use zone or annexing property to a city is likely to affect the underlying property values, indirectly causing the property taxes to increase. However, such an act is also likely to have a more direct effect upon the tax liability of the property owner. Does that mean that it is a new tax or a tax increase?

▶ This is one of the gray areas in the Measure that ultimately will need to be answered by the court.

EFFECT OF MEASURE ON EXISTING LAWS

(pages 52-63)

- Because the Measure would amend the Oregon Constitution, it would add a condition, voter approval to any existing statutes that increase a tax or authorize an administrative increase in a tax after the Measure's effective date.

- The Measure would repeal by implication, or amend, any inconsistent provisions of earlier statutes. To the extent an existing statute imposes a tax schedule with higher rates, unless approved by the voters. The Measure would condition the use of the new schedule.

- However, with respect to statutes that require automatic increases and decreases in tax rates, such as unemployment insurance, the Measure would have one significant, additional effect. Because the Measure would not invalidate those portions of such statutes that lower the tax rates, over the long term, the effect of the Measure is likely to be that tax rates would be pushed lower and lower.

- No provision in the Measure affirmatively authorizes an increase in a tax, fee, charge or tax rate, without voter approval, in response to a change in the cost-of-living index. Accordingly, if the increase would otherwise be subject to the Measure's voter approval requirement, the fact that the increase is triggered by a change in the cost-of-living index provides no insulation from that requirement. The effect would be to void any automatic upward adjustment in the tax or charge based on a cost-of-living index.

- The Measure's effect on existing laws is not certain, however. The courts could determine that its intent was not to affect existing laws that impose new taxes or taxes increases after the effective date of the Measure.

- The Measure would repeal any existing statutes that sunset a tax credit or exemption after the Measure's effective date, unless approved by the voters.

- The Measure states: "Any elimination or reduction of tax exemptions, credits, deductions, exclusions, or cost-of-living indexing shall be considered a tax increase."

- A law that sunsets a tax credit or exemption eliminates that credit or exemption.

- One type of statute commonly considered to sunset an exemption is ORS 468.170(4)(c). This statute allows an exemption for pollution control facilities completed before December 31, 1995. Because we see no material difference to the taxpayer between a law that states that it will "sunset" a tax credit or exemption on a specified date and one that states that the taxpayer must qualify for the credit or exemption before a specified date, we conclude that the statute "eliminates" the credit or exemption and requires voter approval.
- The Measure would repeal by implication the portion of any statutes that require or authorize an increase in charges based on a government body's actual cost.
 - The Measure states, in subsection (4), that "any state or local government fee or other charge" not listed in subsection (3) shall be considered a tax" for purposes of the voter approval requirement.
 - The breadth of this subsection demonstrates that the word "tax" should be given an expansive interpretation.
 - Thus, the Public Utility Commission's regulatory assessment constitutes a "tax" and any increase in it would require voter approval, unless it qualifies under one or more of the exceptions.
 - ▶ The intent of the Measure is to prohibit government from increasing taxes without voter approval, regardless of the cause of the increase, unless specifically exempted by the terms of the Measure. There is nothing in the terms of the Measure that would except tax increases based upon increases in government's cost.
 - ▶ As with the analysis of existing statutes that trigger future tax increases, the Measure would condition the PUC's authority to increase the rate of its regulatory assessments upon obtaining voter approval.
 - The Energy Facility Siting Council's charge for review and consideration of an application for a site certificate is similar to the PUC's increase in regulatory assessments, but this conclusion is not without considerable doubt and requires careful distinction between an increase in the charge and the varying effect that application of such a cost-based charge will have on different applicants.
 - ▶ The amount of the EFSC fee for an application is determined by peculiar characteristics of the particular project or activity for which the applicant seeks permission. The most complex the consideration of the application, the greater the fee.

► The Measure does not appear to have contemplated fees of this character, which allow the government to recover its costs for activities that are unique to a particular individual but also within the exclusive jurisdiction of the government body.

► While the opinion analyzed and discussed three possibilities with respect to these types of fees, it did not predict how a court would view this issue.

○ Similar to EFSC fees, a public body's charge for making public records available probably could not be increased without voter approval, *except* for increases in the costs of the actual copies of the records if the copies may be obtained only from the a government body, and then only to the extent that the increases are solely to pass through increased costs of wholesale inputs that are not labor costs and not otherwise under the public body's control.

HOW THE EFFECT OF AN ACT IS TO BE JUDGED

(pages 64-65)

● The Measure states that questions submitted to the voters "shall clearly describe the proposed new tax or tax increase and the reasonably estimated annual dollar amount of the proposed new tax or increase.

● If no increase in taxes could "reasonably" be predicted, then there would be nothing to submit to the voters. If, however, the government body reasonably foresees that an act will increase taxes, voter approval is required, whether the increase is immediate or at some later date.

● It may be possible to "reasonably estimate" that some increase will occur, but not to estimate with any sense of certainty the amount of the increase. In context, the estimated amount is intended to be that which can be determined from the information reasonably available, by the method or methods which are reasonable, given such considerations of reliability, cost and relevance to the nature of the information that is to be the basis for the prediction.

● The fact that the estimate later proves to be incorrect does not void the enactment, provided that the original estimate was reasonable.

ACTS APPROVED BY VOTERS AFTER THE MEASURE TAKES EFFECT (pages 65-66)

- If this measure is adopted, an act approved by the voters after this measure takes effect that permits a future increase in a tax or a tax rate could be implemented.
- Said another way, the voters may approve an increase in a tax, but extend the effective date of that increase to some date in the future. The Measure imposes no restriction on that power of the voters.
- The question presented to the voters for such a "delayed increase" law, however, would need to clearly describe the proposed increase and the reasonably estimated annual dollar amount of the proposed increase.

mr/jas012CC

Municipal Debt Advisory Commission

Impacts of Ballot Measure No. 5 on Local and State Government Finance and Debt

August 1994

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Acknowledgments

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Members of the MDAC

Jim Hill

State Treasurer
Member by Position

Gary H. Bruebaker

Deputy State Treasurer
Treasurer's Designee

James P. Shannon
Chairperson

Mersereau & Shannon
Public Member

Rosemary Padgett

International Port of Coos Bay
Special Districts Representative

Alan Hillier

Assistant Superintendent, Centennial S.D. 28Jt
Oregon School Board Association Representative

D. Gary Holliday

City of Albany, Finance Director
League of Oregon Cities Representative

Mike Lewis

Seattle Northwest Securities, Vice President
Public Member

Gary Cadle

Jackson County Treasurer
Association of Oregon Counties Finance Official



August 15, 1994

To The Citizens Of Oregon:

Ballot Measure 5 to be voted on at the November 8, 1994 election may have a significant impact on state and local government debt management. In order to fulfill its statutory responsibilities and determine such impact, the Municipal Debt Advisory Commission ("MDAC") undertook a series of public meetings around the State of Oregon to accept testimony of the public, public officials and experts in the public finance field. Meetings were held in Salem, Coos Bay, Ashland, Pendleton and Portland. The mission of the MDAC was:

1. to determine what impacts, if any, Measure 5 may have on past and future state and local government debt;
2. to act as a clearinghouse of information for state and local governmental units with respect to the impact of Measure 5 has on their debt practices; and
3. anticipate legislative changes that may be necessary or desirable, within the limitations of the constitutional language, in the event Measure 5 is approved by the voters at the November 8, 1994 election.

The MDAC did not seek to take a position on the merits of Measure 5 nor advocate its passage or rejection at the polls. Its goal was to develop information concerning the impact Measure 5 may have on state and local government debt and prepare a report containing this information so that the electorate may be better informed when voting on Measure 5 and, if approved at the election, anticipate legislative changes within the constitutional limitations of Measure 5.

The attached report is the result of our efforts. We hope this report is widely circulated and discussed prior to the November, 1994 election so voters will be in a position to make an informed decision.

MUNICIPAL DEBT ADVISORY COMMISSION

James P. Shannon
Chair

The new tax limitation, which will appear on the November 1994 ballot as Measure No. 5 (the "Measure"), is an amendment to the State Constitution and thereby creates a new Section 32a in Article I. The Measure requires that any new state or local tax or tax increase must be approved at an election. Additionally, subsection 4 provides that all fees and charges are a "tax" under this section. The only exemptions are provided in subsections 3 and 7 (see Overview.)

The Municipal Debt Advisory Commission conducted five hearings around the state on the possible impacts of the Measure. Testimony indicated that the Measure will substantively change the way state and local governments fund their activities and undertake financings. The most significant impacts include:

- ☐ **Flaws in the Measure** will make it difficult for voters to determine the real impact of the limitations and could create impacts not contemplated by voters.
 - Several significant **grammatical errors** in the Measure will require legal and/or court interpretation before the affected revenues can be increased.
 - **Lack of clarity in wording** in some subsections could force greater limitations than perhaps intended.
 - The **lack of definitions** in the Measure leaves many ambiguities and uncertainties which may require costly legal and/or court interpretations.
- ☐ The Measure would **shift state and local funding of services back to a property ownership basis**, rather than the current emphasis on benefited user fees.
 - The Measure classifies all fees and charges as "taxes" and then provides an exemption to the Measure for "**incurred charges**" which, according to the prior Measure 5, are based upon property ownership. To obtain this exemption, most fees and charges may have to be imposed on property or property owners.
 - **Revenue bonds may be difficult and costly to issue**, thereby encouraging local governments to switch back to general obligation bonds (revenue bonds are paid from user fees; general obligation bonds involve property taxes for security). The required ballot language in the Measure may not accommodate the needed "rate covenants" and other provisions which make revenue bonds sell at reasonable costs. The Measure exempts user fees of Ports and People's Utility Districts and thus revenue bonds may be sold with less difficulty by these entities.
 - **Local self-supporting General Obligation Bonds** which are now paid from sources other than property taxes may increasingly need to be paid from property taxes, unless the voters approve rate increases for operations and maintenance.
- ☐ The present "**user pays**" **taxation philosophy reverts back under the Measure to the "general taxpayers pay"** for the increasing costs of those services whose fee increases are not specifically approved by the voters. Services mandated by law (such as planning reviews) would increasingly be paid by the general taxpayer, rather than by those who benefit from or require the services (such as developers), unless the voters approve every

increase for each fee or charge. This could lead to tax subsidization of those private concerns who are the largest users of the services.

- ☐ **Failure of the Measure to grandfather outstanding debt** will require reliance on the "Federal contracts clause" referring to the U.S. Constitution's prohibition on the impairment of contracts. Several attorneys have issued special legal opinions stating that this clause should protect outstanding bonds.
- ☐ **Failure of the Measure to address debt at all** means that future debt may not be marketable, since the Measure does not provide ballot language to address non-level debt service or compliance with rate covenants.
- ☐ **Failure of the Measure to exempt refundings** could make it impossible to issue refunding issues, even to save money, without a vote at one of the two annual elections, thereby delaying the sale perhaps beyond the point of greatest benefit in interest rates. The failure to exempt refundings also may make cost-saving interim financing difficult, since the final "take-out" long-term financing may now also require an election, whose outcome is unknown.
- ☐ **State General Obligation bonds, although already voter approved through Constitutional authorization, cannot be sold without another election**, since the voter approved language does not contain the specific language required by the Measure.
- ☐ **Ratings are "generally negatively affected"** (Moody's Rating Services) on outstanding and new issues if the Measure passes. This translates into higher costs on new debt issues.
- ☐ **Federal and state mandates could lead to greater control of local government expenditures by the federal and state governments.** Federal and state courts can mandate implementation of services whose fees have not been voter approved. This would force the use of general taxes to fund these mandated services and therefore divert the taxes from services which have local support. These mandates currently include federal clean air and water acts, criminal justice requirements, environmental clean-up, ADA requirements, sewer overflow orders, etc.
- ☐ **To avoid adverse consequences to local government operations, substantial rewriting of Oregon laws would be required.** All laws which mention "taxes" would need revision. For example:
 - Under current law, **tax-exempt entities** such as governments, churches, charitable organizations, might also be judged exempt from sewer charges, water fees and all other fees for service which this Measure defines as "taxes." A Department of Revenue hearings officer has recently upheld the tax-exemption for certain fees which were judged to be "taxes" under the prior Measure 5.
 - Laws relating to local government tax bases and limitations need reworking to prevent all sewer, water, permit and other fees and charges from being combined and added to property taxes subject to the voter approved tax base amount and 6% limitation of Article XI, Section 11 of the Oregon Constitution.

- ❑ **Costs for services would increase to cover the cost of additional elections, additional bond sale and interest costs, taxpayer suit costs and other expenses resulting from the Measure. The Measure does not provide any revenue source to cover these additional costs. Cost saving efforts at consolidating services would find the necessary intergovernmental contracts difficult under the Measure.**
- ❑ **The Measure's prohibition against passing along labor costs incurred to provide a "monopolized product" may force governments either to privatize these services, even if privatization is more costly or to use general taxes, regardless of the level of product use.**
- ❑ **Variable rate debt may be impossible to issue under the Measure. In certain circumstances, use of variable rates can create substantial cost savings.**
- ❑ **The Measure failed to establish election dates for 1995, leaving no possibility of an election to vote on a tax or fee increase until an approved legislative bill sets the dates and takes effect.**
- ❑ **The long list of fees and charges on the ballot which is likely to appear at each election may make it cumbersome for voters to fully inform themselves about each measure and may even discourage voters from voting.**

MUNICIPAL DEBT ADVISORY COMMISSION

The Municipal Debt Advisory Commission (MDAC) conducted five public hearings throughout the State to focus on the potential impact on local government debt management if the Measure is approved.

The MDAC is a seven-member statutory Commission established in 1975. The membership consists of the State Treasurer or his designee, three local government finance officers, one representative of special districts and two public members. The League of Oregon Cities, Association of Oregon Counties and the Oregon School Boards Association make recommendations to the Governor for appointment consideration.

The statutory role of the MDAC is as follows:

1. Assist State and local government units in planning, preparing, marketing and selling new bond issues to reduce the cost of issuance and protect the issuer's credit.
2. Collect, maintain and provide financial information on local government units pertinent to their ability to assume and service bonded obligations.
3. Serve as a clearinghouse for all local bond issues.
4. Maintain contact with municipal bond underwriters, credit rating agencies, investors and others to improve the market for local government bond issues.
5. Recommend changes in State law and local practices to improve the sale and servicing of local bonds.

The purpose of the hearings was to encourage the public, representatives of local governments and professionals in the debt management field (e.g. bond counsels and financial advisors) to articulate the problems likely to develop in the area of debt management upon the passage of the Measure.

The purpose of this report is to inform the citizens of Oregon regarding the potential impacts of the proposed Measure. The MDAC has collected the testimony of many financial experts who have analyzed the Measure and offered their analysis to better inform the voters on the impacts.

This report deals specifically with the potential impact of the Measure on debt management, not on the management of financial operations generally.

PROVISIONS OF THE MEASURE

The new tax limitation measure, which will appear on the November 1994 ballot as Measure 5, is an amendment to the State Constitution and thereby creates a new Section 32a in Article I. The following provides a summary of the Measure's provisions in the Measure's own words. This is not a legal interpretation of the Measure or its language.

Paragraph 1, Section 32a, (1) states the Measure's primary purpose:

"No new tax shall be levied and no tax or tax rate shall be increased, by the state or by any local government or district, unless such tax or tax increase is first approved by a majority of voters voting on the question."

The Measure requires that any new state or local tax or tax increase must be approved at an election. Additionally, subsection 4 presents the primary impact of the Measure:

"Any state or local government fee or other charge not listed in subsection (3) shall be considered a tax for the purposes of this section."

Therefore, all fees and charges, and not only ad valorem taxes, require an election to initiate or, more importantly, to increase the rate or fee. The only exemptions are provided in subsection 3 and 7:

**Sub-section 3 Revenues not consid-
ered taxes or tax in-
creases:**

In the exact words of Subsection (3):

- user fees charged by People's Utility Districts
- user fees charged by port districts
- school, college or university tuition and fees
- incurred charges as defined in Article XI section 11b
- local improvements as defined in Article XI section 11b
- other user fees paid voluntarily for specific services that are not monopolized by government
- increases in charges for monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control
- fines or forfeitures for violations of law
- earnings from interest, investments, state lottery proceeds, donations or asset sales

**Sub-section 7 Increases which do not
require a vote:**

Increases in government revenue which occur solely due to:

- changes in federal tax law
- increases in income
- increases in real market property values

- other changes in the circumstances of individual taxpayers

A tax base increase of no more than 6% as allowed in Article XI Section 11

The rest of the Measure further refines this basic purpose:

<u>SUB-SECTION</u>	<u>MAIN PROVISION</u>	<u>DISCUSSION</u>
1	New required ballot language:	“clearly describe the proposed new tax or increase and the reasonably estimated annual dollar amount of the proposed new tax or increase”
2	“Tax increase” also includes:	<p>“elimination or reduction of:</p> <ul style="list-style-type: none"> • tax exemptions • credits • deductions • exclusions <p>or cost-of-living indexing (wording unclear here) extension of an expiring tax”</p>
5	Elections for new taxes or tax increases:	<p><i>even-numbered years</i>: one primary and one general election date</p> <p><i>odd-numbered years</i>: up to two election dates designated by law</p>
6	Multiple tax and fee changes:	Can be on one measure and be considered a single subject
9	Override:	<p>If a State of Emergency is declared as provided by law.</p> <ul style="list-style-type: none"> • Legislature and Governor may override and enact particular taxes or authorize particular local taxes without a vote if such taxes are approved by a three-fourths vote in each house and signed by the Governor. • Shall be specifically designated for the declared emergency and in effect no longer than 12 months.

- Revenue in excess of amount required by the emergency shall be returned to the people in a timely manner.
- During the emergency, all other taxes still are subject to this Measure.

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Violations:

Government that levies in violation shall refund any tax or fee amounts collected, plus interest, to taxpayers in the twelve months following the determination of the violation.

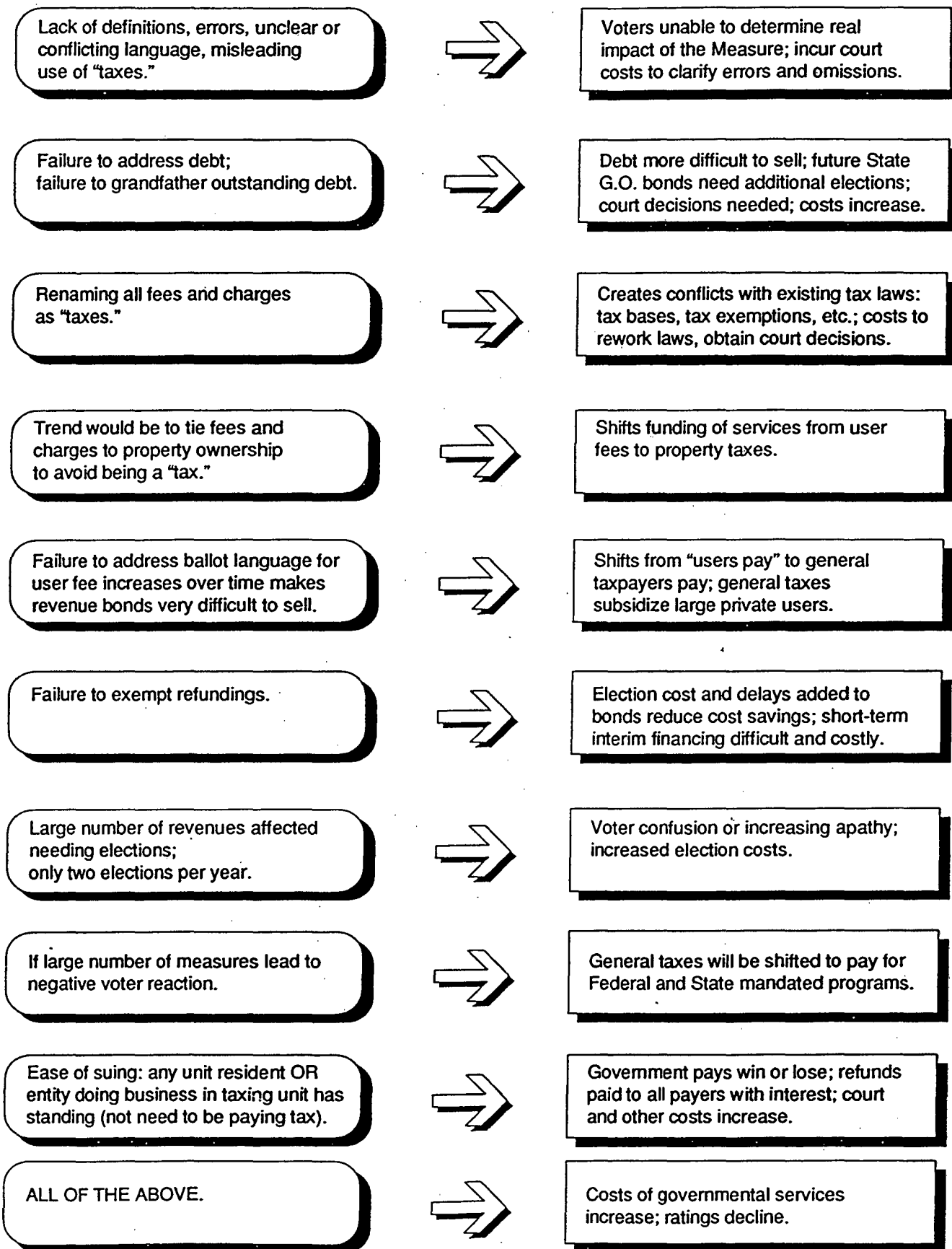
Interest computed as cost of living change plus 6% per year, compounded for the period from collection to payment of refund.

