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Oregon State Ballot Measure 30: Unfunded State Mandates to Local Governments

City Club of Portland (Portland, Or.)

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Oregon State Ballot Measure 30: Unfunded State Mandates to Local Governments

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CITY
CLUB
OF PORTLAND

RECOMMENDATION(S)
ADOPTED

Your committee found: Oregon's local governments have a legitimate grievance: the legislature too frequently enacts laws that are required to be implemented by local governments without providing the funds necessary to comply with those laws. Nonetheless, Measure 30, which would amend the Oregon Constitution, is the wrong solution to this problem. The measure would cause a significant and undesirable shift of power away from the state to local governments, needlessly frustrating the ability of the state to implement social and economic policy objectives, and could lead to a patchwork pattern of compliance and non-compliance with laws and regulations across the state. This can only further exacerbate existing political divisions within the state and would undermine the very notion of what it means to be an Oregonian. Finally, Measure 30 is too broadly written and, depending on how it is interpreted, could seriously impair relations between state agencies and local governments. The measure's ambiguities and unanswered questions invite costly, time-consuming and divisive litigation. Your Committee recommends a "No" vote on Measure 30.

The City Club membership will vote on this report on Friday, October 11, 1996. Until the membership vote, the City Club of Portland does not have an official position on this report. The outcome of this vote will be reported in the City Club *BULLETIN* dated October 25, 1996.

I. INTRODUCTION

Ballot Measure 30 will appear on the ballot as follows:

Caption: Amends Constitution: State Must Pay Local Governments' Costs of State Mandated Programs.

Result of "Yes" Vote: "Yes" vote requires the state to pay local governments for costs of state-mandated programs.

Result of "No" Vote: "No" vote rejects requirement that state pay local governments for costs of state-mandated programs.

Summary: Amends constitution. Measure would require legislature to pay local governments for costs of new state-mandated programs or increased level of services for state-mandated programs. If funds are not paid, local governments need not comply with law or rule requiring program or service. Contains exceptions. Requires 3/5 vote of each house of legislature to take certain actions reducing state revenues that are distributed to local governments. If adopted, measure would be repealed on June 30, 2001, unless approved again at general election in year 2000.

(The language of the caption, question, and summary was prepared by the Attorney General of Oregon.)

Measure 30 is a referral from the 1995 Oregon Legislature (House Joint Resolution 2) and was selected for study by the City Club Research Board from among the 23 measures to be voted on at the November 1996 General Election. A committee was selected from among City Club members who had volunteered to participate in ballot measure studies. The Club screened committee members to ensure that no member had an economic interest in the outcome of the study or had taken a public position on the subject of the measure. Committee members met for eight weeks, interviewed proponents and opponents of the measure and other interested persons, and reviewed relevant articles, reports, and other materials, as listed in the Appendices.

II. BACKGROUND

The legislature referred Measure 30 to the ballot as an attempt to address the problems that arise when state government establishes mandated activities or programs for local governments without providing local governments with the funding they need to comply with these mandates. All local governments experience this problem, but its effects are felt most acutely by counties and cities with smaller populations. While local government revenue sources are being curtailed or cut, local governments are still obligated to carry out activities mandated by the state, often forcing local needs and priorities to take a back seat for lack of funding.

The League of Oregon Cities and the Association for Oregon Counties are strong proponents of Measure 30, as is the Association of Oregon Industries (AOI). The AOI believes that unfunded mandates threaten local services such as roads, schools, and infrastructure, which it feels are essential to attract industry to Oregon. Local governments, especially counties, are particularly concerned about the cost of complying with land use laws and regulations.

The legislature passed a bill similar to Measure 30 in 1995. Governor Kitzhaber vetoed the legislation. In a letter explaining his veto decision, the governor complained that the legislation might upset the balance between state and local governments and the ability of state and local governments to "create innovative partnerships that enhance our collective ability to provide services to all Oregonians." In addition, the governor wrote that he believed the legislation did not adequately address fiscal issues because it failed to provide adequate local revenue-raising options, and that the legislation was "fraught with procedural and definitional problems that make it unworkable and opens the state to litigation." According to the governor, "this legislation has an indeterminate fiscal impact, its scope is undefined and the practical effect on Oregon citizens and communities cannot be adequately predicted. I am concerned that it could result in less government accountability, vastly different levels of service across the state and further broaden the gap between urban and rural Oregon."

Unfunded Mandates in Other States

Unfunded mandates are not just a problem in Oregon. In 1995, the federal government passed the Unfunded Mandate Reform Act in response to state government complaints about unfunded mandates from the federal government. The Act requires Congress to prepare estimates of the fiscal impacts of proposed federal legislation on state governments. Nineteen states have passed unfunded mandate reform bills that address the cost of state mandates to local governments. Some states simply prohibit unfunded mandates. Others have instituted a variety of administrative measures to reduce the problem. In at least 16 states, state governments are required to fund mandates to local governments or to reimburse local governments for the cost of compliance. Comparing the impact of different reform programs is complicated by the unique statutory and administrative approaches used and the different political cultures in each state.

Mandate reforms have led to mixed results in other states. Mandate reforms and reimbursement programs in Tennessee, Massachusetts and Florida have been the most successful in reducing unfunding mandates, primarily because of vigorous enforcement. In many other states, unfunded mandates persist despite reforms. In part, this is because of the difficulty in figuring out the extent of the financial burden imposed on local governments caused by the intermixing of federal, state, and local funding for various programs. The committee found only one state, New Hampshire, in which unfunded mandate reform significantly

exacerbated state-local tensions. The committee found only scattered court cases around the country that resulted from mandate reform programs.

Measure 30 incorporates many of the same provisions found in other states, but it contains some unique provisions too. The result is a distinctive ballot measure that must be evaluated in Oregon's unique political context.

Elements of Measure 30

Measure 30 is a relatively complex constitutional amendment. The measure would require the state to pay local governments the "usual and reasonable costs" of performing any "new program" or "increased level of service" that the legislature or a state agency might mandate after the measure were to take effect. Measure 30 identifies a limited list of laws and programs that would be exempt from the measure's requirements. These include:

- laws passed by initiative and referendum;
- programs required by federal mandates;
- laws passed by three-fifths of the legislature;
- court orders and decrees; and
- laws that create or change the definition of a crime or establish criminal sentences.

Under Measure 30, if the state fails to fund or reimburse a local government as required for a particular mandate, the local government would not be required to comply with the mandate. Once a local government chooses not to comply with a state mandate, the measure would allow any nongovernmental entity or private company that competes with that local government in selling products or services to also not comply with that same mandate.

Measure 30 provides the legislature with two ways to avoid the funding requirement. First, as noted above, a mandate passed by three-fifths of the legislature would be exempt. Second, in lieu of state funding, the legislature could direct local governments to impose a fee or charge to recover the cost of a program.

When a local government determines that it has not received the required funding or reimbursement, it may submit the issue of reimbursement to nonbinding arbitration. The local government has the burden of proving that the state funding was inadequate.

Most witnesses asserted that Measure 30's requirements would probably not apply to state mandates to school districts. However, the measure's list of exemptions does not include mandates to school districts. Indeed, school district officials and attorneys consulted by your Committee were confident that mandates to school districts would be subject to Measure 30's requirements.

If approved by voters, a provision in Measure 30 would cause the constitutional amendment to be automatically repealed in January 2001, unless it is retained by the voters in the year 2000.

III. ARGUMENTS PRO AND CON

A. Arguments advanced in favor of the measure:

- Historically, there has been too little sensitivity on the part of state legislators to the financial impacts of legislative mandates on local governments. This has been particularly true in the area of land use laws and regulations and the accompanying additional personnel costs. Adoption of a constitutional amendment requiring the legislature to fund such mandates will force it to consider such impacts and to prioritize issues affecting local governments.
- Exceptions to the law, coupled with a three-fifths majority override provision, provide adequate safeguards to ensure the legislative process is not crippled and that important statewide issues can still be addressed even without full funding from the legislature.
- The measure encourages the development of a more cooperative relationship between the state and local governments by ensuring local communities have a greater voice in state policy-making.
- The provision in the measure requiring that disputes over costs be submitted to a three-member arbitration panel composed of state and local government representatives will encourage compromise and the development of a uniform system for determining administrative costs.
- The measure provides greater freedom to local governments to establish priorities and address issues affecting them while allowing them to implement unfunded state mandates if they choose to do so.
- The “sunset” provision, which requires voters to reconsider the measure after four years, will encourage local governments to cooperate with the legislature to ensure the law will be renewed and that any unforeseen consequences or drafting flaws can be remedied.
- Adoption of this measure as a constitutional amendment effectively prevents the legislature from altering the measure through subsequent legislation.
- The provision extending the measure’s protection to private businesses competing with local governments ensures a “level playing field” for those private enterprises competing with local governments for the provision of public services or interested in doing so.
- Oregon has strong local government organizations capable of performing the research necessary to accurately estimate the financial impacts of state legislation on local governments and willing to help develop the statewide consensus needed to address important issues of statewide concern.