Paragraph 4

Legal actions:

- Contesting or enforcing any part - to Oregon Tax Court.
- Any Oregon resident or legal entity doing business in Oregon has standing to bring suit provided that the person or legal entity bringing the suit resides or does business within the taxing unit or district which shall be the defendant to the suit.
- No government is entitled to attorney's fees, costs or expenses.
- Action must be begun within two years of the date of any alleged violations.
- If the Oregon resident or legal entity bringing suit prevails - they shall be reimbursed by the defendant for all reasonable expenses of the suit, including, without limitation, attorney's fees, costs and reasonable expenses at trial and on appeal.

SELECTED IMPACTS OF MEASURE 5



This section of the report deals with the potential impacts of the Measure on state and local governments.

GENERAL IMPACTS AFFECTING CREDIT WORTHINESS

A key factor for the rating and sale of bonds is the credit worthiness of the issuer. Some important factors which can cause creditworthiness to decline include:

- a government's financial health deteriorating
- a single source of payment, such as the property tax, is heavily relied upon to pay for governmental services
- services are paid for by taxpayers in a manner which does not relate to the degree by which they use or benefit from the service
- legally required governmental services lack funding and general operating funds must be shifted to pay for these mandated services

As credit worthiness declines, so do the ratings and marketability of debt. Any deterioration in ratings and marketability translates into higher interest and debt issuance costs.

Testimony indicated that the Measure could tend to shift taxation from a "user pay" philosophy back to a general property tax payment system regardless of use of a service or product. To the extent voters do not approve increases in the fees and charges needed to cover costs, property taxes could subsidize the users of the services or products. Also, testimony indicated that there could be impacts on costs to both the governments and the tax and rate payers who reside in the governmental area, without any identified increase in revenues to pay these costs. The following summarizes some of these forecasted overall impacts.

- Impacts which could increase reliance on property taxes, subsidizing private use by general tax payers.
- Shift taxation and user fees back to property ownership
 - The Measure could encourage governments to tie more fees and charges to property ownership than before, since "incurred charges" and "local improvements," which are exempted from both this Measure and the prior Measure 5, are property ownership based. Incurred charges are defined as charges which can be controlled or avoided by the property owner.
 - There is no exemption for fees or charges for "products" which are NOT monopolized by governments. Water, electricity (from non-PUD entities such as cities) therefore may not be exempted. These would have to become tied to property ownership if they were to qualify as incurred charges.
 - Where property owners are landlords, in order to be exempt from the Measure, the landlords may have to assume responsibility for payment of the water and sewer "incurred charges." This may entail a lien upon the property which is enforceable if there is a failure to pay the bill.

- ❑ **User pays philosophy changed back to general taxpayer pays**
 - If governments cannot increase fees according to use, then general taxpayers could subsidize heavy users. This is counter to the "user pays for service" philosophy and shifts the costs to the property tax payer. If the service is mandated, general taxes could shift from other services. If the service is not mandated, service levels could drop to those fundable from the voter approved fee levels.
 - Local government capital financing for sewer, water and similar service facilities may tend to shift from Revenue Bonds back to General Obligation Bonds, since both would now require voter approval and revenue bonds would be quite difficult to issue. If the General Obligation bonds are approved but the future rate increases needed for operations and maintenance costs are not approved, these facilities' bonds would then be paid from property taxes, rather than sewer or water fees, which would be used for operations and maintenance costs.
- ❑ **Federal and State Mandates could lead to greater control of local government expenditures by the Federal and State Governments**
 - There are many Federal and state mandated services for which a Federal court can order implementation regardless of availability of local revenues. This could shift taxes from other services and could shift control to the Federal and state governments. Some areas include:
 - Clean Air Act
 - Clean Water Act
 - Criminal Justice requirements, including prisons, law enforcement, courts, indigent defense, etc.
 - Combined sewer overflow Stipulated Final Order (DEQ)
 - ADA requirements for governmental facilities
 - Underground Storage Tanks clean-up
 - Environmental Clean-up requirements
- ❑ **Subsidy of Private Entities, such as Developers**
 - If governments cannot recover the full cost of providing service or regulation to a private entity, and that service is required by law, then the government must shift general governmental taxes to pay for that cost.
 - For example, as development or growth fees (building permits, inspection fees, zoning change fees, etc.) fail to be increased to meet the costs, the actual cost to process permits, etc. may be subsidized by the general property taxes. This in essence subsidizes private individuals and developers who currently pay directly for the services they use.

☐ **Possible Impact on Tax Bases**

- Under this Measure, Subsection 4 states that "any state or local government fee or other charge not listed in subsection (3) shall be considered a tax for the purposes of this section." This essentially redefines most fees and charges as "taxes." Some fees and charges may be exempt if they become "incurred charges," but to become an incurred charge, they must become "taxes" under the old Measure 5.
- There has been a court case considering whether a charge which was considered a "tax" (although not an ad valorem tax) under old Measure 5 should be counted as part of the "tax base" of the entity; this case was dismissed on technical grounds. If a future court determines that this is the case, then sewer fees, water fees, licenses, etc. could all be counted as part of the voter approved tax base - whether or not they are incurred charges - thereby lowering or eliminating the ability of the entity to levy property taxes for general governmental services.

☐ **Possible Impact of Tax Exemptions**

- There are a number of entities that enjoy a tax exemption, including governments, charitable organizations, churches and others. There are currently two court cases by tax-exempt entities seeking to be exempt from the governmental charge which under the old Measure 5 was considered a tax, even though it was not an ad valorem tax. To the extent the tax-exemption statutes are not specific as to ad valorem tax exemption, then all fees and charges subject to this Measure are also taxes and may be considered subject to the tax exemption.
- If the courts so find, then the cost of the services could be transferred to the smaller base of rate payers. Since this could force a rate increase, voters would have to decide whether to increase the rates ("taxes") or to have the service diminish to meet the available revenues. This could include water and sewer services and any other services normally charged the tax-exempt entities based upon their use of the service. Also, any attempt to amend the statutes pertaining to tax-exemptions may be deemed to be an elimination of a tax-exemption which is defined in the Measure as a tax increase.
- On one case, a Department of Revenue hearings officer has found in favor of the tax-exempt entity. This case will be appealed to the Oregon Tax Court.

☐ **The restrictions could apply to non-governmental fees**

- Counsel suggests that payments to some non-governmental entities could become "taxes" under this Measure. For example, fees to private garbage haulers who are franchised by the local government to provide collection services may be subject to the voter approval limitation.

☐ **Intergovernmental Charges**

- Charges between governments may be treated as taxes, including payments from the Federal Government. Therefore, this Measure could restrict increases in charges to the Federal Government for housing Federal inmates in local prisons, etc. unless voters approve the increase.

- Impacts which could either directly or indirectly increase governmental costs without new revenues identified to cover these costs.
- ☐ Court Costs
 - The lack of clarity in the Measure will require court interpretations. The costs of these suits will most likely be paid by governments which will seek such court assistance.
- ☐ Elections
 - The ongoing need for elections for most governments and the large number of measures may cost more.
- ☐ Bond Costs
 - Issuance costs increase as complexity increases or security decreases.
 - Ratings may go down, causing interest rate increases.
 - Marketability may go down, causing interest cost increases.
- ☐ Consolidation of Services
 - To save costs and eliminate duplication of services, governments have been consolidating services. Under this Measure, the government assuming services from another government may have difficulties paying for the service, since the payments from the government giving up the service may be treated as a new "tax" subject to a vote.
- ☐ Governments pay for taxpayer suits even if the government wins the suit
 - Persons or entities initiating litigation under the Measure are paid their attorney's fees and costs if they are successful in their lawsuit, encouraging litigation especially if the lawyer accepts the case on a contingent fee basis.
 - The government must pay its own legal costs even if it wins.
- ☐ Privatization may be necessary even if not cost effective.
 - Under the Measure, governments can pass through wholesale inputs, but not their own cost increases, such as from labor - even if labor contracts require cost increases. Therefore, transferring certain services to the private sector, even if the service costs tax/rate payers more, may be forced if the voters do not approve the government's cost increases.

GENERAL DEBT IMPACTS

Testifiers identified some potential impacts and some areas of uncertainty which apply to most types of debt. The following are impacts raised by the testimony.

Throughout this discussion, references to the "Federal contracts clause" refers to the U.S. Constitution's prohibition on the impairment of contracts. According to the State Attorney General in a recent State of Oregon Official Statement, "*Court decisions under the Contracts Clause of the United States Constitution have prohibited the application of changes in state law in a manner that impairs such a security feature underlying previously issued obligations.*"

□ **Lack of definitions; unclear concepts could halt sales of some debt issues until courts rule; Legislative action alone may not be able to resolve uncertainty**

- The most commonly stated observation in the testimony was the lack of definitions and clarity in the Measure. While the Legislature can enact legislation that attempts to define and clarify the Measure, the ultimate determination must be made by the courts. This could be costly and involve significant delays or uncertainty while awaiting court rulings, since issuers can't sell bonds if litigation is ongoing which pertains to the issue. Where an uncertainty in the Measure particularly relates to the ability of the government to repay the debt, the bond counsel may not be able to provide a legal opinion and therefore the debt may not be issuable at all until that uncertainty is removed by the courts.
- Experience after the first Measure 5 relating to tax increment financing has made bond counsel, rating agencies and investors more hesitant in relying on Legislative action or legal opinions alone. While the State Attorney General opined that the tax increment was exempt from the \$10 limitation, the courts ruled in opposition, making the increment subject to the \$10 limitation.
- Moody's Investor Services, who rates most of the state and local debt issues in Oregon, in their April 5, 1994 report stated that:

"Many of the terms contained in the Measure as written are imprecise." Therefore, "Measure 5 will be subject to judicial interpretation."

□ **Errors in construction will require court interpretations**

- Testifiers identified several areas in the Measure where words appear to be missing or the sentence construction leads to perhaps unexpected results. These will require clarification by the courts. Some examples include:
 - Subsection 3 of the Measure exempts "local improvements" but does not mention the "assessments" which are the payments; it is not clear that exempting the improvements is the same as exempting the assessments.
 - Subsection 3 ends:

"and earnings from interest, investments, state lottery proceeds, donations or asset sales."

1. According to the rules of English grammar, this would exempt only the earnings on these items and not the items themselves.

- Subsection 7 indicates that:

"This section shall not require a vote of the people when increases in government revenue occur solely due to changes in...."

The subsection goes on to list situations which affect taxes. Does this imply that all governmental increases in revenue not due to the listed situations is then subject to a vote, even if the increase is due solely to user fees increasing due to an increase in use (e.g., a water consumption increase) rather than an increase in rates?

- Subsection 2 reads:

"Any elimination or reduction of tax exemptions, credits, deductions, exclusions, or cost-of-living indexing shall be considered a tax increase."

- It is not clear whether cost-of-living indexing is itself a tax increase or only the elimination or reduction of the indexing.

☐ **Ratings on outstanding and new state and local debt may be affected negatively**

- Moody's Investor Services in their April 5, 1994 report stated that:

"Measure 5 has generally negative implications for bond ratings."

"First and foremost, this additional limitation would further reduce the operating flexibility of local governments. Financial operations are likely to narrow or reserves be reduced. The ability to finance capital improvements on a pay-as-you-go basis would be reduced, possibly increasing the reliance on debt financing."

(See the Revenue Bond section below for Moody's comments regarding revenue bonds.)

☐ **The ease of tax or rate payer suits could halt debt issuance**

- Persons or entities not paying the tax can still sue if they live in the taxing district. The only requirement for standing to sue a governmental entity is that they live or do business in the taxing district. So an out-of-state business doing business in district could sue even if they do not buy the non-monopolized product from that district, including the district's own competitors. (Products are exempt only if the product is monopolized by government.)
- The costs of suing are not shared equally. The government must pay its own legal costs even if the government wins the suit. It pays both sides' legal costs if it loses the suit.
- The ease of suing may encourage suits which could delay bond sales until they are resolved, since issuers can't sell bonds if litigation is ongoing which pertains to the issue.

- ❑ For future debt, fluctuations in debt service may require an election, thereby making the debt not marketable
 - Where a debt service requirement increases from one year over the prior year:
 - *If the debt is voter approved*, this increase may be exempted from the election requirement if the ballot title had the “reasonably estimated annual dollar amount” although it is possible that increases still would require separate votes. This needs legal clarification.
- ❑ Disclosure to investors regarding the effects of this Measure will be difficult until courts interpret it
 - The uncertainties relating to the lack of definitions and unclear concepts will make disclosure difficult when selling bonds until the court opinions have been obtained. If bonds are sold and later a court makes a determination which adversely affects the bonds’ security or rating, the issuer could be subject to bondholder suit for a failure to properly disclose.

GENERAL OBLIGATION BONDS

Local governments and state agencies have historically issued General Obligation bonds (“G.O. bonds”) for a wide variety of items commonly considered capital, such as land acquisition, building acquisition and construction, equipment acquisition and repair of existing properties, to name a few. Most G.O. bonds are voter approved and are payable from property taxes which may be levied without limitation as to rate or amount to pay debt service on the bonds.

Some of these bonds are called “self-supporting,” meaning that the bonds are paid from revenues other than property taxes and the taxes are intended only to secure the bonds in the case the revenues are insufficient. Until recent years, many water and sewer bonds were sold as self-supporting G.O. bonds. If the water or sewer revenues were insufficient, then property taxes must be levied to pay the bonds.

Testimony to the MDAC indicated that the Measure affects G.O. bonds in the following ways:

- ❑ Future State G.O. bonds cannot be issued without a statewide election for each issue
 - The State cannot issue any more of its already voter approved G.O. bonds without new elections for each issue since the voter approved Constitutional language does not contain the required ballot language stating the reasonably estimated annual dollar amount of the tax to pay debt service on the bonds. Therefore, each new bond issue would be considered a “new tax.”
 - The state is authorized to issue G.O. bonds for the following purposes:
 - Veterans housing
 - Higher education building projects and facilities, including community colleges

- Education
 - Transportation - building and maintaining roads
 - Environmental quality
 - Multifamily housing for elderly and disabled persons
 - Water resources
 - Small scale energy projects
- The Oregon Attorney General has opined that State G.O. bonds issued prior to the effective date of the Measure will be protected by the Federal contracts clause. Additionally, the Attorney General stated in the State of Oregon General Obligation bonds Official Statement dated May 9, 1994 that:

“the Measure bears no indication that its drafters intended the Measure to have retrospective application to previously established State general obligation bond commitments.”

- ☐ **Bonds authorized before but issued after the effective date of the Measure**
 - If the “reasonably estimated annual dollar amount” was not in the ballot title, the first levy may be considered a “new tax”. It would then require another election to authorize the new tax. There are some counsel who believe that this would not be the case, since this Measure does not amend Article XI of the State Constitution.
- ☐ **Outstanding Self-Supporting G.O. bonds may start to use property taxes for payments**
 - For self-supporting G.O. bonds (bonds paid from sources other than property taxes), issuers are required by bond contract to levy property taxes if the revenues used to pay debt service are no longer available. Therefore, G.O. bonds now paid from non-property tax sources, such as sewer or water bonds, may have to switch to payment from property taxes while rate revenues are used to cover inflating operations and maintenance costs, unless increases in the rates are voter approved.
 - It is possible in some cases the Federal contract clause protection applies to the revenues; however, there is typically no pledge of revenues or covenant to raise rates, so there is no contract with bondholders to use anything except property taxes.

REVENUE BONDS

Revenue bonds are bonds which are paid solely from the revenues which are pledged to the bonds. The repayment revenues can range from a single source, such as water rates and charges, to a broader range of revenues, usually termed “legally available revenues.” If the revenues are insufficient to pay debt service, then the issuer may default on the revenue bonds - the government cannot be forced to use or levy taxes to support revenue bonds.

Most revenue bonds have covenants, which are contractual promises to the bond holder. An important covenant is the "rate covenant" which promises to raise rates to a level greater than that needed to pay debt service. This level is termed "coverage" and is set in the bond documents. It is typical for the rate covenant to refer to "net revenues" after payment of operations and maintenance costs. Typically, the issuer promises to raise rates sufficient to operate and maintain the facility, to pay debt service and to have some revenue left over every year. The more difficult it is for an issuer to make these promises, the less secure the bonds are considered, the lower they are rated, the harder they are to market and higher are the interest and issuance costs for the bonds.

Testimony to the MDAC indicated that the Measure affects revenue bonds in the following ways (note that "tax" below refers to fees and charges in accordance with subsection 4 of the Measure):

☐ **Ratings may decline**

- Moody's Investor Services in their April 5, 1994 report stated that:

"In the case of revenue systems which rely on user fees, strong credit ratings are often tied to the unregulated ability to increase fees in a timely basis to meet debt service requirements. It is not clear what the impact of Measure 5 would be on the ability of an entity to increase rates in the future for existing debt service or to maintain operations. Further many revenue systems have regulatory mandates to improve service which may be hindered by the inability to raise rates without voter approval."

"The wording of the Measure could also affect a system's ability to raise rates even with a vote in a timely manner."

☐ **Bonds issued before the Measure but the "tax" has not yet been "levied" OR bonds issued after Measure takes effect may require elections unless fees and charges are changed to incurred charges**

- Increases in rates will require voter approval of these "tax" increases unless the rates qualify as "incurred charges" (see below) or an election was held with the appropriate ballot language. Issuers might be able to submit a ballot measure referencing projections which demonstrate the reasonable annual estimates for future increases in rates due to operations and maintenance costs and debt service. Legislative and/or judicial guidance is needed to determine how to accomplish this.
- It may be difficult to issue revenue bonds unless the questions regarding rate covenants and coverage are resolved. Also, the ability to adequately pay operations and maintenance costs by the revenue system may affect the rating and marketability of the bonds.
- It is not clear when a tax is "levied" in the case of fees and charges.

- ❑ **Rate covenants will become difficult to establish in new bonds**
 - For the purposes of the ballot title, issuers may find it difficult to predict the annual dollar amount for the term of the bonds, since rate covenants typically require collections after payment of operations and maintenance costs. O&M costs are not totally controllable by the governmental issuer.
 - If new bonds can't have rate covenants equal to those of outstanding bonds, the new bonds will not be issued "on a parity" with outstanding bonds, thereby becoming "junior lien bonds" and less secure. These bonds will be perceived as weaker and thereby obtain a lower rating and increased interest cost for the additional risk.
- ❑ **Bonds of PUDs and Ports exempt**
 - The bonds issued by PUDs and ports should be exempt from the difficulties discussed above, since Subsection 3 of the Measure exempts "user fees charged by Peoples' Utility Districts and port districts.
- ❑ **Incurred Charges, based on property ownership, may become a more common form of fees and charges**
 - Rates and fees which qualify as "incurred charges" are exempt from this Measure. In order to be an incurred charge, the fee or charge must relate to the ownership of property and then fit the following qualifications.

Article XI, Section 11b (2)(c):

" 'Incurred charges' include and are specifically limited to those charges by government which can be controlled or avoided by the property owner:

"(i) because the charge is based on the quantity of the goods or services used and the owner has direct control over the quantity; or

"(ii) because the goods or services are provided only on the specific request of the property owner; or

"(iii) because the goods or services are provided by the governmental unit only after the individual property owner has failed to meet routine obligations of ownership and such action is deemed necessary to enforce regulations pertaining to health or safety."

- The statutory definitions which apply to incurred charges have not been court tested and may be subject to judicial revision.
- Where connection to a sewerage system is mandated by law, it is not clear that the sewer charges would qualify as "controlled or avoided" by the property owner.

- ☐ **Ramped rate schedules increases may require an election**
 - Many entities have “ramped rate schedules” already approved, with rates due to increase at set intervals for a certain number of years. It is not clear if these increases can be implemented past November 8, 1994 without an election. Outstanding revenue bonds secured with ramped rate increases may be protected by the Federal contracts clause.
- ☐ **State Highway User Tax Revenue Bonds**
 - Gas taxes are not specifically exempted under Subsection 3 and any increases would be subject to an election.
- ☐ **State Public Works Revenue Bonds**
 - These are revenue bonds backed by loan payments from local governments and lottery proceeds. Both revenue sources may be subject to the Measure. Only the investment earnings on lottery proceeds are clearly exempted.
- ☐ **System Development Charges are not exempt**
 - Many revenue bonds are paid in part from SDCs. New SDCs or increases in these charges are not exempt, unless these become incurred charges. Some cities have an automatic adjustment in the amount of systems development charges which reflect various economic indices. Under this Measure, an increase in the charge may be considered a tax increase subject to a vote.

CERTIFICATES OF PARTICIPATION AND LEASE REVENUE BONDS

Certificates of Participation (COPs) and Lease Revenue Bonds are issues which rely upon lease payments to repay the certificates or bonds. There are many forms of these and they are secured in various ways with various covenants. Each outstanding issue's documents have to be examined to ascertain the promises made that would obtain Federal contracts clause protection. Most issues were not voter approved.

Testimony to the MDAC indicated that the Measure affects COPs and lease revenue bonds in the following ways:

- ☐ **Outstanding obligations may have deterioration of their security and thus their rating may decline**
 - The underlying security for these obligations is an array of revenue sources, some of which may not be exempt from a vote if they must be increased (e.g., business license fees, franchise fees, emergency service fees). To the extent a large portion of the revenues either paying or securing the lease payments is subject to a vote, the credit quality may deteriorate. This could lead to shifts to other payment sources and rating downgrades.

- ☐ **Non-appropriation clauses may be less marketable, especially if used as a result of this Measure**
 - Due to the general weakening of credit worthiness resulting from the Measure, obligations with non-appropriation clauses may be less marketable.
- ☐ **New issues may require elections**
 - All issues which require non-exempt revenues for repayment or security may require an election with the appropriate ballot language.
- ☐ **Leases based upon rental payments for governmental property increases may require elections**
 - Increases in these rents may be considered tax increases unless rental of the property is not considered a monopoly. Governments which rent property to anyone may find themselves unable to increase rents without an election. Where bonds are involved, increases in debt service could be considered increases in lease payments and may require an election to approve the increase.

BANCROFT BONDS AND SPECIAL ASSESSMENT BONDS

Bancroft bonding was a financing method commonly used by local governments until the passage of the old Measure 5. The bonds are payable from the assessments levied upon the improved area and are backed by the unlimited general obligation and taxing power of the issuer. Before the old Measure 5, these could be issued without a vote; after the old Measure 5 they required a vote. These are essentially self-supporting G.O. bonds.

Assessments are levied upon the improved area to pay for the improvements. Special Assessment bonds are bonds which are paid solely from the assessments and do not have the general obligation security. These do not require a vote to issue, but are difficult to sell given the potential for defaults or delinquencies on assessments.

Testimony to the MDAC indicated that the Measure affects Bancroft and Special Assessment Bonds in the following ways:

- ☐ **If courts do not consider "assessments" exempted, then all new special assessment bonds would need election**
 - While Bancroft bonds are now subject to an election, special assessment bonds are not. The Measure failed to exempt assessments for local improvements. If the courts do not opine that the assessments are exempt then assessments of a fixed dollar amount which have already been levied would probably not require an election to continue being collected. Local improvement project assessments would require voter approval if they are new or increased.
 - It is not clear whether all residents of the district would vote or just those specially benefited.

TAX INCREMENT (URBAN RENEWAL) BONDS

Urban renewal agencies finance urban renewal projects through Tax Increment Bonds paid from the property tax increment resulting from the growth in real market value within a designated urban renewal area. This increment amount of collected taxes is provided directly to the urban renewal agency, which uses it to pay debt service on its indebtedness. The agency does not itself levy taxes; the taxes result from the tax rates of other overlapping jurisdictions being applied against the valuation within the area.

A number of court cases were required to clarify the treatment of this increment after passage of the old Measure 5. Since the increment was judged by the courts to be "taxes" subject to the \$10 limitation, the concept of "underlevying" evolved to avoid forcing compression upon the overlapping jurisdictions. Some cities opted to absorb the debt service into their general taxes rather than default on the bonds, when compression under Measure 5 did not produce sufficient revenues to retire the debt from the increment.

The complexity of the tax increment system in Oregon is renowned. Testimony indicated that the new Measure further complicates this system and may adversely impact the outstanding bonds.

☐ **Federal contract clause protection unclear**

- While some counsel believe that the Federal contracts clause would protect outstanding tax increment bonds, others do not think so given that there is no covenant to raise the increment or other promise contracted with the bond holders that would compel tax collections.

☐ **Possible exemption under Subsection 7**

- Some counsel believe that the tax increment could be exempt under the Subsection 7 exemptions for increases in governmental revenue occurring solely due to increases in real market property values. This would still leave in question the exemption for increment increases due to tax rate increases and how this increment would be segregated from the increment due to real market value increases.

☐ **Increment increase may be subject to election**

- Any increase over a prior year collections may be considered a tax increase and newly collected increment may be considered a new tax.
- Districts which presently do not collect the full amount of increment they are legally entitled to collect (many districts are "underlevying" to avoid compression under the old Measure 5) may be forced to collect all possible increment, even if it is not needed, so following years would not be considered increases.

☐ **Ability to hold an election uncertain**

- It is not clear who would vote if an election is required, since the increment is collected as a bi-product of other district levies.

- ☐ **New bonds may require an election**
 - Unless tax increment is found to be exempt, new issues may require an election, provided elections are possible.
- ☐ **Ratings may decline; agencies may refuse to rate new issues**
 - To the extent the collection of increment is impaired, the ratings on outstanding bonds may decline.
 - The increased complexity will make it harder to rate new tax increment bonds. According to the testimony of a former rating analyst, the present system is already very complex, due to the old Measure 5 and the various court rulings.
- ☐ **Economic development**
 - The primary purpose of urban renewal bonds is to encourage and assist economic development. Given the difficulty and higher costs in issuing these bonds, the resulting economic development may be delayed or discouraged.

REFUNDING AND ADVANCE REFUNDING BONDS; INTERIM FINANCING

Refunding is a procedure whereby an issuer refinances an outstanding bond issue by issuing new bonds. The proceeds of the new bonds are either deposited in escrow to pay the debt service on the outstanding bonds when due ("advance refunding"), or used immediately to retire the outstanding bonds ("current refunding").

There are generally two major reasons for refunding: to reduce the issuer's interest costs or to remove a burdensome or restrictive covenant imposed by the terms of the bonds to be refinanced. The most common is the savings purpose and therefore refundings generally result in a lesser cost to the tax or rate payer for the debt service.

Presently refundings can be issued without an election. Testimony to the MDAC indicated that the Measure affects refunding bonds in the following ways:

- ☐ **All G.O. refunding bonds will require an election**
 - The Measure has no exemption for refunding bonds, so even if the refunding saves money, G.O. refundings will require voter approval and inclusion of the reasonable estimate in the ballot title. The bonds may be considered a "new tax" even if taxes are currently being levied to pay the debt service on the refunded bonds.
- ☐ **Other types of refundings will face the same uncertainties as new money issues**
 - It is likely that revenue bond refundings will require voter approval unless the revenues are incurred charges. The new revenue refunding bonds will face the same questions regarding the rate covenants and coverage requirements as new revenue bonds.

- ☐ Most short term debt or lines of credit will require an election to issue and another election may be needed for the "take-out" long term bonds
 - Governments sometimes borrow at the beginning of a construction project and then refund ("take out") the short term debt with long term bonds when the construction is complete. Given the lack of an exemption for refunding, it is not clear if the long term bonds would be considered a "new tax" or "tax increase" requiring an election in addition to the election required to issue the short term debt or line of credit.

OTHER TYPES OF BONDS

Testimony to the MDAC indicated that the Measure affects other types of bonds in the following ways:

- ☐ **Conduit financings and the fees for them may require an election**
 - Bonds issued on behalf of hospitals, private colleges and non-profit organizations may require an election if the payments to the government are found to be "new taxes" under the Measure.
 - Reimbursement fees paid to government to issue on behalf of the private or non-profit entity may be considered a new tax under the Measure and subject to election.
- ☐ **Variable Rate Debt needs election; ballot language unclear**
 - It is unclear how to put language into a ballot title to describe the annual dollar amount where the dollar amount changes due to changes in interest rates. If these bonds are not voter approved, debt service increases due to increases in interest rates may be a "tax increase" subject to an election.
- ☐ **Letter of Credit backed bonds**
 - Bank Letters of Credit often require that draws upon the letters must be repaid by the issuer. If these draws are considered to be new taxes or increased taxes, they must be voter approved.

OTHER IMPACTS

Testimony to the MDAC indicated that the Measure had various other impacts which may affect the financial health of governments:

- ☐ **O & M Deterioration**
 - Failure of voters to raise rates needed to pay debt service may force deterioration or delays in operations and maintenance.
- ☐ **No elections set for 1995**
 - The Legislature needs to establish election dates for 1995, since the Measure fails to establish any dates for 1995. No election can be held until the Legislature enacts such a bill and it becomes effective.

☐ **Serial Levies**

- Serial levies which were approved on a rate basis, rather than annual dollar amount, may have difficulties. There is no Federal contract clause protection.

☐ **Serial levies which expire in 1995**

- The Legislature needs to establish an election date; meanwhile these levies will cease and the governments cannot collect further taxes for these purposes until the election date. Some of these levies may be for public safety.

☐ **Voter turnout could decline**

- The large number of measures could discourage voters.

Public Hearings

Conducted on Ballot Measure #5 by the Municipal Debt Advisory Commission

City of: **SALEM**
State Capitol
Hearing Room C
Salem, OR 97310

Date: April 29, 1994

Time: 1:30 to 3:30 p.m.

City of: **COOS BAY**
Public Library Auditorium
525 W Anderson
Coos Bay, OR 97420

Date: May 5, 1994

Time: 1:30 to 3:30 p.m.

City of: **ASHLAND**
City Council Chambers
1175 E. Main Street
Ashland, OR 97520

Date: May 6, 1994

Time: 10:00 a.m. to 12:00 noon

City of: **PENDLETON**
Convention Center
West Meeting Room #2
1601 Westgate
Pendleton, OR 97801

Date: May 13, 1994

Time: 10:00 a.m. to 12:00 noon

City of: **PORTLAND**
Portland Building
Second Floor Hearing Room C
1120 SW Fifth Avenue
Portland, OR 97204

Date: June 9, 1994

Time: 2:30 to 4:30 p.m.

List of Persons Providing Testimony

Bob Becket, Josephine County
 Dave Boyer, Finance Director, Multnomah County
 Pat Boylston, Stoel Rives Boley Jones & Grey
 Chuck Carter, The Charles Carter Company
 Pat Clancy, Managing Director, Public Financial Management
 Rob Edmiston, Dain Bosworth
 Ed Einowski, Stoel Rives Boley Jones & Grey
 Sherman Gardner, Resident, City of Ashland
 Doug Goe, Partner, Ater Wynne Hewitt Dodson & Skeritt
 Sandra Hansen, City of Reedsport
 Manville Heisel, Attorney, Medford
 Hank Henry, Chairman, Jackson County Board of Commissioners
 Jim Hill, State Treasurer
 Alan Hudson, Josephine County
 Jon Jallali, Finance Director, City of Medford,
 Carol James, Finance Director, City of Pendleton
 Mike Jordan, City of Canby
 Karen Krop, Assistant Vice President, Moody's Investors Service
 Ellen Meeuwssen, First Interstate Bank
 Chuck Norris, State Representative, District #57
 Barbara Novak, Stoel Rives Boley Jones & Grey
 Howard Rankin, Ater Wynne Hewitt Dodson & Skeritt
 Steve Rhodes, City of Tualatin
 David Ris, Coos County
 Harvey Rogers, Partner, Preston Gates & Ellis
 Ken Rust, Debt Manager, City of Portland
 Ann Sherman, Ater Wynne Hewitt Dodson & Skeritt
 Jennifer Sims, METRO
 B.J. Smith, League of Oregon Cities
 Alvin Thompson, Mayor, Butte Falls
 Jill Turner, Finance Director, City of Ashland
 Charles Vars, Mayor of Corvallis
 Leonard Vuylsteke, Director of Finance, Portland Public Schools
 Sandra Westin, Mersereau & Shannon
 Jim Whitty, State Representative
 Rollie Wisbrock, Chief of Staff Oregon State Treasury

Some Revenues Identified In Testimony Which May Be Reclassified As Taxes And Subject To A Vote

The following list indicates a number of revenues which were identified during testimony as governmental fees and charges which may be subject to the provisions of the Measure. This list is not complete and is set forth in alphabetical order. Some of these revenues may qualify as incurred charges as long as they are tied to property ownership.

911 Telephone Charges

A&T recording fees

Alarm permits

Alcoholic liquor sales

Ambulance franchise fees

Animal control fees

Any product NOT MONOPOLIZED by government, its price increase...

Bus ticket charges

Business license fees

Car registration fees

Cat licenses

Cigarette tax 10 cent increase passed last session

Cigarette taxes

Collections of tax increment revenues

Contracts charges - new or increases in

Copy public documents fees

Copying documents which cannot be removed from government (e.g., in Supreme Court library)

Court filing fees

Court orders

Court transcript preparation or copying

Dental care charges for children

Dog license fees

Drainage fees

Driver's license fees

DUII evaluation fees

Electric service (not from a PUD)

Elk tags

Federal Marshall fees for housing Federal prisoners

Fire protection fees

Firearm regulation permits

Forest products harvest tax, portion of

Franchise fees

Garbage collection Fees

Gas tax
 Gas tax - county
 Governmental permits
 Health inspection fees
 Hotel/motel taxes
 Juvenile court subsidies
 Library fines
 License plates
 Liquor taxes
 Local sales taxes
 Marriage licenses
 NSF check fees - pass on?
 Other license fees
 Parking fees and charges (depends upon "monopolized" and "voluntary")
 Passport fees
 Patents, copyrights and proprietary process charges resulting from research
 Payments for use of property
 Penalties which are not fines or forfeitures
 Pollution control credit
 Port Fees and charges which are not "user fees"
 Prices charged upon sale of products of the prison industry
 Prices on school or university books
 Probation payments
 Process servers
 Property tax increase resulting from granting an exemption
 Property tax increases caused by annexations or mergers
 Public library fines for overdue books (not violation of law)
 Publications of governments fees
 PUD Fees and charges which are not "user fees"
 Real estate transfer fee
 Recording fees
 Rental car tax
 Restaurant Inspections fees
 Restitution payments
 Sale of goods or commodities
 School lunches
 SDCs
 Sewer Charges
 State income taxes
 State loan fees, charges and payments
 State lottery tickets
 State sales taxes
 State Treasury fees and charges for services

Appendices

Surface water management fees
Tax Increment
Train ticket charges (where owned by government)
Transit fares
Transit Fees
Transportation Fees
U.S. Immigration detention reimbursements
Use of state and local parks fees
Utility Charges (not sewer or water)
Vehicle registration fees
Victim Assistant penalties
Water charges
Writ of habeas corpus fees

AN ACT

Be it enacted by the People of the State of Oregon:

PREAMBLE. The purpose of this Act is to ensure that tax increases, which further deprive citizens of income and property, are hereafter directly approved by the people.

PARAGRAPH 1. The Constitution of the State of Oregon is amended by creating a new Section 32a in Article I to read:

Section 32a. People's right to approve all taxes. Notwithstanding any other provision of this Constitution, any new taxes or tax increases shall require approval by the people, as follows:

- (1) No new tax shall be levied and no tax or tax rate shall be increased, by the state or by any local government or district, unless such tax or tax increase is first approved by a majority of voters voting on the question. The question submitted to voters shall clearly describe the proposed new tax or increase and the reasonably estimated annual dollar amount of the proposed new tax or increase.
- (2) Any elimination or reduction of tax exemptions, credits, deductions, exclusions, or cost-of-living indexing shall be considered a tax increase. Any extension of an expiring tax shall be considered a tax increase.
- (3) The following revenues shall not be considered taxes or tax increases for the purposes of this section: user fees charged by Peoples' Utility Districts or port districts; school, college, or university tuition and fees; incurred charges and local improvements as defined by Article XI Section 11b of this Constitution; other user fees paid voluntarily for specific services that are not monopolized by government; increases in charges for monopolized products solely to pass through increased costs of wholesale inputs that are not state or local government labor costs and not otherwise under the charging government's control; fines or forfeitures for violations of law; and earnings from interest, investments, state lottery proceeds, donations, or asset sales.
- (4) Any state or local government fee or other charge not listed in subsection (3) shall be considered a tax for the purposes of this section.
- (5) New taxes or tax increases may only be submitted to voters at the following election dates: one primary election date in each even-numbered year, the general election date in each even-numbered year, and up to two election dates, designated by law, in each odd-numbered year.
- (6) A government may combine requests for multiple tax and fee changes into a single measure submitted to voters. Such a combined measure shall be considered to embrace one subject.
- (7) This section shall not require a vote of the people when increases in government revenue occur solely due to changes in federal tax law, increases in income, increases in real market property values, or other changes in the circumstances of individual taxpayers.
- (8) A tax base increase of no more than 6%, as allowed by Article XI Section 11 of the Constitution, shall not require voter approval under this section.

(9) Notwithstanding Article IX Section 1a of this Constitution, if a State of Emergency is declared as provided by law, the Legislative Assembly and Governor may override this section and enact by law particular taxes, or authorize particular local taxes, without a vote of the People if such taxes are approved by a three-fourths vote in each house and signed into law by the Governor. Such emergency taxes shall not be enacted without the Governor's signature. Any taxes authorized or enacted by such action shall be specifically designated for the declared Emergency and shall be in effect no longer than twelve months. Revenue from such taxes in excess of the amount required by the Emergency shall be returned to the People in a timely manner. During any such Emergency, this section shall remain in effect for all other taxes.

(10) A government that levies taxes or fees in violation of this section shall refund any tax or fee amounts collected in violation of this section, plus interest, to taxpayers in the twelve months following the determination of violation. Interest paid shall be computed as the cost of living change plus six percent per year, compounded for the period from collection of the taxes or fees to payment of the refunds.