B. Arguments advanced against the measure:

- Adoption of this measure will create a fundamental shift in the balance of political power to local governments, handicapping the ability of the state to implement statewide policy objectives.
- The measure is too broadly drafted. It contains several provisions the language of which could be interpreted to require development of local government impact statements and full state funding for virtually every state action affecting local governments, including rulemaking and agency orders. This will impair state government operations.
- Ambiguities and uncertainties in the measure invite litigation. State mandates to school districts would likely be subject to the measure's requirements, further complicating the ability of the state and local governments to provide adequate funding for education.
- The time and cost involved in accurately assessing financial impacts to local governments will substantially delay the legislative process and limit the number of laws passed that have even a marginal impact on local government.
- The three-fifths majority requirement is anti-democratic, difficult to achieve, and will severely restrict the ability of the state legislature to address important issues of statewide concern that will disproportionately affect local governments and the lands they own. Coupled with the existing requirement for a super-majority of the legislature to pass revenue bills, Measure 30 will fuel the power of a legislative minority. This will further limit the ability of the governor and a legislative majority to implement their political mandate and result in a "tyranny of the minority."
- Passage of the measure could create an unwillingness to comply with unpopular legislation, resulting in a patchwork pattern of laws throughout the state. Lack of compliance is likely to be particularly evident for environmental laws and regulations among rural areas of the state east of the Cascades, thereby exacerbating existing urban/rural and east/west frictions.
- The next four years is a critical time for addressing issues of statewide concern; *e.g.*, salmon restoration, energy industry deregulation, transportation and population growth pressures. These issues should properly be resolved at the state level because of their high cost and the political stakes. Because of their impact on local governments, passage of this measure will hamstring the state's ability to satisfactorily address these issues.
- Pressures on the state's General Fund will increase because of the need to fund local government mandates. This will further erode funding for needed services and reduce budgetary flexibility.
- The measure may increase the imposition of user-based fees to support local government services mandated by the state legislature.

This would allow the legislature to avoid political accountability for what are essentially new taxes in disguise.

- The measure undermines support for the governor's recent executive order which commits the state to develop a comprehensive partnership agreement with local governments. It fails to give the governor an adequate opportunity to explore other, less restrictive ways of addressing the concerns of local governments, *e.g.*, more accurately estimating the costs to local governments of prospective mandates; adopting a revenue-sharing program with local governments to deal with mandates (as the state of Washington has) or restricting passage of only those mandates that have a significant fiscal impact on local governments.
- It encourages the legislature to make even greater use of the controversial initiative and referendum process to circumvent the measure's requirements.
- By extending the scope of the measure to include private businesses competing with local governments, the measure could result in unintended and uncertain consequences and reduce public accountability.

IV. DISCUSSION

Measure 30 is an interesting measure that deserves greater attention than it is likely to receive. In an election where voters will consider a multitude of questions covering a variety of issues, many voters may shrug off Measure 30 as a benign "technical adjustment" in funding for state government, rather than the radical restructuring of the balance between state and local governments that its opponents contend it is. In a time of increasingly limited government resources, many of Measure 30's proponents portray the measure as a matter of equity a simple directive that the legislature provide funding for any new programs it imposes on local government.

Although the referral of Measure 30 by the legislature may point to broader questions about the fairness of our political system and structure and its ability to respond to the needs of a state that is geographically and politically diverse, the Committee, in this report focuses on two basic questions: (1) Is there a legitimate problem that needs to be addressed? (2) If so, is Measure 30 an appropriate solution?

A. Is Measure 30 Necessary?

The threshold question is whether a constitutional ban on unfunded state-mandated programs is necessary. Witnesses before the Committee uniformly acknowledged that unfunded mandates present a problem for local governments. Given local government's limited fiscal resources coupled with the legal and practical constraints of raising additional money, unfunded state-mandated programs are forcing local governments to cut or eliminate programs and services they have

traditionally provided. Local government officials claim the problem is growing.