PARAGRAPH 2. SEVERABILITY. If any provision of this Act is invalidated, then the remaining provisions shall remain in effect.

PARAGRAPH 3. CONFLICTS WITH OTHER BALLOT MEASURES. If there is an irreconcilable conflict between any provision in this measure and a provision in another measure amending the Oregon Constitution and passed at the same election, then the provision in the measure that received the most affirmative votes shall prevail.

PARAGRAPH 4. LEGAL ACTIONS. Any legal action contesting or enforcing any part of this Act or any laws implementing it shall be brought in the Oregon Tax Court or any successor court. Any Oregon resident or legal entity doing business in Oregon has standing to bring suit to enforce this Act and any laws implementing it, provided that the person or legal entity bringing the suit resides or does business within the taxing unit or district which shall be the defendant to the suit. If the Oregon resident or legal entity bringing suit prevails, then the Oregon resident or legal entity shall be reimbursed by the defendant for all reasonable expenses of the suit, including, without limitation, attorney's fees, costs, and reasonable expenses at trial and on appeal. No government unit shall be entitled to attorney's fees, costs, or expenses. Any legal action alleging violations of this Act or of any law implementing this Act must be begun within two years of the date of any alleged violations.

(about 910 words in the Act)

APPENDIX 1

GLOSSARY of TERMS

AD VALOREM TAX: A tax based on value, such as the assessed value of real (land and improvements) and personal property.

ADVANCE REFUNDING: Advance refunding of a municipal bond refers to the sale of a refunding issue several years prior to the first call date of the issue to be refunded, with proceeds held in trust. See also "Advance Refunding Bonds" and "Refunding".

ADVANCE REFUNDING BONDS: Bonds issued to refund an outstanding bond issue prior to the date on which the outstanding bonds become due or callable. Proceeds of the advance refunding bonds are deposited in escrow with a fiduciary institution, invested in U.S. Treasury Bonds or other authorized securities, and used to redeem the underlying bonds at maturity or call date and to pay interest on the bonds being refunded or the advance refunding bonds. Issuers are usually able to attain a debt service savings as a result of this process.

ASSESSED VALUATION: The valuation placed on real estate or other property by a government for the purpose of levying taxes.

AUTHORIZATION: Permission to issue the bonds. In addition to the Constitution, Statute or Charter enabling language, an election is often also required.

AUTHORIZING RESOLUTION or ORDINANCE: With respect to an issue of municipal securities the document adopted by the issuer which implements its power to issue the securities. The legal grant of such authority may be found in the enabling provisions of the constitution, statutes, charters and ordinances applicable to the issuer. Adoption of an authorizing resolution or ordinance by the issuer's governing body is a condition precedent to the issuance of the proposed securities.

BANCROFT BOND (Also called General Obligation Improvement Bond, or Bancroft Improvement Bond): These are general obligation bonds, but special assessments levied on benefited properties comprise the major source of payment. The municipality's taxing authority is committed if the revenues are not sufficient to meet payments.

BOND: A certificate representing a promise to pay a specified sum of money, called the face value or principal amount, at a specified date or dates in the future, called the maturity date(s), together with periodic interest at a specified rate. The difference between a note and a bond is that the latter runs for a longer period of time, is usually a permanent financing tool and requires greater legal formality, while a note is typically an interim device. The term "bond" may also mean the par value of \$1,000. Although bonds may be issued in any denomination, municipal bond dealers and others use the term to mean \$1,000 par value, regardless of the actual denomination. Thus, a \$25,000 bond would be referred to as "25 bonds." Many transactions, e.g. the spread between the purchase and sales price by investment bankers, are expressed in terms of the "amount per bond," i.e. per \$1,000 par value.

BOND CONTRACT: An agreement which the issuer is obligated to perform by virtue of issuing its bonds. The terms of the agreement may be determined by reference to specified documents associated with the bond issue. Typically, the bond resolution or ordinance, trust indenture and security agreements constitute parts of the contract, as do those laws in force at the time of issuance. The documents which form the bond contract vary according to the terms of each issue.

BOND COUNSEL: Law firm or attorney hired to advise the Issuer regarding the legal and tax aspects of the sale. Bond counsel writes the legal opinion for the bond issue.

BONDED DEBT: The portion of an Issuer's total indebtedness represented by outstanding bonds.

BOND ELECTION: A process whereby the qualified voters of a governmental unit are given the opportunity to approve or disapprove a proposed issue of municipal securities. An election is most commonly required in connection with general obligation bonds. Requirements for voter approval may be imposed by constitution, statute, or local ordinance.

BONDHOLDER: The owner of a municipal bond. The owner of a bearer bond is the person having possession of it, while the owner of a registered bond is the person whose name is noted on the bond register.

CAPITALIZED INTEREST: A portion of the proceeds of an issue which is set aside to pay interest on the securities for a specified period of time. Interest is commonly capitalized for the construction period of a revenue-producing project. In an accounting sense capitalized interest is the interest expense paid during the construction period (net income earned on construction funds) which is added to the book value of the asset being constructed.

CERTIFICATE OF PARTICIPATION or COP: A certificate showing participation through ownership of a "share" of lease payments or lease-purchase agreement. Usually made between a municipality and an equipment vendor. While these certificates are similar to bonds, they are secured solely by the lease or rental revenues accruing to the municipality/agency issuing the certificate. Such agreements and certificates have maturities and are paid in a manner parallel to the process involved in the execution and administration of bonds. Inasmuch as these leases are financings arranged for individual agencies and typically incorporate a clause abrogating the agreement in the event of non-appropriation of revenues by the legislative body, COPs do not qualify as debt insofar as statutory debt limitations.

No particular revenue source is normally pledged to support repayment of principal and interest on a COP, but the structure or asset acquired is pledged as security - if the issuer defaults, the structure or asset is "repossessed." The security of the instrument in the eyes of COP investors lies in the expectation that the government will not choose to forgo use of the structure or asset critical to the government's functions.

COMPETITIVE BID or COMPETITIVE BIDDING (Also called Public Bidding): A method of submitting proposals to purchase a new issue of bonds by which the bonds are awarded to the underwriting syndicate presenting the best bid according to stipulated criteria set forth in the notice of sale. Underwriting bonds in this manner is also referred to as a competitive or public sale.

COVENANT or BOND COVENANT: The Issuer's enforceable promise to do or refrain from doing some act. With respect to municipal bonds, covenants are generally stated in the bond contract. Covenants commonly made in connection with a bond issue include covenants to charge fees for use of the financed project sufficient to provide required pledged revenues (rate covenant); to maintain casualty insurance on the project; to complete, maintain and operate the project; not to sell or encumber the project; not to issue parity bonds unless certain earnings tests are met (additional bonds covenant); and not to take actions which would cause the bonds to be arbitrage bonds.

COVERAGE: The ratio of pledged revenues available annually to pay debt service requirement. This ratio is one indication of the margin of safety for payment of debt service.

DEBT: An obligation resulting from the borrowing of money or from the purchase of goods and services. Debt of governmental units include bonds, time warrants, notes, and floating debt.

DEBT LIMIT: The maximum amount of debt which an Issuer of municipal securities is permitted to incur under constitutional, statutory or charter provisions. The limitation is usually a percentage of assessed valuation and may be fixed upon either gross or net debt. If the latter is the case, the legal provision will usually specify what deductions from gross debt are allowed in order to determine net debt.

DEBT RATIOS: Comparative statistics showing the relationship between the Issuer's outstanding debt and such factors as its tax base, income or population. Such ratios are often used in the process of determining credit quality of an issue, especially in the case of general obligation bonds.

DEBT SERVICE: The amount of money necessary to pay interest on an outstanding debt, the serial maturities of principal for serial bonds and the required contributions to an amortization or sinking fund for term bonds. Debt service on bonds may be calculated on a calendar year, fiscal year or bond fiscal year basis.

DEBT SERVICE FUND: A fund established to account for the payment of interest and principal on all general obligation debt, both serial and term. Usually separate funds are created for special assessment and revenue debt issued for and serviced by a governmental enterprise.

DEBT SERVICE REQUIREMENT: The amount of money required to pay the interest on outstanding debt, serial maturities of principal for serial bonds, required contributions to a debt service fund for term bonds and reserve fund payments.

DEBT SERVICE SCHEDULE: A table listing the annual payments necessary to meet debt service requirements over the period of time the bonds are to be outstanding.

DEFAULT: Breach of some covenant, promise or duty imposed by the bond contract. The most serious default occurs when the Issuer fails to pay principal or interest or both, when due. Other, "technical" defaults result when specifically defined "events of default" occur, such as failure to perform covenants. Technical defaults may include failing to charge rates sufficient to meet rate covenants or failing to maintain insurance on the project. If the Issuer defaults in the payment of principal, interest or both, or if a technical default is not cured within a specified period of time, the bondholders or trustee may exercise legally available rights and remedies for enforcement of the bond contract.

DEFEASANCE: Termination of the rights and interests of the bondholders and of their lien on the pledged revenues in accordance with the terms of the bond contract for the prior issue of bonds. Defeasance usually occurs in connection with the refunding of an outstanding issue by the final payment, or provision for future payment, of principal and interest on a prior issue.

DEPRECIATION: 1) Expiration of the service life of capital assets attributable to wear and tear, deterioration, action of the physical elements, inadequacy or obsolescence. 2) That portion of the cost of a capital asset which is charged as an expense during a particular period.

ENTERPRISE ACTIVITY: A revenue-generating project or business which supplies funds necessary to pay debt service on bonds issued to finance the facility. The debts of such projects are self-liquidating when the projects earn sufficient monies to cover all debt service and other requirements imposed under the bond contract. Common examples include water and sewer plants, electric supply facilities and private business projects financed with industrial development bonds.

FINANCIAL ADVISOR or CONSULTANT: With respect to a new issue of municipal bonds, a consultant who advises the issuer on matters pertinent to the issue, such as structure, timing, marketing, fairness of pricing, terms and bond ratings. Such consultant may be employed in a capacity unrelated to a new issue of municipal securities, such as advising on cash flow and investment matters.

FULL FAITH AND CREDIT: A pledge of the general taxing power for the payment of debt obligation. Bonds carrying such pledges are usually referred to as general obligation bonds or full faith and credit bonds.

GENERAL OBLIGATION BONDS or G.O. BONDS: Bonds which are secured by the full faith and credit of the Issuer. In Oregon, State general obligation bonds are secured by the State's full taxing power not otherwise pledged to trust funds. General obligation bonds issued by local units of government are secured by a pledge of the Issuer's *ad valorem* taxing power. *Ad valorem* taxes necessary to pay debt service on general obligation bonds are not subject to the constitutional property tax millage limits. Such bonds constitute debts of the Issuer and normally require approval by election prior to issuance. In the event of default, the holders of general obligation bonds have the right to compel a tax levy or legislative appropriation, by mandamus or injunction, in order to satisfy the Issuer's obligation on the defaulted bonds.

RESERVE FOR RETIREMENT OF SINKING FUND BONDS: A reserve representing the amount of cash and other resources which should have been accumulated in the sinking fund at a certain date, according to actuarial computation, in order that the bonds outstanding may be redeemed at maturity.

RESERVE MAINTENANCE FUND: A fund established by the bond contract of a revenue bond issue into which moneys set aside for extraordinary maintenance or repair expenses are deposited. The fund is intended to protect the bondholders by ensuring against interruptions of operation of the financed project due to unavailability of moneys to pay for repairs of unexpected damage or breakdown. Under a typical revenue pledge this fund is the fourth to be funded out of the revenue fund.

REVENUE BOND: A bond which is payable from a specific source of revenue and to which the full faith and credit of an issuer with taxing power is *not* pledged. Revenue bonds are payable from identified sources of revenue, and do not permit the bondholders to compel taxation or legislative appropriation of funds not pledged for payment of debt service. Pledged revenues may be derived from operation of the financed project, grants and excise or other specified non-*ad-valorem* taxes. Generally, no voter approval is required prior to issuance of such obligations.

SPECIAL ASSESSMENT: A charge imposed against property in a particular locality because that property receives a special benefit by virtue of some public improvement, separate and apart from the general benefit accruing to the public-at-large. Special assessments must be apportioned according to the value of the benefit received, rather than the cost of the improvement, and may not exceed the value of such benefit or the cost of the improvement, whichever is less.

SPECIAL DISTRICTS: Single-purpose or limited-purpose units of government formed under State-enabling legislation to meet certain local needs not satisfied by existing general purpose governments in a given geographical area.

SYSTEM DEVELOPMENT CHARGE: A reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit or connection to the capital improvement. System development charge includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the unit of local government for its average cost of inspecting and installing connections with water and sewer facilities. It does not include any fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed upon a land use decision.

TAX ANTICIPATION NOTES [TANS]: Notes issued in anticipation of collection of taxes usually retireable only from tax collections, and frequently only from the proceeds of the tax levy whose collection is anticipated at the time of issuance. TANs are a form of short-term financing.

TAX-INCREMENT REVENUE BOND (Also called Urban Renewal Bonds): Revenue bonds paid from moneys derived from "tax increment financing," a special application of taxes levied in urban renewal districts on the growth in taxable value.

UNLIMITED TAX BOND: A general obligation bond secured by a pledge of taxes that are not limited in rate or amount.



The Office of Secretary of State has received an amended certified ballot title from the Supreme Court for an initiative petition proposing a constitutional amendment.

The certified ballot title is as follows:

**AMENDS CONSTITUTION: GOVERNMENTS CANNOT APPROVE,
CREATE CLASSIFICATIONS BASED ON,
HOMOSEXUALITY**

QUESTION: Shall constitution bar governments from creating classifications based on homosexuality or spending public funds in manner expressing approval of homosexuality?

SUMMARY: Amends state Constitution. Governments cannot:

- create classifications based on homosexuality;
- advise or teach children, students, employees that homosexuality equates legally or socially with race, other protected classifications;
- spend public funds in manner promoting or expressing approval of homosexuality;
- grant spousal benefits, marital status based on homosexuality;
- deny constitutional rights, services due under existing statutes.

Measure nonetheless allows adult library books addressing homosexuality with adult-only access. Public employees' private lawful sexual behaviors may be cause for personnel action, if those behaviors disrupt workplace.

AN ACT

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

The Constitution of the State of Oregon is amended by creating a new section to be added to and made a part of Article 1. The new section shall be known as "The Minority Status and Child Protection Act" and will read as follows:

Section 41: MINORITY STATUS BASED ON HOMOSEXUALITY PROHIBITED.

- (1) In the State of Oregon, including all political subdivisions and government units, minority status shall not apply to homosexuality; therefore, affirmative action, quotas, special class status or special classifications such as "sexual orientation," "domestic partnerships" or similar designations shall not be established on the basis of homosexuality.
- (2) Children, students and employees shall not be advised, instructed or taught by any government agency, department or political unit in the State of Oregon that homosexuality is the legal or social equivalent of race, color, religion, gender, age or national origin; nor shall public funds be expended in a manner that has the purpose or effect of promoting or expressing approval of homosexuality.
 - (a) The State of Oregon, political subdivisions and all units of state and local government shall not grant marital status or spousal benefits on the basis of homosexuality.
 - (b) The State of Oregon, political subdivisions and all units of state and local government, with regard to public employees, shall generally consider private lawful sexual behaviors as non-job related factors, provided such factors do not disrupt the work place and that such consideration does not violate subsections (1) and (2).
 - (c) Though subsections (1) and (2) are established and in effect, no unit of state or local government shall deny to private persons business licenses, permits or services otherwise due under existing statutes; nor deprive, nullify, or diminish the holding or exercise of any rights guaranteed by the Constitution of the State of Oregon or the Constitution of the United States of America.
 - (d) Though subsections (1) and (2) are established and in effect, this section shall not limit the availability in public libraries of books and materials written for adults which address homosexuality, provided access to such materials is limited to adults and meets local standards as established through the existing library review process.
- (3) The PEOPLE INTEND, that if any part of this enactment be found unconstitutional, the remaining parts shall survive in full force and effect. This Section shall be in all parts self-executing.

SUMMARY OF THE FINANCIAL IMPACT OF MEASURE 15

In March 1994, the State Office of Legislative Revenue made revenue estimates about the impact of Measure 15 on the State General Fund. Using those estimates, and *assuming that the Legislature cuts 1995-97 allocations across the board* in the General Fund, the difference between State appropriations without Measure 5 and with Measure 5 looks like this.

	1993-95	1995-97 W/o Msr 15*	Percentage Reduction*	1995-97 With Msr 15	Percentage Reduction
TOTAL STATE GENERAL FUND (\$ in millions)	\$6,400	\$7,000		\$7,000	
Cost of replacing lost school property taxes	1,500	2,800		2,800	
Basic School Support	1,200	1,029	-14%	1,200	0%
Subtotal: State Cost of Schools	\$2,700	\$3,829		\$4,000	
All Other State General Fund Programs	\$3,700	\$3,171	-14%	\$3,000	-19%

*Assumes the Legislature makes proportionate cuts in basic school support and all other programs.

This analysis suggests that Measure 15 would shift at least \$171 million toward school funding and away from other State General Fund programs in the 1995-97 biennium and would guarantee \$700 million of cuts in General Fund programs instead of leaving the Legislature discretion over what cuts to make.

Since March, the State's financial problem for 1995-97 appears to have changed somewhat. The latest figures available in the Oregon Economic Forecast, however, are not materially different from the table above. Assuming, however, that State General Fund resources are 5% higher next March than were predicted last March, the effect of Measure 15 would look something like this.

	1993-95	1995-97 W/o Msr 15*	Percentage Reduction*	1995-97 With Msr 15	Percentage Reduction
TOTAL STATE GENERAL FUND (\$ in millions)	\$6,400	\$7,400		\$7,400	
Cost of replacing lost school property taxes	1,500	2,800		2,800	
Basic School Support	1,200	1,127	-6%	1,200	0%
Subtotal: State Cost of Schools	\$2,700	\$3,927		\$4,000	
All Other State General Fund Programs	\$3,700	\$3,473	-6%	\$3,400	-8%

*Assumes the Legislature makes proportionate cuts in basic school support and all other programs.

Under this scenario, about \$73 million would have to be shifted toward basic school support from other General Fund programs and would guarantee a \$300 million cut in those programs.

Note that in all cases, the percentage cut is the change in absolute dollars from the 1993-95 biennium funding level. Actual costs will be affected by inflation and reductions in programs will be higher than these percentages imply.

BRIEFING REPORT

ASSOCIATION OF OREGON COUNTIES

September 12, 1994

FUNDING EDUCATION FIRST

SPONSORS: Rece Bly

CONTACT: Bob Cantine
(503) 585-8351



Key Provision

1. Requires the legislature to fund schools (K-12) and community colleges at no less than the 1993-95 base funding amount, as adjusted over time for inflation, deflation, and changes in enrollment.
2. The 1993-95 base amount includes all revenues available to the schools and community colleges in 1993-95 from the legislative assembly, property taxes, payments-in-lieu of property taxes, privilege taxes on harvest of timber, federal forest receipts, and state forest receipts.
3. The legislature may alter the funding for any individual school or community college so long as it provides the base amount, as adjusted, for all schools and community colleges.



Impact

- Education would receive \$1.4 billion in additional funding in 1995-97 from the State. This would be adjusted automatically in the future for inflation and student enrollment.
- All other General Fund services would be reduced \$1.4 billion below 1993-95 levels, or a reduction of 25-29%.
- Schools would be guaranteed their funding level even if state revenues were declining.
- The State would have no authority to reduce the amount given to schools even if the schools were running inefficiently.
- County and city services would be at risk for cuts since joint taxes and other revenues distributed to counties and cities may be reduced or withdrawn.



Unanswered Issues

- How would the general public be affected by the cuts required in other State and local services necessary to meet the school funding guarantee?