All witnesses agreed the measure addresses a legitimate problem: the legislature's inadequate sensitivity to the fiscal impact of state laws on local governments and the legislature's too easy willingness to shift the burden of administration from the state to local governments, particularly in the area of land use. Witnesses on both sides of the issue testified that unfunded mandates are often enacted with little or no effort made to assess the costs imposed on local governments. Even local governments often have only a rudimentary understanding of the potential costs of proposed legislation and, at present, do not have reliable means to quantify those costs. Faced with the spectre of passage of so-called "cut and cap" limits on property taxes, local governments reported that they are extremely concerned about their own ability to continue to provide baseline services.

Considered in that context, local governments' frustration with state-mandated programs and regulations is understandable. In fact, opponents of the measure do not necessarily disagree that it is a problem that needs attention. Indeed, Governor Kitzhaber, who opposes Measure 30 and who vetoed nearly identical legislation, has issued an executive order addressing the issue and has vowed to work with local governments as partners in the legislative process.

The governor's position is that state government and local governments need to work together to solve the difficult issues the state faces, that the two levels of government should be partners in problem-solving, and that he is personally committed to find more creative and less restrictive means of addressing local concerns. Proponents of Measure 30 concede that Governor Kitzhaber's office has attempted to work more closely with local governments during his tenure, but maintain the measure is still necessary because there is no assurance that subsequent governors will be as sensitive to the problem. They also assert that a constitutional amendment is necessary to protect local governments from future legislative compromises based on political expediency. They also point out that, if the governor is already committed to avoiding unfunded mandates, this measure would not impinge on his ability to govern.

Several witnesses also pointed out that Oregon's present government structure does not leave local governments powerless. Local governments have unutilized tax and revenue-raising authority. Moreover, like any constituent, local governments can and do lobby against passage of unfunded mandates. They can also inform legislators of the potential costs of legislation. Extending the argument, there is no reason why local governments and their competitors should be specially benefited by the need to secure a 3/5 supermajority in both houses to comply with state laws. The City Club has consistently opposed such supermajority proposals as anti-democratic. As recently as May 1996, the City Club opposed an initiative measure requiring a legislative

supermajority to pass all revenue bills. The subsequent passage of that measure by voters, in the minds of many, only underscores the need to preserve majority rule in other areas of legislative prerogative.

B. Is Measure 30 the Appropriate Solution to the Problem?

If Measure 30 addresses a problem that needs resolution, a more troubling question must be faced: Is this the right law? That question spawns any number of further questions about the measure, all of which deserve answers if voters are to approve the measure. Unfortunately, while questions about the measure abound, answers are few.

1. Other States' Experiences with Unfunded Mandate Reform

Nineteen states have in place some form of law, whether a constitutional amendment or a statute, that prohibits unfunded state-mandated programs. Oregon's unique political environment makes one reluctant to draw any firm conclusions based upon another state's experience. Nonetheless, Measure 30 contains many provisions similar to those adopted elsewhere. There is therefore some basis for comparing Measure 30's proposed structure with what other states have done, and the drafters of the measure may have tried to draw on these experiences. Several provisions in Measure 30 appear to have been added to address specific criticisms leveled at other states' measures.

Your Committee interviewed several witnesses familiar with the experiences of those states, including a political science professor who has spent the past decade studying the issue. Her study highlights the shortcomings of these measures. One major problem with laws that provide for reimbursement of local governments' costs is that the process of information gathering is slow and expensive. Most local governments do not have the means to reliably project the cost of carrying out a particular law. Thus, they may face an uphill battle in seeking reimbursement, despite an arbitration provision weighted in their favor.

Given the practical constraints on successfully seeking reimbursement, the principal benefits of such laws have tended to be more symbolic than substantive, but they do give local governments a potent bargaining chip with which to extract concessions from their state legislature. There are few documented successes as a result of such legislation. The most favorable interpretation of their effectiveness is that they prevent legislators from even considering unfunded mandates as an option; however, that interpretation is belied by the lack of evidence that legislatures in states with laws forbidding unfunded mandates have stopped passing them. In fact, in all but a few states, the measures have been largely ignored within a few years of their passage. Proponents suggest the sunset provision will prevent that from happening in Oregon, since it will again focus attention on the measure in four years. They also contend that fears of large-scale local government non-compliance because of inadequate state funding will not materialize because local governments will have the ability to extract necessary concessions through the usual legislative bargaining process.