PHIL KEISLING
SECRETARY OF STATE
MICHAEL GREENFIELD
DEPUTY SECRETARY OF STATE



Ballot Measure 15
November 8, 1994 General Election
Amends Constitution: State Must Maintain Funding for Schools,
Community Colleges


Estimate of Financial Impact

"Current direct state expenditures of \$1.457 billion annually for primary and secondary schools and community colleges would increase \$713 million annually to \$2.172 billion annually. Future annual costs must be adjusted for inflation and projected student population growth."

Certification

We, the undersigned, hereby certify that, pursuant to ORS 250.125, we have prepared the statement described above under "Estimate of Financial Impact."

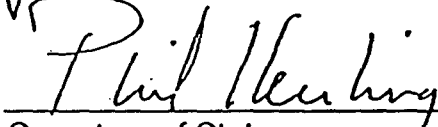
Respectfully submitted,



State Treasurer

8/5/94

Date



Secretary of State

8/5/94

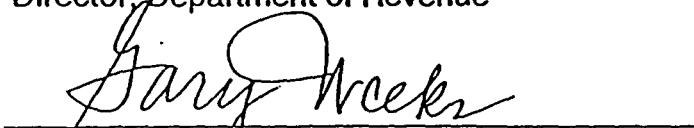
Date



Director, Department of Revenue

8/5/94

Date



Director, Department of Administrative Services

8/5/94

Date



STATE OF OREGON
LEGISLATIVE REVENUE OFFICE
H-197 STATE CAPITOL BUILDING
SALEM, OREGON 97310-1347
OFFICE (503) 986-1266 - FAX (503) 373-1527

Legislative Revenue Officer
James R. Scherzinger

THE EFFECT OF MEASURE 20 **2% Equal Tax**

RESEARCH REPORT 2-94
August 4, 1994

INTRODUCTION

Oregonians will vote on Measure 20 at the general election on November 8, 1994. Measure 20 is an initiative which amends the Oregon Constitution. It replaces virtually all state and local taxes and fees with a 2% tax on all transactions. The measure itself is complex. It repeals a number of constitutional provisions and overrides many more. This report describes the main provisions of the measure and discusses some legal, policy, and revenue questions raised by the measure.

EXECUTIVE SUMMARY

Description of the Measure

Measure 20 repeals virtually all existing state and local taxes, fees, assessments, and tolls and replaces them with a 2%, or less, tax on almost all transactions. The measure allows voters to increase the tax or impose a local transaction tax with a 60% majority vote. The measure also requires a 60% vote to make any changes to its own provisions.

Measure 20 distributes replacement revenue from the 2% state tax based on 1992 collections of banned taxes plus allowances for inflation, population, and other factors.

Measure 20 repeals all existing authority in the Constitution to incur debt.

Measure 20 takes effect January 1, 1995.

Effect of the Measure

State and local governments will lose about \$7.4 billion in revenue from the banned sources in 1995-96, assuming charges for service are not prohibited.

No one knows how much the equal tax would raise. If the state could collect taxes on all the transactions envisioned by the measure, the equal tax could theoretically raise enough revenue to replace the banned taxes. However, the state will have severe problems collecting the tax because of U.S. Constitutional limits on the state's power to tax, legal infirmities in the measure, practical limits on the state's ability to collect taxes from individuals and from some kinds of transactions, and the strong likelihood many transactions (especially financial transactions) will move out-of-state to avoid the tax.

In any event, the measure appears to limit 1995-96 collections to about \$6.9 billion, which implies a net state and local total revenue loss of at least \$490 million. In addition, the measure allows only seven weeks to implement the new tax, which could significantly reduce collections in the first year.

Oregon individuals and businesses will pay higher federal taxes of about \$896 million in 1995-96 due to loss of personal income tax deductions for income and property taxes and loss of federal tax credits for state unemployment and inheritance taxes. Repeal of some environmental fees will put Oregon out of compliance with the federal Clean Air Act, which could result in loss of federal highway funds, increased emission reduction burdens on new or expanding businesses, and federal takeover of state environmental programs.

The distribution of equal tax collections appears to favor the state, local schools, and districts with unusually high revenues in 1991-92. It appears to disfavor the Highway Fund, non-school local governments, and districts with unusually low revenues in 1991-92.

DESCRIPTION OF THE MEASURE

Amends Constitution

Measure 20 amends the Oregon Constitution to repeal existing tax provisions and replace them with a single tax (Equal Tax) on transactions. The measure also increases to 60% the majority vote required to make further constitutional amendments that would affect its provisions. The repeal of existing taxes, the new tax, and all other provisions take effect on January 1, 1995.

Repeals Existing Constitutional Tax Provisions

Measure 20 repeals the following provisions of the Oregon Constitution:

- Section 32, Article I, which requires consent of the people or the Legislature to impose taxes and requires uniformity of taxation.
- Section 32, Article IV, which allows the state to base its income tax on federal law.
- Sections 11 to 11f, Article XI, which contain the tax base, safety net, and Measure 5 property tax limits.
- Article IX, which contains many tax provisions. These deal with uniformity, prohibition of head taxes, declarations of emergency in tax laws, urban renewal financing, dedication of highway taxes, dedication of oil and gas severance taxes, prohibition of taxes on social security, and requirements regulating the process of appropriating funds and balancing the budget. Many of these provisions are replaced by similar provisions in Measure 20.

Bans Most Taxes, Fees, Assessments, and Tolls

Measure 20 bans all taxes, fees, assessments, and tolls in the state, except for the Equal Tax and receipts from the following:

- State accident insurance
- Municipal or district utility charges for water, electricity, natural gas,
- Bus, trolley, train
- Rents, leases, sale of property
- Tuitions
- Dividends
- Fines, penalties
- Interest
- Lottery and other recreational user or admission charges
- Federal revenue sharing (but not timber receipts)
- Common School Fund sources.

This ban will end all existing state and local taxes, fees, assessments, and tolls on January 1, 1995, except for those on the above list.

Imposes Equal Tax

Measure 20 imposes a tax on all trade within the state and all trade between "Oregon persons" and persons located outside the state. The tax is based on the gross value of the property, good, or service at the time of transfer.

The tax is imposed on any transfer of value, title, or possession, including:

- Retail and wholesale sales
- Sales of services
- Barter transactions
- Sales of labor services
- Fees and commissions
- Insurance premiums and settlements
- Gifts exceeding \$1000
- Interest payments on loans and deposits
- Principal payments on loans of more than 30 days
- Rents and leases
- Sales involving state and local government.
- Sales of securities and financial instruments (but at a lower rate)

Measure 20 exempts pensions, retirement benefits, income, and gifts to non-profit, religious, or charitable organizations from the tax. It sets a lower state rate (one quarter of one percent) on sales of securities and financial instruments and exempts sales of securities from any local tax.

The measure sets the state tax rate to 2% or that rate, if less, needed to replace the amount of banned taxes, fees, assessments, and tolls collected in 1992. It allows an increase if approved by 60% of voters, except that temporary increases (through the end of a fiscal year) require only a majority vote. It requires the Legislature to propose up to 0.1% increase to reduce college tuition. This proposal would require 60% voter approval to be enacted.

The measure allows a local equal tax of up to 1%, if approved by 60% of voters. It limits any local tax to 5 years.

"Person" is defined very broadly to include individuals, corporations, organizations, governments, and virtually any entity with a separate identity.

Distributes State Tax

Measure 20 distributes the proceeds of state equal tax as follows:

- 100% of revenues received in 1992 from banned sources, plus growth for inflation and population, to all state and local governments.
- 0.1% of state equal tax revenues to reduce tuition at all accredited post-secondary schools.
- 105% of 1992 banned revenues, plus growth for inflation and population, to the Highway Fund.
- Any excess collections not needed above to a supplemental spending fund, up to 5% of state equal tax collections.
- Any further excess to a stabilization fund, until the balance reaches \$1 billion.
- Any remaining excess to reduce the bonded indebtedness of the state and the equal tax rate.

The measure requires the Legislature, with the concurrence of the counties, to adjust the distribution for changes in population, school enrollment, the cost of living, and district existence and boundaries.

Sets Administrative Process

Measure 20 establishes the State Treasure as the "executive of operations" of the Revenue Department to collect the tax. It requires monthly returns and allows issuance of stamps in lieu of a monthly return. It requires a receipt for all transactions.

The measure requires the seller to pay the tax, except: (1) the purchaser of services or labor must pay, (2) the purchaser must pay if state cannot force an out-of-state seller to collect, (3) the giver of a taxable gift must pay, (4) an insurance company must collect the tax on premiums and pay the tax on settlements, and (5) each party in a barter pays half of the tax.

The measure sets a penalty of \$1000 or the full value of a transaction, whichever is greater, plus collection, court, and attorney costs, for failure to pay the tax.

The measure requires all state funds to be appropriated, requires appropriations not to exceed revenues, and requires annual audits of the equal tax system.

Repeals Debt Authority

Measure 20 repeals all existing authority in the Constitution to incur debt.

LEGAL QUESTIONS

Out-of State Transactions

The measure raises a number of legal questions. Two are fundamental to the state's ability to impose taxes when transactions occur out-of-state. Resolution of these issues is vitally important to achieve the purpose of the measure.

Can the state tax out-of-state transactions? The measure appears to impose its tax on transactions, as opposed to gross receipts or the use of goods or services. Although the measure clearly intends to tax out-of-state transactions involving "Oregon persons", the state does not have the power, under the U.S. Constitution, to tax out-of-state transactions. Because of this, sales tax states normally impose a separate tax on the first use within the state of an out-of-state purchase. This measure, however, bans all other taxes. It is not clear whether an Oregon court would interpret this ban literally or would conclude a separate tax to reach out-of-state transactions is within the intent of the measure. Without such an interpretation, the state could not impose its transaction tax on out-of-state transactions, even if an "Oregon person" is involved.

Even if the state could impose a use tax, it does not have the power to collect taxes from many out-of-state sellers. Under the measure, these taxes would have to be collected from purchasers. The measure requires a monthly return or the purchase of tax stamps.

A similar issue exists when the purchaser is out-of-state. If the sale is arranged so the transaction takes place out-of-state, the transaction may not be taxable even if the seller is in Oregon. These problems are particularly difficult for sales of services and financial transactions that can be easily moved.

What transactions are taxed? Assuming out-of-state transactions can be effectively taxed, some rules must be devised to determine which transactions are taxable. The potential difficulties involved can be illustrated by the following example: If a multi-state company that produces products in Oregon and two other states buys advertising from a New York advertising agency, is the purchase of advertising subject to the equal tax?

If the firm's headquarters is in Oregon, the employees purchasing the advertising are in Oregon, and the advertising was for the products produced in Oregon, the measure clearly intends to tax the transaction. The mere fact a firm has some operations outside Oregon should not exempt them from tax.

On the opposite extreme, if the headquarters and purchasing employees are out-of-state and the advertised product is not produced in the Oregon plant, the measure probably does not intend to tax

the transaction. The mere fact a firm has some operations in Oregon should not make all their purchases taxable, including those unrelated to their Oregon operations.

But what if the headquarters, the head advertising purchaser, and some product assembly are out-of-state, but most of the production is in Oregon and some Oregon employees review the advertising and give advice to head purchaser?

According to the measure, the transaction is taxable if it involves an "Oregon person". "Person" is defined to include a firm, but "Oregon person" is not defined. Thus, to implement the measure, the Legislature and the Department of Revenue will have to develop laws and rules to determine which out-of-state transactions, or portion of transactions, are subject to the tax. Although it certainly is possible to develop these rules, they are not likely to be simple.

Other Legal Questions

What state tax rate is permitted? Section 3 sets the state equal tax rate to 2% or that percentage, if less, necessary to replace the amount of banned taxes collected in 1992. Section 5 sets three base allocations (100% of 1992 collections plus growth to most governments, tuition reduction, 105% of 1992 collections plus growth to the Highway Fund) and carefully prioritizes the handling of any excess funds. In short, the Section 5 base allocations distribute more revenue than Section 3 allows the state to collect.

It is not clear how to reconcile these two sections. A natural interpretation would be to assume the drafters were uncertain about the revenue potential of the tax and wanted to set the rate at a reasonable level in the first year, but, once set, the rate would not change unless voters increased it or all the allocation funds were filled. However, even this assumption leaves room for some interpretation of how the first year calculation would be made.

Taking Section 3 literally would set the rate so that 1995 collections equaled 1992 banned taxes and fees. This would not fund the three base allocations, which would appear to defeat their purpose. To confound matters further, the overall intent of the measure appears to be no net gain or loss of revenue. Neither of the approaches above would achieve this. For a discussion of the revenue implications of this question, see the revenue effect section later in this report.

What transfers between related entities and financial transactions are taxable? The measure defines "person" and "trade" very broadly, implying that any transfer that changes the ownership of property in any way is taxable. In the extreme, this could include transfers from one spouse to another or to joint ownership, simple deposits into a checking account, and purely financial business transactions. If the measure is not intended to be carried to these extremes, the Legislature will have to draw the line somewhere short of a literal reading of the measure. It is not clear how

much authority the Legislature has to do this. The measure imposes the tax and sets the base in the Constitution. Thus any exemption would appear to require a constitutional amendment. The measure permits "legislative interpretation", but this appears to be limited to collection and administrative issues.

What does the equal tax exemption for income mean? The measure exempts income from the equal tax, but taxes the purchase of labor services. This seems to say there is no tax on the receipt of the income, but an employer must pay tax on the wage payment. Thus the transaction is still taxable despite the income exemption. It is questionable whether this analysis would apply to other income. For example, interest income from a savings account might be exempt, but the bank may have to pay tax because the interest payment is a charge for the use of money. A further complexity is that a portion of the proceeds of the sale of a security may represent income, but sales of securities are specifically taxed at a lower rate.

The measure also specifically exempts pension and retirement benefits. It is not clear whether, following the analysis above, the pension or retirement fund must pay tax on the payment.

What taxes and fees are forbidden? The measure generally bans all other taxes, fees, assessments, and tolls, except for receipts from a specific list of sources. The list exempts many charges for service, like municipal water bills, but not all. It is not clear whether other charges, like state hospital patient charges, are exempt. The measure does not specifically ban charges for service. But listing many charges in the exemptions seems to imply unlisted charges may be banned.

What does the 0.1% dedication to tuition reduction mean? Section 3 allows voters to approve a 0.1 percentage point increase in the 2% equal tax rate for tuition reduction. Section 5 dedicates "0.1% of state equal tax revenue" to tuition reduction. Assuming the tax could raise enough to cover the banned taxes, the former would be \$375 million while the latter would be \$7.5 million. It is not clear whether this difference was intended. These funds are dedicated to reduce tuition for resident students at accredited post-secondary schools. This would apparently include private colleges and trade schools. The Section 3 dedication is limited to in-state schools, but the Section 5 dedication is not.

What is the effect of the bonding prohibition? The measure removes any existing constitutional authority to incur debt. It defines debt broadly to include any financing mechanism, including certificates of participation. The measure protects bonds issued prior to the effective date to prevent default.

The impact of this prohibition is not clear. The constitution generally does not "grant authority" to incur debt. The constitution limits general obligation bonding authority, and only "grants authority" when it makes an exception to its own limits. There is no existing constitutional provision granting authority to issue revenue bonds or certificates of participation. So, although the intent seems to be to prohibit assumption of any new debt, this language does not appear to do that.

REVENUE EFFECT

Loss from Banned Taxes

State and local taxes, fees, assessments, and tolls prohibited by this measure would probably total about \$7.4 billion in 1995-96. The table at right shows the detail of this calculation.

This estimate assumes the measure generally does not prohibit charges for service. As noted earlier, the measure does not specifically ban charges for service, but includes many

charges on the list of exemptions from the ban. Thus it is unclear whether unlisted charges are banned. The largest unlisted charges (together amounting to about \$540 million in 1995-96) are state and local hospital charges and local sewer charges. If all unlisted charges were also banned by the measure, the total lost revenue would be about \$8.1 billion in 1995-96.

TAXES, FEES, ASSESSMENTS, AND TOLLS PROHIBITED BY MEASURE 20			
	1995-96		
	State	Local	Total
Income taxes	\$3,122	\$57	\$3,179
Property taxes	—	2,139	2,139
Fuel and truck taxes	576	10	586
Unemployment tax	415	—	415
Transportation licenses	121	—	121
Transit payroll taxes	—	108	108
All other	507	299	806
Total	\$4,741	\$2,613	\$7,354
All figures in millions Assumes charges for service not prohibited.			

Not all of the lost revenue will result in savings to taxpayers due to federal laws, for the following reasons:

- In some cases, like inheritance and unemployment taxes, payment of state taxes generates a credit against federal taxes. So if the state taxes are repealed, the federal government will collect higher taxes. Loss of the inheritance credit will increase Oregonian's federal taxes by about \$27 million in 1995-96. Repealing the unemployment tax will put Oregon out of compliance with federal unemployment system standards. This will subject Oregon employers to the full federal tax, increasing their tax by about \$409 million in 1995-96.

- Households can deduct property and income taxes on their federal income tax returns, but the equal tax will not be deductible. Loss of these deductions will increase Oregonian's federal income taxes by about \$460 million in 1995-96.
- The Congress and the federal courts are increasingly preempting the freedom of states to design their own tax systems. So there are likely to be other areas, especially licenses and fees, where the measure may have unanticipated effects due to federal laws. One significant example is the Clean Air Act. The measure would repeal the state emission and other fees required by that act. This would put Oregon out of compliance with the act. The sanctions for noncompliance are denial of federal highway funds, increases in the amount of emission rights businesses must buy to build or expand, and federal takeover of state environmental programs.

Equal Tax Revenues

The revenue potential of the equal tax depends on two separate factors: (1) the state's legal and practical ability to collect the tax, and (2) the method of setting the initial tax rate.

Equal Tax Revenues - Ability to Collect

No one knows how much a 2% equal tax would raise. If the state could collect taxes on all the transactions envisioned by the measure, the equal tax would raise more than enough revenue to cover the banned taxes. However, the state will have severe problems collecting the tax because the states' power to tax is limited, Congress and the federal courts are further limiting this power, the globalization of economic activity is increasingly testing these limits. Also, there are practical limits on the state's ability to collect the tax and easily-moved transactions may escape the tax. Finally, this measure is not drafted in a manner that maximizes the state's ability to collect the taxes it tries to impose.

An analysis of a potential gross receipts tax indicates as much as \$5 billion could be raised by a very broad tax. This means that, if the legal infirmities mentioned earlier could be overcome, this amount could be raised by more-or-less conventional means. The rest of the revenue would have to come from taxing transactions not taxed elsewhere, largely financial transactions. It is not clear how much can be derived from these transactions because: (1) it is not clear what transactions would be taxed, (2) there is little data, (3) these transactions are inherently difficult to tax, and (4) many of these transactions are easy to move and might be affected by even a small tax. Resolution of these uncertainties is critical to any revenue analysis.

Revenue collections may be enhanced by the severe penalty for failure to pay the tax (\$1000 or the full value of the transaction, whichever is greater). However, failure to pay the tax is not defined. So the Legislature probably has some leeway to mitigate the impact of what may appear to be a draconian penalty.

Equal Tax Revenues - Method of Setting Initial Rate

If, despite the reservations above, the equal tax could produce enough revenue, the actual revenue potential of the tax will be limited by the method of setting the initial rate. Four interpretations of the method appear reasonable.

- Set the initial rate so that collections in calendar year 1995 would be the same as 1991-92 collections from prohibited sources. The 1991-92 calculation is shown in the table below. This would be the limit for calendar 1995. Allowing for six months growth implies this method would permit fiscal year 1995-96 equal tax collections of about \$6.9 billion. The loss from prohibited taxes in 1995-96 is about \$7.4. This means a net loss to all state and local governments of about \$490 million in 1995-96. This interpretation is a literal, and perhaps most likely, reading of the measure.

POTENTIAL EQUAL TAX RATE SETTING LIMITS			
	1991-92 Lost Revenue	1995-96 Lost Revenue	1995-96 Base Allocations
Most governments	\$6,089	\$6,668	\$7,519
Tuition reduction	0	0	8
Highway Fund	570	686	729
Total	\$6,659	\$7,354	\$8,256

- Set the rate so there is no net loss in total revenue. This implies total collections in 1995-96 of about \$7.4 billion. Although this seems to be the general concept behind of the measure, it is difficult to find language in the measure that would justify it.
- Set the rate to fund the three base allocations. The estimated allocations are shown in the table. This implies total revenue of about \$8.3 billion in 1995-96, a \$900 million net gain to all state and local governments. This large gain occurs because total revenues are growing much more slowly than inflation and population under the current system, due to Measure 5 school property tax reductions.
- Set the rate so that, if the equal tax had been imposed in 1991-92, equal tax collections would have been the same as 1991-92 collections from prohibited sources. Although the Section 3 language could be read this way, this would permit revenue even larger than the three base allocations, probably about \$8.8 billion. This occurs because the economy has grown more rapidly than inflation and population since 1992. One problem with this approach that the rate would at best be a guess since the equal tax would not have been actually imposed in 1992.

Short Implementation Period

Whatever the resolution of the revenue issues above, the Treasurer and the Department of Revenue cannot implement this measure by January 1, 1995, just 7 weeks after the election. Thus equal tax collections are likely to be very low in the first year. This not only would cause budget problems for state and local governments, but it further confuses the method of setting the tax rate.

Abnormally low collections in the first year, if used to set the tax rate, would produce an abnormally high rate.

Thus all of the revenue discussion above should be viewed as indicative of the long run potential of the tax, and not as a prediction of the actual effect in the early years.

EFFECT ON INDIVIDUAL GOVERNMENTS

Uncertainties about the overall effect of Measure 20 make predictions of the effect on individual governments difficult. However, Measure 20's distribution formula will cause some shifts that can be described in general terms.

Highway Fund

Despite its extra 5% allocation, the Highway Fund share of total resources would drop. The table on page 11 shows the Highway Fund's 1995-96 base allocation is about \$729 million, about 8.8% of total revenue compared to 9.3% in 1995-96 under the current system. If the equal tax produces just enough revenue in 1995-96 to replace banned taxes and the base allocations were funded proportionally, the Highway Fund would get about \$650 million, about \$36 million less than the current system.

This loss occurs because Measure 5 has reduced school property taxes since 1992, while Highway Fund revenues have grown. Thus going back to 1992 benefits schools and, indirectly, the state relative to other programs. In addition, the formula permits schools to use enrollment growth instead of population. Enrollments will grow a total of about 3% faster than population over the four year period.

Finally, Measure 20 rewrites the language dedicating Highway Fund revenue. This rededication is basically the same, except that it appears to limit Highway Fund spending to state highways. Under the current system, 40% of Highway Fund revenue is distributed to cities and counties.

Local Schools

At first glance, it might appear local schools generally would benefit substantially from an allocation based on 1992 revenues. School property taxes have dropped since 1992, while other revenues have risen. In addition, formerly "rich" districts might appear to be big winners, because school funds have been significantly equalized since 1992.

This effect, however, is probably not as strong as it might appear. The measure seems to permit the Legislature to appropriate the state's allocation as it sees fit (except for the Highway Fund). Thus the Legislature is free to adjust the total amount of aid to local schools.. This means the state and schools together share whatever benefit the allocation formula may bestow.

In addition, Measure 20 does not appear to limit the state's ability to determine the distribution of state aid to individual districts. Thus Measure 20 does not conflict with Article VII, Section 3 of the Oregon Constitution, which requires a uniform system of common schools. Thus Measure 20 is unlikely to reverse the equalization that has occurred since 1992.

Finally, if the equal tax produces substantially less total revenue in 1995-96 than the current system, local schools and the state might fare relatively better than other districts, but still would lose revenue.

Districts with Bond Levies

In general, the allocation formula will benefit districts that had abnormally high revenues in 1992 and penalize those that had abnormally low revenues. For example, a local district that had a large bond levy in 1992 would get a high base allocation. There appears to be no mechanism in the measure to reduce the district's allocation when the bonds are repaid. The Legislature is empowered to adjust the allocations for population changes, enrollment changes, inflation, creation and dissolution of districts, mergers, and boundary adjustments. But there is no direct authority to adjust for other factors. This analysis applies mainly to cities, counties, and other non-school districts, because, as noted earlier, the state has the ability to adjust its direct aid to schools.

Finally, a district that began a large bond levy after 1992 appears to be penalized. Although the measure has some language permitting taxation to avoid default on such an obligation, the district receives no direct allocation to replace the levy. It is unclear how much the district must use its base allocation to repay the debt before the default language would be triggered.

POLICY ISSUES

Simplicity and Fairness

The primary intent of the equal tax proposal is to create a simpler and fairer tax system. Although there is some doubt about the calculation of the initial rate and some proponents claim most people will pay less tax, the intent appears to be raise the same revenue as the current system.

The current system is certainly complex and many people find current taxes, especially the property tax, unfair. Whether the proposed tax would improve the system is a matter of opinion. As illustrated by the legal questions discussed earlier, the equal tax will have some complexities of its own, although the extent is unclear.

Ironically, much of the current system's complexity is intended to make the system fairer. Heavy highway users pay higher highway taxes. Urban taxpayers pay higher local property taxes. Businesses with better employment records pay lower unemployment taxes. Many fees run programs benefiting or regulating specific industries. Higher income people pay more income taxes while large families and those with high medical costs pay less. None of these systems are perfect and the level of fairness they achieve is debatable. Nonetheless, there is an internal logic to the system.

The equal tax argues weaknesses of the current system outweigh whatever fairness it achieves and that a relatively small tax imposed on all transactions would more equitably allocate the burden and, in addition, reduce administration and compliance costs. Although clearly some would pay more and some less under a transaction tax, analyzing these shifts is a difficult task.

Local Control

Under the current system, locally elected officials and voters determine the tax and budget levels of non-school governments. Under the equal tax, budget resources will be set at 1992 levels plus legislative adjustments. This is a fundamental change in governance and represents a substantial centralization of power in state government. This issue typically gets little public attention in debates about taxes. But experiences like California's Proposition 13 demonstrate the far-reaching effects of these shifts.



Regional Financial Advisors, Inc.

Rebecca Marshall Chao, President
Chris Scherer, Senior Vice President
Liz Johnston, Business Manager
733 SW Vista Ave, Portland, OR 97205-1203
(503) 227-2009 FAX (503) 227-2510

SOME MEASURE 20 CHOICES

Measure 20 is the measure amending the Constitution replacing current taxes with an "equal tax" on trade. As of January 1, 1995, it eliminates:

- ➡ All taxes
- ➡ All fees
- ➡ All assessments
- ➡ All licenses
- ➡ All tolls
- ➡ All other sources
- ➡ No tax, fee, assessment or other charge added to utility user bills or receipts listed below

EXCEPT RECEIPTS FROM:

- * State accident insurance
- * municipal or district utility charges for
 - ◆ water
 - ◆ electricity
 - ◆ natural gas
 - ◆ bus
 - ◆ trolley
 - ◆ train
 - ◆ rents
 - ◆ leases
 - ◆ sale of property
 - ◆ tuitions
 - ◆ dividends
 - ◆ fines
 - ◆ penalties
 - ◆ interest
 - ◆ lottery and other recreational user or admission charges
 - ◆ federal revenue sharing but NOT timber receipts
 - ◆ Common School Fund sources
 - ◆ NOTE - does not include sewer charges

FOR ALL BONDS

Who Pays 2% on Principal and Interest?

Starting Jan. 1, 1995, all payments on principal and interest will carry the 2% Equal Tax requirement (in essence, this increases the cost of borrowing by at least 2%). It is not clear who must pay, except that the Oregon seller is liable to pay if the bondholder does not. Therefore, issuers must decide whether they are willing to covenant to pay or not before selling the bonds.

It is also not clear from what source the tax would be paid: usually a tax levy covers only the principal and interest on the bonds, not a tax payment. Perhaps this would be changed in the statutes. Since there is may be no property tax levy after Jan. 1, 1995, this may be included in the demands upon the issuer's allocation of the Equal Tax.

- ♦ *If the issuer does not wish to pay:*

Most likely the interest rate will be raised some amount to cover the payment. Even so, if the bondholder is out-of-state, it is not clear that the tax can be levied on this bondholder, so the issuer could still be required to pay the tax on behalf of all out-of-state holders, but now on a higher interest amount. If Measure 20 does not pass, the interest penalty would remain on the bonds until they could be refunded.

- ♦ *If the issuer is willing to covenant to pay*

There would be no need for the bondholder to require additional interest to cover this expense. If Measure 20 does not pass, there is no interest rate hike to pay. If Measure 20 passes, the issuer is responsible to pay the additional 2% tax every year along with debt service payments.

- ♦ **NOTE:** secondary trading of the bonds will cost 0.25% of the "gross selling price." This does not involve the issuer, but an interest may be assessed to cover the expense of trading the bonds.

Extraordinary Call

The bond issue could contain an "extraordinary call" which is exercised only if Measure 20 passes. While there may be some interest penalty, this may be less than the penalty assessed if the bond buyer thinks Measure 20 might pass.

NOTE: this approach would mean that the PROJECT BEING FINANCED WOULD NOT BE BUILT. If the issuer would not wish to proceed with the project if Measure 20 passes, then this works. If the issuer needs the project regardless of the Measure, this approach does not work. Then the issuer simply risks that the bonds and the debt service tax will be paid from their allocation of the Equal Tax.

ESCROW

The call can be combined with a reservation of the bond proceeds in an escrow (can be held by the issuer) until after the election. If Measure 20 passes, the bonds must be called (the issuer is out-of-pocket for the issuance costs). This permits the issuer to leave unresolved who pays the 2% tax on debt service, since the bonds would cease to exist if the Measure passes.

CURRENT REFUNDING

The extraordinary call could be used in the opposite manner if the issuer has not covenanted to pay the 2% on the debt service payments. The call would be exercised only if Measure 20 does not pass. Several warnings:

- ◆ There would be a higher penalty here for the call, since it is more likely to be exercised.
- ◆ Measure 5 does not exempt refundings, so the new bonds could not be sold unless the required ballot language is present or the bonds are not subject to Measure 5 restrictions.

FOR GENERAL OBLIGATION BONDS

There is considerable debate over what exactly is the protection for General Obligation bonds issued prior to Jan. 1, 1995. There are two protections:

- ◆ The Federal Contracts Clause should provide some protection. What is unclear is what and when is the protection. Is a property tax levy guaranteed here? Before or after the Equal Tax is fully utilized to pay debt service, even to the degree other programs, services and personnel are eliminated?
- ◆ Section 10 of the Measure states that:

it should not be construed to negate or supersede any ultimate security provided by other taxation for bonded indebtedness incurred prior to January 1, 1995 ... *but such taxation shall be imposed only to the extent necessary to cure default.*

The last few words (*italics mine*) create a question as to how soon the property taxes can be levied, since it is unclear when the bonds would be in "default" sufficiently to permit "curing" the default. Since G.O. bonds do not have debt reserves, there is a timing problem and the potential for a **technical default** (late payment of debt service.)

Provisional Debt Reserve

One possible approach to mitigate investor concern over a possible technical default is to establish a debt reserve equal to average annual debt service from the bond proceeds. This is permitted under Federal law, but the reserve must be yield restricted.

This debt reserve would be held by the issuer until after the election. If Measure 20 fails, the reserve is eliminated and the proceeds freed to be used for the project. If Measure 20 passes, the reserve would remain in place until such time as the courts have clarified the timing issue and bond counsel provides an opinion that the property tax levy can be accessed in a timely manner, unlikely to cause a technical default or that the issuer has sufficient capacity to pay the debt service on time from its resources. Once this certification is received, the issuer can eliminate the reserve and use the proceeds.

This means that the issuer would risk NOT BEING ABLE TO USE an amount of proceeds equal to one year's debt service if the Measure passes. If there are other resources than bond proceeds, these could be set aside in the reserve or used for the project.

DISCLOSURE

It is imperative that there be complete disclosure regarding the *possible* impacts of this measure. Bond Counsel will provide suitable disclosure, but the issuer must be comfortable with the material. The issuer must remove their marketing hat and don the legal protection hat. So must RFA.

RFA and yourselves have full legal liability for the disclosure on your issue, regardless of who prepares the material or from where it comes, including bond counsel. While bond counsel also has liability, our liability is not diminished (discuss this with bond counsel or your own counsel).

Under the securities law, we must warranty that, regarding the disclosure:

1. I am not aware of any misstatement of a material fact.
2. I am not aware of any omission of a material fact.

A material fact is a fact that would influence a reasonable investor in making an investment decision. Just ponder what would make you change your mind about buying your bonds if you were an investor investing your savings. You will discover a great reluctance to take risk! This includes speculation that this Measure will or will not pass.

In preparing for your rating and possibly for the Official Statement, you'll want to estimate the "base allocation" in Section 5 (1).

...shall be 100% of their fiscal 1992 budget derived from revenues described in Section 3 plus per capita growth and cost of living allowances in Section 8 (1)...

Section 8 (1) For the purposes of per capita growth allocations, and prior to the beginning of each fiscal year, the Legislative Assembly shall certify to the Treasurer, with concurrence of the counties, any changes in population, school enrollments, and cost of living increases or decreases, and the creation or dissolution and merger or annexation of districts or governments.

Section 15: Definition of "per-capita" ...means the total of gross state and local revenues divided by the total applicable state, local or district population.

There are some provisions for limited increases:

- ◆ Increases may be voter approved state-wide, but only with 60% approval (Section 3 (2))
- ◆ Temporary increases which end at the end of the fiscal year may be voted statewide if initiated by the Legislature (no provision for years when the Legislature is not in session) for "shortfalls" and need only a majority vote. (Section 8 (3))
- ◆ A "Local Equal Tax" up to 1% may be imposed for up to 5 years within a county to provide supplemental revenue for special needs of schools, other districts and local governments. The percentage and allocations shall be voter approved with a 60% majority vote in the affected district. It appears that all districts within the county must share the tax up to a total 1%. If voters approve more than 1% when adding all votes together, there probably would be compression such as under the current Measure 5.

Some attempt to quantify the potential allocation of Equal Tax may be helpful in selling bonds, although it must be very speculative.

**AMENDS STATE CONSTITUTION: "EQUAL TAX" ON
TRADE REPLACES CURRENT TAXES**

QUESTION: Shall state constitutional tax provisions be repealed, "equal tax" on transfer of property, goods, services replace current state, local taxes?

SUMMARY: Amends state constitution. Repeals sections regarding income tax, fuel and oil taxes, urban renewal financing, tax bases, property taxes, tax limitation, related matters. Bars all current state, local taxes, fees, assessments. Substitutes "equal tax" on all transfers of property, goods, services. Includes loans, securities, insurance, barter, gifts over \$1,000. Exempts charitable gifts, pensions. Prescribes who pays tax. State rate 2 percent; local rate 1 percent or less. Sets priorities to allocate revenue. Ends constitutional state, district bonding authority. Other changes. Effective January 1, 1995.



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Effects of an Equal Tax Found Hard to Estimate

Oregon's Legislative Revenue Office has tried to estimate the legal and practical effects if the "2% Equal Tax" (Measure 20) is approved by voters at this November's General Election.

This article reviews some of Legislative Revenue's estimates and questions, supplementing the thoughtful review on page 2, done for this issue of *Your Taxes* by William B. Conerly, Ph.D., senior vice president and economist for First Interstate Bank.

OTR's thanks to Jim Scherzinger, Oregon's Legislative Revenue Officer, for most of the following.

Estimates of what the 2% tax on most financial transactions would raise vary widely with assumptions about what would (and could) be taxed. Apparently, most services would be taxed, including transactions by Oregon entities conducted outside the state.

The Equal Tax prohibits the levy of most taxes, fees and assessments, which in fiscal '96 Legislative Revenue estimates would total \$7.35 billion. (User fees are not banned.)

The proposal requires imposition of that rate on transactions (up to 2%) which will equal the amount which was raised in 1992 from those taxes, fees, etc. which the measure would now ban, plus adjustment for inflation and population growth. (Schools can substitute enrollment growth for population). The statewide 2% rate could be raised only by a 60% majority vote of the people. However, local governments could impose an additional rate up to 1% upon 60% voter approval, subject to voter reaffirmation every five years.

If the state equal tax produced more money than the '92 state and local revenue (estimated by Legislative Revenue at \$6.66 billion) a proportionately lower rate would be imposed.

Legislative Revenue is unsure exactly what financial transactions would be taxed or what statewide rate would be imposed to start. (See Conerly article for probable financial effects.)

They believe the likeliest would be: Taxes which would be banned produced

in 1992 about \$6.66 billion. Collections would be limited to that plus fiscal 95-96 inflation and population or about \$6.9 billion. But growth between those years brings current collections to \$7.35 billion. So a gross savings to taxpayers of nearly half a billion dollars is indicated at first face.

Taxpayers would not net that however, for several reasons. Two major examples: Property and state income taxes, now deductible on federal tax returns, no longer would be. Cost to Oregon taxpayers: \$460 million in fiscal '96. Equal tax would not be deductible. Failing to collect employment tax would throw Oregon out of compliance with federal standards, costing Oregon employers an extra \$409 million by 1995-96. Inheritance tax credits would be lost. Legislative Revenue points out other items, such as Oregon falling out of compliance with the federal Clean Air Act because it could not collect federally mandated emission fees.

Measure 20 prohibits creation of new debt by state or local government.

Over time this would bring Oregon's enormous Veterans Farm & Home Loan program to an end. Legislative Revenue finds the fate of revenue bonds and certificates of participation dubious but probably meant to be banned. It requires state or local governments to operate balanced budgets.

The initiative requires that local governments be given the funds which they received in 1992.

Both schools and nonschool local government would become dependent for most of their funding on state legislative decisions — or allocations simply because the revenue stream will concentrate in the state's hands. Local governments would have such limited nonstate sources remaining as user fees, interest on savings, bequests, sales of property, etc.

Legislative Revenue believes the measure permits the Legislature to appropriate the state allocation in its own best judgment. That undoubtedly implies that the

continued on page 6

Spending up a Sixth For 1993-95 Biennium Adopted Budget Shows

State expenditures budgeted for Oregon's current biennium jumped one sixth (16.7%) from the 1991-93 budget, which, in turn, was up 19.3% from '89-91. Although the rate of increase has slowed, it has not dropped nearly as fast as inflation has been tamed.

Figures shown on page 5 are for the "All Funds" budget, or all state spending for the current 1993-95 and two immediately previous bienniums. The more discretionary General Fund spending is about 31.1% of "All Funds" (\$20 billion) and is condensed in a chart on page 5. (dollars in millions)

continued on page 5

Cost of Government Day Celebration Missed

"Cost of Government Day," sponsored by the Americans for Tax Reform Foundation, slipped by this year without fanfare. The 1994 celebration date was July 10 when Americans were fully relieved from their government obligations (on-budget government spending + off-budget regulatory costs).

On "Tax Freedom Day" 1994, in Oregon May 6, the average worker had earned enough gross income to pay federal, state and local taxes.

"Cost of Government Day" adds the cost of government regulations, according to the Americans for Tax Reform Foundation. It is determined by adding the figures for all government spending (all federal, state and local outlays) and an estimate of the cost of government regulations. Most federal regulations were incorporated except costs associated with civil rights legislation, minimum wage laws and anti-trust laws.

At the state level, only workers' compensation and tort costs were used.

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Suite 201
6950 SW Hampton Street
Portland OR 97223
624-6055

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COMMENTARY: The Equal Tax

William B. Conerly, Ph.D. Senior Vice President and Economist
First Interstate Bank

"The intent of this Article is to replace a system of many taxes with a one-tax system that is equal for everybody. This will generate revenue by a very low Equal Tax charge on every exchange of value or transaction in trade on the broadest possible base which will adequately fund the government and provide for adequate protection and services for the people of the state."

From the constitutional amendment proposed by Measure 20

"The turnover tax, applying to each sale through which a commodity passes in production and distribution channels, does not warrant serious consideration. The discrimination against non-integrated firms and the effects of encouraging integration . . . lessen economic efficiency . . . The nonuniformity of burden on various consumer expenditures is substantial, and burden pattern by income group is indeterminate. Elimination of the exact amount of the tax from exports is impossible, and imported goods are often favored over domestically produced goods. Germany, the originator of the turnover tax in its modern form, abandoned it . . . in favor of the value-added tax, and the other European Common Market countries have now done so."

John F. Due &
Ann F. Friedlander
Government Finance, 1977

Most Taxes Axed

Ballot Measure 20 would eliminate all taxes in Oregon (except for some fees for service such as bus fares) and replace them with a single transactions tax, called the Equal Tax. (The proposal should not be confused with the Henry George's Single Tax proposal.) In this discussion we first describe the proposal (omitting lesser details), then we offer an economic evaluation of the tax.

DESCRIPTION Taxation

The measure would tax every transaction in the state, including transactions with out-of-state parties, at the rate of two percent. The tax rate could be raised by a vote of the people, with a 60 percent majority. Both wholesale and retail trade would be taxed, as would all services, barter transactions, and even loans and savings deposits. The tax is not on income *per se*, but on the transaction that generates the income. For example, an employment transaction would be taxed at two percent of the gross wage paid. The tax is also paid on intermediate transactions,

such as the raw materials purchased by a manufacturer, regardless of whether a profit is made.

Local governments would have the authority to levy up to one percent in addition to the two percent state tax, upon a vote in the local jurisdictions with a 60 percent majority, for a term of five years. The local tax is renewable, upon another vote of the people.

In most transactions, the business would be responsible for paying the tax: the seller of goods, the purchaser of labor. Consumers would be responsible for paying taxes on services they purchase, such as haircuts and automobile repair. They could either pay with special tax stamps or file a monthly tax return with the state.

Loans Taxed

A loan is taxed on two percent of the principal plus interest (interest only on loans under 30 days; no tax on interest-free loans). Each deposit into an interest-bearing bank account would be taxed at the two percent rate. (If a non-interest-bearing account, such as a checking account, were bundled with free services, that transaction might be taxed as barter trade.) It is unclear how revolving accounts, such as credit card balances, would be treated. For example, a person pays \$100 toward the outstanding balance on a credit card, then charges a \$100 purchase. That might generate a transaction tax on the extension of credit, in addition to the tax on the actual purchase.

Stock Tax Lower

Securities transactions would be taxed at the rate of 1/4 of one percent. The tax is per transaction, not per annum. That is, someone who buys a Treasury Bill pays the tax on each purchase (on principal and interest), even if the bill is rolled over several times in one year. The purchaser of a two-year Treasury Note, in contrast, pays the tax in the year of purchase, but in the second year pays tax only on interest income, not on principal.

All gifts above \$1000 would be taxed.

Exports are not exempt from the tax, unlike most Value Added Taxes and some state sales taxes.

Spending

Most government spending would be frozen at 1992 levels, with adjustments for population growth and inflation. Each government, state and local, gets 100 percent of its adjusted 1992 budget. Additional spending is mandated to reduce college tuition and for the Highway Fund. An additional five percent of revenue may be allocated by the legislature for certain

continued on page 3

William Conerly Analyzes Equal Tax Proposal

Special needs. Any additional revenue goes into a "rainy day" fund, until one billion dollars has been accumulated. Any further revenue shall pay off bonded indebtedness, and after that, be used to reduce the tax rate.

Bonds

The measure would eliminate authority to issue new bonds. The amendment notes that capital improvements could be financed by an increase in the tax rate, if approved by a vote of the people.

ANALYSIS

The Budget

So how much will the Equal Tax raise? That is very hard to estimate. The measure's proponents used the volume of bank debits to estimate total transactions that would be subject to the tax. They determined that a two percent tax would generate revenue sufficient to cover 1992 spending, adjusted for inflation and population growth. This methodology omits some barter transactions and much of the underground economy, which is appropriate given the likely compliance problems. However, it is unknown how much of the bank debit volume represents mere shuffling of funds that would not be taxed, or transactions that would end if the tax were imposed. In short, two percent is a very rough estimate of the tax rate necessary to cover 1992 expenditures. It could prove to be wildly inaccurate, on either the high or low side.

Moving Money

First, when a business moves money from one checking account to another, no tax would be owed, even though the transaction would be part of the total bank debit volume. Second, today I might move some money from my checking account to my savings account for a month or two. But if I have to pay a two percent tax to add funds to my savings account, I'll leave the money in checking. Thus, the overall volume of taxable activity will decline after the tax is imposed. As we will discuss later, businesses will vertically integrate to avoid the tax, while some export business will be lost.

The bottom line is that total revenue collected from the tax is impossible to

pinpoint. The Legislative Revenue Office concludes that the tax could collect sufficient revenue if in fact the state succeeds at taxing all transactions. They are doubtful that all transactions can be taxed, for legal and practical reasons. Even after implementation, we will have several years of changing business organization motivated by tax avoidance, so tax revenue will not stabilize for some time. Only then will we know how much money the Equal Tax will raise.

Distortions and Inequalities

The Equal Tax is anything but equal in application. Its major drawback is the distortion that it will inject into all economic activity. Let's start with some examples.

A large wood products company grows timber on its own land, harvests the timber, transports the logs on its own trucks, mills the logs, then remanufactures them, shipping the finished product to its own retail yard, again with its own trucks. It also has employees who reforest the land. By-product chips are delivered in company trucks to the company pulp mill, which makes paper, which is sold directly to an end-user. That company pays a single two-percent tax on its sales of millwork and paper.

Contrast that tax payment with a person who owns some timber and sells it to a mill. A tax is paid. The mill contracts with a logging company, paying a tax. Reforestation is also contracted out, a taxable transaction. Using an independent log truck company requires a tax payment. If the mill sells its lumber to a remanufacturer, another tax must be paid. When the remanufacturer sells millwork to a distributor, the tax is paid again, and once again when the distributor sells to the retailer. The chips from the mill might be sold — and a tax paid. The chip buyer makes pulp, which it sells to a paper company, in another taxable trade. The paper company pays the tax when it sells bulk paper to a wholesaler, with another tax when the paper is sold to a retailer. If any of these small businesses contracts out for its payroll, bookkeeping, tax preparation, guard service, engineering, legal work, janitorial, or anything else, then it pays a tax that the large integrated company can avoid.

Small Enterprise Hurt

In short, the Equal Tax falls heaviest on small, specialized businesses; it falls least on large, integrated companies. We can expect to see consolidation within many industries if the Equal Tax is implemented. Our economy would move away from one with many small businesses, to one with fewer, larger businesses. Providers of services to other businesses will face smaller markets as firms shift activities in-house.

It is difficult to determine if the average tax burden on a business would increase or decrease. Elimination of property and income taxes help, but we cannot know how the cascading of taxable transaction upon taxable transaction impacts total tax burden. Some businesses may benefit, especially large, integrated firms using high-value property and earning large margins. The opposite firms, small businesses using a variety of outside vendors, using low-value property, doing business at a low profit margin, would be hurt. Portland, for example, is a major warehousing center, but that activity would probably move out of state with the Equal tax. We cannot assess the overall impact of business entering or leaving the state.

Social Estimates Tough

Nor can we estimate the tax burdens on people at different income levels. Higher income people often have more complex transactions, suggesting a higher tax incidence, but they are also in a better position to structure their affairs to minimize taxes. This is another great unknown about the Equal Tax.

Interstate transactions pose a serious problem. The state does not have the legal authority to tax interstate transactions, according to the Legislative Revenue Office. But what if it does? The measure intends to tax a company that buys raw materials out of state for use in an Oregon factory. What if an Oregon company buys raw materials in Utah for use in its North Carolina factory? The proponents of the measure have said that this would not be a taxable transaction. But they also said that if an Oregon company buys shoes from a factory in the Far East, then ships those shoes directly to Europe, the company would still be liable for the two percent tax. It is hard to see the distinction between the two transactions, so we would be in for some litigation to resolve the issue. In the meantime, such businesses could easily move out of state to avoid the tax.

In summary, the measure attempts to find an easier way to collect money for state and local government. However, there is no easy way to extract billions of dollars of resources from the people. Some taxes are, indeed, worse than others, but the Equal Tax's disproportionate burden on small business makes little sense. Its unknown incidence and uncertain revenue stream make it a risky gamble. A desire to tax those out of state is understandable, but too great an effort in that direction simply pushes business away from Oregon. However, the proponents of the Equal Tax have one valid point to make about the present tax system: it doesn't make a lot of sense, either.

"How Oregon Compares"

... delayed until late fall, when Commerce Department local tax & spending data become available.

Effects of an Equal Tax Found Hard to Estimate

drive toward equalization of per pupil spending among districts will continue.

As the responsibility of the Legislature to fund local governments increased, so might disputes among geographic regions and types of government service. Legislative responsibility for and power over what has been the nondiscretionary (or "Other Funds") side of the budget (in contrast to the largely discretionary "General Fund". This, in turn, might lengthen legislative sessions and, hence, discourage able people from seeking to serve.

Two groups are treated differently.

1) The Highway Fund (Oregon Department of Transportation) receives 105% of 1992 banned revenues, rather than 100%.

2) Tuition. The Legislature is required to propose to voters that 0.1% of equal tax revenues go to reduce tuition of in-state students at in-state colleges and other post-secondary schools. This appears to include private schools. Legislative Revenue, however, notes that one section calls for a 0.1% increase in the tax rate above 2% (which could raise \$375-million) Another section refers to "0.1% of equal tax revenue (or \$7.5 million).

The seller is required to pay the tax except for services or labor, where the pur-

chaser (including employer) is required to pay. A monthly report must be filed with the state. In lieu of that, the taxee may buy script or stamps. Failure to pay incurs

Teacher Contract Eludes Pitch-In for Pensions

Portland teachers, among many others, apparently will elude any financial effect of the "Pitch-In Initiative if, as expected, it passes voter approval this November.

The Initiative (Measure 8) requires public employees to pay 6% of their salaries toward their pensions. Currently, the public employer pays the full amount.

A clause has long lain dormant in the Portland teacher contract, activating an automatic pay raise to offset the pension payment, if ever it should be imposed.

Many details of the proposed teacher contract, (approved by negotiators at *Your Taxes* deadline) remain unrevealed. However, the full 177-day school year has been preserved. District management had proposed to cut off five days to save \$5 million in labor costs for the 1994-95 school year. But apparently a substantial pay raise is included.

Vote on the proposal is set for Aug. 30, 31 and Sept. 1.

Even the Portland's leading newspaper, the *Oregonian* chastised the district and

either a \$1000 penalty or the whole value of the transaction, whichever is greater, plus legal fees.

union for keeping details of the proposal secret until after the vote.

Here, in part, is what The *Oregonian* had to say:

"Too often, labor negotiations carried on in secret result in surprises sprung on the public only after binding deals have been struck and public concerns ignored or minimized.

"In 1990, while school officials were warning of the dire effects of voter approval of the property tax limitation initiative (measure 5), they were negotiating employee pay raises with employee unions — and withheld news of their agreement until after the November election for fear it might encourage voters to support the measure.

"Multnomah County and the City of Portland negotiated domestic partnership benefits in secret.

"The Legislature should open the door ... Invite taxpayers in..."

September 1994

YOUR TAXES

From



Supported by Individual and Business Memberships and Grants.
Encouraging Efficient and Economical Government through Research and Public Education.

OFFICIAL STATEMENT DISCLOSURE BALLOT MEASURE #20

relating to

\$9,000,000

**Multnomah County, Oregon
General Obligation Library Bonds, Series 1994B**

At the November 8, 1994 general election Oregonians will vote on Measure 20 ("Measure 20"), which would replace all state and local taxes and most fees with a tax (generally 2%) on all transactions (the "Equal Tax"). Measure 20 was placed on the ballot through the initiative process and was so qualified by the Secretary of State to be placed on the ballot on July 22, 1994.

If enacted, Measure 20 will take effect on January 1, 1995, and will ban all state and local government taxes, fees, assessments, licenses, and tolls, including the personal income and corporate excise taxes, real and personal property taxes, and gas, liquor and cigarette taxes. Measure 20 would repeal the property tax that is the security for the payment of the above referenced bonds and would substitute the Equal Tax. Measure 20 eliminates future property tax supported state and local government general obligation bond issues, because it eliminates the property tax system. Excluded from this ban is the Equal Tax and "receipts from state accident insurance, municipal or district utility charges for water, electricity, natural gas, bus, trolley, trains, rents, leases, sale of property, tuitions, dividends, fines, penalties, interest, lottery and other recreational, user or admission charges, federal revenue sharing, (but not timber receipts), and Common School Fund sources." Measure 20 imposes the Equal Tax on all trade within the state and all trade between "Oregon Persons" and persons located outside the state.

The Equal Tax is based on the gross value of the property, good or service at the time of transfer. The initial rate of the Equal Tax is to be an amount sufficient to replace the amount of all banned taxes and fees which were collected in 1992, subject to a maximum rate of 2%. The initial rate may be increased with the approval of 60% of voters. County voters may also impose a separate, "local equal tax" of up to 1% with approval of 60% of county voters.

Measure 20 also imposes a 1/4 of one percent (0.25%) tax upon securities transactions (which would include both primary and secondary market sales of bonds, financial instruments or securities) which occur after December 31, 1994 if those sales are considered to occur within Oregon or to involve an "Oregon person." "Financial Instrument" includes, but is not limited to, notes, deeds, mortgages, bonds, contracts and any other document conveying interest in property or services of tangible value. In addition, Measure 20 provides, in part, that "the Equal Tax shall be computed on both the principal and interest on any interest bearing loan if that loan exists for more than 30 days from the date of execution or billing, to date of final payment." Measure 20 does not specify in all cases

SCG\scg0000.20

which party must pay these taxes, but provides that if the party primarily responsible fails to pay, the other party is obligated for the payment.

The effect of individual provisions of Measure 20 on the County's ability to collect property taxes for the County's General Obligation Library Bonds, Series 1994B (the "Bonds") or its effect on other bonds and programs of the County cannot be predicted with certainty. Court decisions under the Contracts Clause of the United States Constitution have prohibited the application of changes in state law in a manner that impairs a security feature underlying previously issued obligations.

The Contracts Clause provides that, "No state ... shall ... pass any ... law impairing the obligation of contracts ..." This constitutional provision has been interpreted and applied in cases to invalidate legislative actions (including initiative petitions like Measure 20) that would have acted to impair contractual undertakings made by municipal entities in favor of bondholders. Based on the County's covenants in the Resolution, the existing case law supports the conclusion that if imposition of property taxes is needed to avoid a payment default on the Bonds, it would constitute a violation of the Contracts Clause if Measure 20 acted to prohibit such a tax. However, a court may hold that the County must first utilize other sources of revenue, such as the Equal Tax, if available, prior to protecting the County's ability to levy property taxes for payment of the Bonds. No court has passed on this question and no assurance can be given that a court would, in fact, reach this conclusion. Furthermore, subsequent court decisions interpreting the Contracts Clause could undermine or by overruling existing case law, eliminate the support given by existing case law to this conclusion.

The effect of Measure 20 on the County's Bonds with respect to the application of the Equal Tax to "both the principal and interest on any interest bearing loan" (which may include a tax in connection with the payment of principal of or interest on the Bonds), or the application of the Equal Tax to securities transactions (such as the sale of Bonds in the secondary market) cannot be predicted with certainty.

It is unclear, particularly with respect to the payment of any Equal Tax in connection with "principal and interest on any interest bearing loan," such as the County's payments of principal of and interest on the Bonds, whether the County or the owners of the Bonds will be liable for the Equal Tax.

If the voters approve Measure 20, legislation will be required to interpret and implement Measure 20. Moreover, it is likely that the courts will be required to interpret Measure 20 and any implementing legislation. The potential effects of the passage of Measure 20 on future revenue sources not contractually pledged prior to the effective date of Measure 20 or the effect of Measure 20 Equal Tax on transactions (such as payments of principal and interest due subsequent to the effective date of Measure 20), therefore, cannot be known until implementing legislation is enacted, and Measure 20 and such legislation have been reviewed by Oregon courts.

Meeting Date: 9/29/94

Agenda No.: B-2

(Above Space for Board Clerk's Use **ONLY**)

AGENDA PLACEMENT FORM

SUBJECT: Briefing on Early Childhood Development/Ready to Learn Benchmark Plan,
Parents as Teachers Program

BOARD BRIEFING: Date Requested:
Amount of Time Needed:

Thursday, September 29, 1994
15 minutes

REGULAR MEETING: Date Requested: ____
Amount of Time Needed: ____

DEPARTMENT: Nondepartmental **DIVISION:** Chair's Office

CONTACT: Carol Wire

TELEPHONE: X-3899
BLDG/ROOM: 106/1410

PERSON(S) MAKING PRESENTATION: Pauline Anderson, Cornetta Smith and Helen Richardson

ACTION REQUESTED:

☒ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if available):

The Multnomah Commission on Children and Families' Early Childhood Development/Ready to Learn Benchmark Plan calls for the implementation of a nationally recommended and evaluated parent education program, Parents As Teachers. Funding of \$159,784 will support a training conference for 50 parent educators and five implementation grants. A grant of \$7,664 out of those monies must be given to CASA (Court Appointed Special Advocates). The Commission and its task force further request that staff with knowledge and expertise in early childhood development be available to implement this plan and other early childhood programs contracted by the county. This plan is a part of the Commission's approved comprehensive plan for 1994-95.

ELECTED OFFICIAL: Beverly Stein

OR

DEPARTMENT MANAGER: _____

9/29/94 CONT/RESCHEDULED
FOR 10/11/94

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions? Call the Office of the Board Clerk at 248-3277 or 248-5222.



MULTNOMAH COUNTY OREGON

MULTNOMAH COMMISSION ON CHILDREN AND FAMILIES
ROOM 1410, PORTLAND BUILDING
1120 SW FIFTH AVENUE
PORTLAND, OR 97204
PHONE (503) 248-3897 FAX: (503) 248-3093
COUNTY INFORMATION TDD (503) 248-5040

TO: Board of County Commissioners

FROM: Multnomah Commission on Children and Families (MCCF)
Pauline Anderson, Chair

DATE: September 22, 1994

SUBJECT: Early Childhood Development/Ready to Learn Benchmark Plan

We are pleased to present to you an exciting new system of parent education for Multnomah County. Using benchmark funds allocated to the Commission on Children and Families for the current biennium, the nationally acclaimed Parents As Teachers program from Missouri will be implemented in a variety of settings. It will be offered first to staff of Parent Child Development Centers, if they wish to implement this program, then to Head Start and child care centers.

Parents As Teachers will serve families with children birth to five. When combined with our Parent Child Development Centers and their community health nursing component, this programming completes a model very similar to the Hawaii Healthy Start model supported by the Legislature and the State Commission on Children and Families. It incorporates the essential long term home visits which research shows are critical to successful parenting programs. Parents As Teachers is an adaptable and flexible program, capable of meeting the needs of diverse populations. It has undergone significant evaluation with positive results and is one of five federally recommended programs.

Please let us know if you would like additional more specific information on Parents As Teachers.

The MCCF made one change in the task force's recommendations. Acknowledging the lack of professional expertise within the Community and Families Division in early care and education, the Commission requests that adequate personnel with expertise and knowledge in early childhood development be available to implement this and other contracts focusing on young children and their families. The task force's request for a structural change to form an Office of Early Care and Education will be considered in the context of the comprehensive plan.

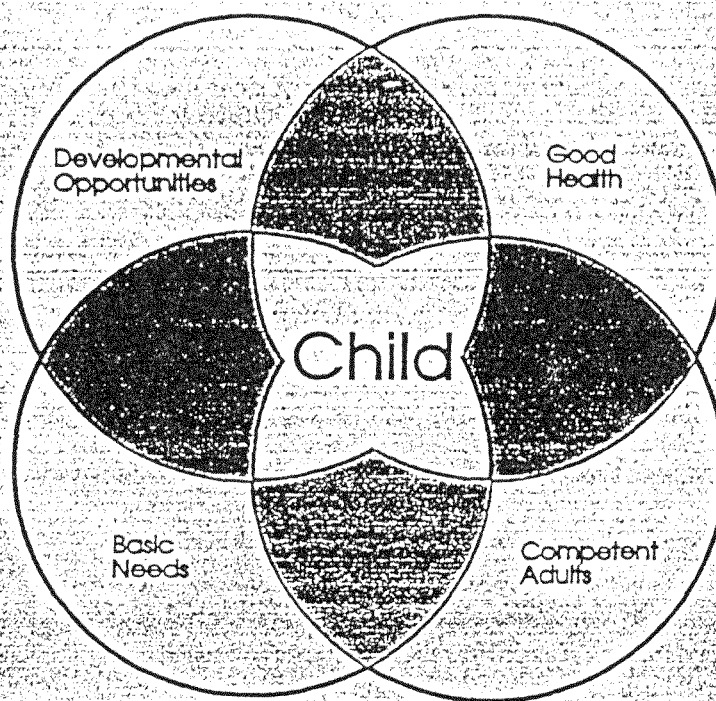
MULTNOMAH COMMISSION ON CHILDREN AND FAMILIES
Plan Review/Staff Report

<i>Name of the reviewed planning initiative</i>	<i>Early Childhood Education/Ready to Learn Benchmark Planning Date released to MCCF: September 6, 1994</i>
<i>Planning team convened by:</i>	<i>MCCF</i>
<i>Key contact persons:</i>	<i>Lola Lawson, Chair; Sharon Mc Cluskey, Commissioner; Cornetta Smith, Commissioner; Donna Dengel, Plan Composer; Lynn Ervins, Staff</i>
<i>Summary of the initiative's purpose</i>	<i>To assure that children are prepared to enter Kindergarten; MCCF was granted funds to address the "Ready to Learn" benchmark in the current biennium.</i>
<i>Available resources:</i>	<i>\$159,784, including \$7,664 which must go to CASA; amount granted to Multnomah County for the biennium is \$181,798 which includes administration and indirect costs. Planning group budget was using approximations.</i>
<i>Related MCCF benchmarks:</i>	<i>Early Childhood Development/Ready to Learn</i>
<i>Related existing planning:</i>	<i>Zero to Seven; Great Start; Child Care and Development Block Grant</i>
<i>General notes:</i>	<i>This planning was delayed due to the change in structure in the Commission and within the County; the planning task force has been frustrated by the lack of early childhood education expertise within the Children and Family Services Division.</i>
<i>Summary of the plan's findings and recommendations:</i>	<i>Building strongly on the Great Start planning work of the Children and Youth Services Commission, the Early Childhood Education Task Group reaffirms the urgency of developmentally appropriate care and education for young children and acknowledges parents as a child's first and most important teachers. Consequently, they recommend the implementation of the nationally recommended and evaluated Parents As Teachers (PAT) program at five locations and the convening of a training conference for 50 PAT parent educators, including staff of Parent Child Development Centers that want to use PAT. In accordance with Great Start and Child Care Block Grant recommendations, the task force affirms the importance of an infrastructure of services for young children and their families and the county's role in building and maintaining that infrastructure. They recommend the establishment of a Multnomah County Office of Early Childhood Care and Education.</i>

<i>Does this planning initiative uphold core values and principles of the MCCF and the concept of wellness?</i>	<i>Yes, this plan is firmly grounded in MCCF values and particularly in the concept of wellness; parent development and early childhood education are affirming, non-stigmatized and universal services supporting the health and well being of all children and families.</i>
<i>Does this planning initiative support cultural diversity and culturally appropriate services?</i>	<i>Yes, in several ways. The planning group was developed with diversity strongly in mind. The PAT program was selected for its adaptability to diverse populations and its evaluation of that adaptability through Harvard's Family Resource Center.</i>
<i>Does this planning initiative support gender diversity and equality of access for girls and young women?</i>	<i>Not applicable</i>
<i>Does this planning initiative support healthy growth and development and appropriate strength-based services?</i>	<i>Parent education and developmentally appropriate care and education are core services for a strength based system. They are predicated on the need and desirability of the healthy growth and development of each child.</i>
<i>Has this planning process been open and accessible to the community, including providers and networks?</i>	<i>Yes, the planning process was inclusive, open and accessible. Many providers participated including child care providers, Head Start, Portland State, Portland Community College, Albina Ministerial Alliance, Multnomah County Library, Parent Child Development Centers, Portland Public Schools.</i>
<i>What is known about best practices and science? Has this been incorporated into the recommendations?</i>	<i>The implementation of PAT is based on best practices as outlined by the federal government in the Family Support and Preservation Program. One of five nationally noted parent education programs, PAT was considered most adaptable to this community at this time by the task group. With Parent Child Development Centers, it supports the development of a Healthy Start model as outlined by the State Commission.</i>
<i>Does this program propose meaningful evaluation, measurable outcomes and coordinated data collection?</i>	<i>PAT was selected by the task group not only because it fit this community but because its ongoing national evaluation supports the outcome evaluation this county seeks. The Children and Family Services Division will be responsible for ongoing local evaluation.</i>
<i>What, if any, controversial matters exist related to this plan and its development process?</i>	<i>There was some concern about selecting one curriculum for parenting; it was decided that this would be step one in parent development services; that PAT would be evaluated and a second nationally rated curriculum would be considered following that evaluation in order to allow choice. Additionally, child care providers felt this money should go to child care services rather than parent education.</i>

<i>What are the broader system issues that have been or need to be considered related to this issue?</i>	<i>The lack of internal county expertise and leadership in early care and education was evident during this planning process. As the MCCF and the County move to recognize the cost effectiveness and child effectiveness of early services, having an office of early childhood care and education, as many other states and counties do, will be essential.</i>
<i>To what extent has this initiative been, or is proposed to be, a collaborative effort?</i>	<i>This initiative is strongly collaborative, bringing together schools, Head Start, PCDC's, child care providers and linking them with other services.</i>
<i>What policy issues have been raised and need further discussion?</i>	<i>A policy committing the County to supporting families at the earliest possible point; a policy committing the county to developing an early childhood care and education system; a policy committing the county to consider child care an essential part of the economic and social development of this county.</i>
<i>Date of plan review:</i> <i>MCCF lead reviewer:</i> <i>Date submitted to MCCF:</i> <i>MCCF actions taken:</i>	<i>Sept 12, 1994</i> <i>Carol Wire</i> <i>Sept 14, 1994</i> <i>Approved September 19, 1994</i>

MULTNOMAH COUNTY
EARLY CHILDHOOD EDUCATION/READY TO LEARN
BENCHMARK PLANNING



Submitted by the Task Group
Early Childhood Education Benchmark

Commission on Children and Families:

The Task Group addressing the **Multnomah County Early Childhood Education/Ready To Learn Benchmark** met from May through August 1994 to create a plan that would help children achieve the developmental milestones necessary for school success. The Task Group believes the success of a child's development and education is based upon building and strengthening relationships within the family and surrounding that family with community support. Deficit models of child and family assistance, in which people must demonstrate inadequacy in order to become eligible for support are ineffective and counter-productive. Strategies that address the **Early Childhood Development Benchmark** will respect and build upon individual, family and community strengths, positively value diversity (race, gender, family form, age, physical and mental ability, sexual orientation), and honor cultural differences.

With this understanding the Task Group recommends to the Commission on Children and Families that the county 1) establish an office of Early Childhood Care and Education, 2) implement the Parents As Teachers model at five additional locations, and 3) convene a Parent Education/Support Conference.

Submitted by the Task Group
Early Childhood Education Benchmark

EXECUTIVE SUMMARY

HISTORY OF PLANNING FOR EARLY CHILDHOOD CARE AND EDUCATION IN MULTNOMAH COUNTY

Multnomah County has a rich history in planning for the needs of young children and their families. This effort is concordant with the national awakening on the urgency of providing services to children. Beginning in 1988 the "Zero to Seven Report" recommended that the county 1) create two pilot programs "Parents Are Important," serving children birth to three and their families and 2) develop a continuum of prevention services for children and their families. Coinciding with Governor Goldschmidt's Children's Agenda, which identified the family as the major institution impacting children, and the inception of the Children and Youth Services Commission, Great Start funds received by the county were used to fund the Parent Child Development Centers. The two pilot programs were similar to those described in the "Zero to Seven Report." Efforts of the Portland Leaders Roundtable resulted in the Portland Public Schools Teen Parent Program and the Three Year Old Screening Project.

In 1991, the long awaited federal Child Care and Development Block Grant came to the counties through the Children and Youth Services Commission. Again, building upon previous goals and work, the commission began to develop an infrastructure for child care. The early childhood community has been consistent in building upon the goals and commitment of previous efforts to systematically address the needs of young children. New research and understanding has brought us to this juncture with an increased awareness of how the first years of life shape a child's future success.

READY TO LEARN

The Early Childhood Education Benchmark directs concern to the increasing number of children coming to school without the necessary skills and confidence to succeed. Ready to Learn: A Mandate for the Nation by Ernest L. Boyer of the Carnegie Foundation for the Advancement of Teaching defined physical well-being, social confidence, emotional maturity, language richness, general knowledge, and moral awareness as the key dimensions of school readiness. What would most improve the school readiness of children according to Boyer's research? Parent Education.

"Whose responsibility is it to assure the school readiness of children? Who should take the lead in seeing to it that every child receives not just food, protection, and love, but also the guidance and the richness of experience needed to succeed in school and proceed, with confidence, in life? We begin, where we must, with parents. When all is said and done, mothers and fathers are the first and most essential teachers." (Boyer, p.8)

TARGET POPULATION

The Portland State University Center for Population estimates 45,528 children aged 0 to 5 in Multnomah County in 1993. The birth rate has averaged approximately 9000 per year, reflecting an increase of approximately 1000 additional children in the target population per year. These numbers will greatly increase with the projected metropolitan population growth. Considering the national goal of all children coming to school ready to learn by the year 2000, immediate steps must be taken because those children are being born now.

CURRENT SERVICES

Programs involved with parent education, support and resources include Family Support Centers with Parent Child Development Services, Head Start, teen parent programs, library parenting centers, short term parenting classes, child care programs, and other formal and informal systems.

GAPS IN SERVICES

While great strides have been made toward a secure infrastructure, gaps remain. Few programs offer home visits or have long-term, consistent supports for parents. A common network does not exist to support programs offering services. Parent education and support is not valued consistently through out the community.

RECOMMENDATIONS - General

The Task Group identified the following areas of concern. 1) Parent education and support must be expanded to reach greater numbers of children and families in a non-stigmatizing environment. 2) A common understanding that all parents need education and support, not just at-risk families, must be embraced. 3) Many county departments provide services or programs for young children, but organizational support is lacking.

The recommendations of the Task Group build upon previous community planning effort, particularly the Great Start and Child Care Development Grant strategies. The commission is poised for leadership in implementing a systemic parent education program throughout the county with the full implementation of Parent Child Development Services in each district.

"(Parent education and support)...is a preventative strategy that can strengthen all families, particularly those with infants and toddlers, thus improving conditions in which very young children are raised. It is often said that children are our most valuable natural resource, but children do not come without families. It is time to develop strategies to conserve and nurture the family environment of our future generations." (Starting Points: Meeting the Needs of Our Youngest Children, Carnegie Corporation, New York, 1994, p.41)

The Task Group recommends that the commission expand their work in parent education by bringing the nationally recognized program Parents As Teachers (PAT) to a variety of settings across the county to include Parent Child Development Services, Head Start, child care centers, public schools, and other community programs reaching children 0 - 5.

A linked system of childcare education and parent support/ education is needed to assure the health and well being of our children and their families. An office of Early Childhood Care and Education is needed to connect present services and bring the needs of our most vulnerable population to the forefront.

To raise community awareness of the issues families with young children face and to understand efforts needed to support all families, a parent education/support conference should be convened.

RECOMMENDATIONS - SPECIFIC

IMPLEMENTATION OF THE PARENTS AS TEACHERS PROGRAM - \$153,000

The Task Group recommends the start-up of five Parents As Teachers (PAT) programs in Multnomah County. A Sub-group of members reviewed several curriculums which felt that Parents As Teachers best met the criteria and needs of Multnomah County. A PAT program is in place at Eastwind, one of the county's Parent Child Development Services.

Parents As Teachers began in Missouri as four pilot projects. Three years later in 1984 PAT became a statewide program by legislative mandate administered through the public school districts. The program has been replicated in 37 states and 3 foreign countries and is now supported by the Parents As Teachers National Center, Inc. in St. Louis, Missouri. PAT works with parents through home visits, group meetings, health and developmental screenings, and referral networks.

The primary goals of the program include:

1. Increase in parents confidence and competence in enhancing their child's development and learning, beginning at birth.
2. Early prevention/treatment of health or developmental problems.
3. Decrease in school underachievement and failure.
4. Increase in parent involvement in their child's school experience.

Independent evaluation of the original Missouri pilot programs found that the children at the end of first grade were doing better in school than a comparison group and their parents were more involved in their education. Other long range studies have followed and continue to support the effectiveness and long term impact of PAT.

Discussions with program leaders in other states attest to the adaptability of PAT beyond a school based setting. Successful programs have been created through teen parent, Chapter I, Head Start, and child care programs as well as several large corporations. The Bureau of Indian Affairs has also implemented PAT on reservations to address underachievement and decrease school dropouts. Other programs serve military families and homeless populations.

Given the above, the Task Group felt that Parents As Teachers embodies the philosophy and goals of this community while offering the adaptability and sensitivity to various populations.

ACTION PLAN

STAGE I

Provide \$116,000 in funding for five Parents As Teachers (PAT) programs beginning date January 1, 1995 and continuing until June 30, 1995. Each program would receive \$23,200 for the start-up costs to include staffing, materials, travel and office expenses. Eligible programs must serve families of children age 0 - 5, one program of which must be a child care program. A 1. FTE case load would reach approximately 40 families. Programs must also demonstrate that they are connected to a system of services (ie: Metro Child Care Resource and Referral). All parent educators and a supervisor implementing the PAT program must attend the Implementation Institute. This process will begin immediately upon approval.

PAT START-UP PROGRAMS

STAFF SALARY/OFFICE EXPENSE
TRAVEL/MATERIALS
5 PAT PROGRAMS @ \$23,200

\$116,000

STAGE II

\$25,000 will be provided for the Parents As Teachers Implementation Institute to be held in November or December 1994. 50 slots will be available for parent educators and administrators. All PAT start-up program parent educators and administrators and the local PAT Coordinator must attend the five day institute. Slots will then be offered to staff of Parent Child Development Services interested in beginning the PAT program. Remaining slots will be made available to other interested individuals or programs on a scholarship basis.

INSTITUTE COSTS

PARENT EDUCATOR AND ADMINISTRATOR'S TRAINING

50 @ \$425 = \$21,250

AFFILIATION FEE \$ 500

TRAINER COSTS (2 TRAINERS)

LODGING \$1200

AIR FARE \$800

PER DIEM \$490

SHIPPING \$100

FACILITY/
REFRESHMENTS \$660

\$ 3,250

\$25,000

PAT COORDINATOR

In the absence of a county Early Childhood Specialist position or an office of Early Childhood Education, a PAT coordinator will be hired on a contract basis for \$12,000 to handle arrangements for the PAT Implementation Institute, the Parent Education/Support Conference and to provide technical assistance and support to the PAT start-up programs. The coordinator will also conduct an evaluation of the PAT program and its effectiveness in Multnomah County, particularly considering how PAT programs with technical assistance and support compare with programs starting without such support. The coordinator must be a participant in the PAT Implementation Institute and would also participate in the Parent Education/Support Conference. The coordinator should be hired as soon as the plan is approved.

DESIRABLE OUTCOMES

Parents will demonstrate -

- increased knowledge of child development
- ability to set individual or family goals and work towards achievement of those goals
- ability to evaluate and gain understanding from mistakes
- increased confidence in parenting decisions
- improved quality and increased quantity of interactions between the parent and child
- increased involvement in child's care and education facility
- increased father involvement
- increased number of activities involving entire family

The child

- will reach physical, intellectual, emotional, and social developmental milestones within acceptable norms
- where needed, will receive appropriate intervention or assistance.

PARENT EDUCATION/SUPPORT CONFERENCE

No agency or program can adequately meet the needs of young children alone. It takes a community united with a common purpose and clear objectives. Resources and support are often made available when needs are clarified. Task Group members felt an informational conference was necessary to articulate the needs of children and families, to understand how parent education fits into the broader scope of early childhood development and to examine the benefits of parent education and support.

ACTION PLAN

\$7,177 will be provided for a Parent Education/Support Conference to be held on the day following the five day PAT Implementation Institute. This conference will be designed for those interested in supporting or networking with the start-up programs, those looking at the feasibility of starting their own parent education program and anyone interested in understanding the field of parent education. Possible attendees might be child care providers, child care resource and referral agencies, Family Support Center staff, health care providers, commission members, etc. The PAT trainers will give an overview of the program and focus on how the community can support this particular program. Additional presenters from the metropolitan area will cover subjects such as effectiveness of parent education programs, evaluating curriculums, and readiness to learn issues. Again, the PAT coordinator would organize and coordinate the conference.

PARENT EDUCATION/SUPPORT CONFERENCE

FACILITY/SPEAKERS/
REFRESHMENTS,ETC

\$ 7,177

DESIRED OUTCOMES

Participants will

understand the needs of young children and what is required to be "Ready To Learn"

understand the importance of parent education and support

have opportunities to network with individuals from a wide variety of fields working with children and their families

find new connections and resources to support their work with young children and their families

STAGE III

As of January 1 1995, all training will be complete and full implementation of the PAT programs will begin. The PAT Coordinator will provide technical assistance and support to the start-up programs, while encouraging networking and support between the programs. By June 30, 1995, the PAT Coordinator will provide an evaluation report to the commission.

BUDGET \$160,177

PAT PROGRAMS	\$116,000
PAT IMPLEMENTATION INSTITUTE	\$ 25,000
PARENT EDUCATION/SUPPORT CONFERENCE	\$ 7,177
PAT COORDINATOR	\$ 12,000
	<hr/>
	\$160,177

IMPLEMENTATION PLAN

DESCRIPTION

STAFFING

TIMELINE

STAGE I

FUND PAT PROGRAMS
HIRE PAT COORDINATOR

COUNTY

IMMEDIATELY

STAGE II

PAT IMPLEMENTATION INSTITUTE

PAT COORDINATOR

NOV/DEC

PARENTING EDUCATION/
SUPPORT CONFERENCE

PAT COORDINATOR

STAGE III

IMPLEMENTATION OF PAT PROGRAMS
TECHNICAL ASSISTANCE AND
EVALUATION

PAT COORDINATOR

JANUARY

CONTINUED BENCHMARK PLANNING

With the introduction in our community of benchmarks, the early childhood community (educators, providers and supporters) are well poised to meet the challenge of assuring that every child is ready for school. While focusing on ages 0-8 the Task Group is always envisioning the full spectrum of the child's continuous growth and development. Values and philosophy have been well articulated, principles and objectives well delineated. Additional funding from the Early Childhood Development benchmark through the new Commission on Children and Families, from the federal Family Support and Preservation Program, from expanded funding for Head Start and from (possibly) the federal Social Services Block Grant compel the Commission and its planning groups to pull together the excellent work of past planning to implement a strong, well integrated, outcome based plan for young children and their families in Multnomah County.