National experts told your Committee that the most effective laws are the simplest, *e.g.*, an outright prohibition of unfunded mandates is preferable to a reimbursement process. Measure 30 takes the opposite approach, specifically allowing the state to promulgate laws and regulations so long as it agrees to “pick up the tab”. The drafters of Measure 30 did not lay out instructions for how the initial cost estimate and reimbursement process would work. This lack of clear direction is troubling, considering other states’ experience with the issue.

2. Potential for Litigation

The greatest difficulty the Committee faced in analyzing the measure is that neither the contours nor the specifics of the measure are certain. Proponents acknowledge the problem, but express confidence that courts would be able to construe the measure’s meaning and that the general thrust of the measure is evident the state government is not to pass laws that would require local governments to implement programs without reimbursing local governments for those costs.

On a basic level, the intent of the measure is in many respects unclear. For instance, most witnesses believed that state mandates to schools would be exempt from Measure 30’s requirements, but the measure does not specifically exclude them. Indeed, the definition of “local government” in the measure is quite broad. Attorneys told your Committee that school districts are considered to be local governments. Education advocacy groups agree and are concerned about the measure’s impact on school funding at both the state and local levels. Even if schools are somehow exempted, school funding at the state level is certain to come under increasing pressure if Measure 30 passes.

Another potential problem is the fact that key terms are not defined. For example, there is no attempt to define an “increased level of service.” Under Measure 30, the state would be responsible for reimbursing local governments for increased costs, but plausible interpretations of when that requirement would be triggered abound. Does an increased cost brought about by inflation qualify? Does a change in service level that costs more to administer, but reduces benefits or extends to fewer persons, evade the reach of the measure? If a federal law allows states to administer a federally mandated program, but gives the state discretion to adopt statewide standards under the program, is the action of the state in amending, interpreting or applying those standards so as to increase service levels exempt from the measure’s coverage? It was these uncertainties and the inevitable crush of litigation that, in part, prompted Governor Kitzhaber to veto a similar bill.

It may be that the parameters of the measure could be worked out over time through litigation, but that too is a disconcerting response, given the potential for patchwork compliance in the interim.

3. Uncertainty Regarding Enforcement of the Measure

It is uncertain how the measure’s enforcement process will work. Conceivably a local government could be obliged to challenge the

adequacy of state funding in nonbinding arbitration (at which the local government would bear the burden of proof), which is the position Measure 30 proponents tend to take. However, if a local government considers the state's proposed cost reimbursement too low, the measure may allow the local government to challenge the provision by simply opting out of compliance. One fear expressed by Measure 30 opponents is that it will make statewide enforcement of government regulation next to impossible. Alternatively, and more likely, patterns of compliance and noncompliance will develop, probably along urban and rural lines. Proponents argue, however, that the sunset provision will encourage local governments to cooperate since voters will have to be shown that the system works or they will not approve the measure again in four years.

Your Committee also considered the uncertain impact the measure would have on state executive branch operations. Agency rules and regulations as well as agency orders all fall within the measure's scope. Their inclusion is likely to unduly hamper state government in its day-to-day dealings with local governments.

Without attempting to list all the potential questions raised by Measure 30's language itself, there is another provision that deserves individual mention. That provision excuses competing local enterprises from compliance with any law with which the local government did not comply. None of the witnesses had a sound command of the ramifications of that provision. Nevertheless, it is easy to imagine how, privately-owned utilities, for instance, could use such a provision to avoid compliance should a local publicly-owned utility district litigate (or simply refused to carry out) new state laws or regulations. The measure's language makes such an interpretation plausible, although not certain. It is also not clear how the arbitration provision is designed to work. Your Committee was disturbed by all this uncertainty, particularly in a constitutional amendment.

4. Is this the Right Time for this Measure?

One criticism offered by the governor's office is that whatever the possible benefits of undertaking such an experiment in law-making might be, those benefits are outweighed at this time by the critical issues the state faces currently that demand statewide resolution. In particular, the state's surging growth already strains the state's ability to maintain its services at a minimally acceptable level. This has resulted in increased demands for fundamental changes in our land use laws and regulations and for new and expanded state transportation funding. Natural resource issues are another political flashpoint. Among these issues, which will affect all Oregonians, are salmon restoration and the related issues of water quality and quantity, energy industry deregulation and the state Endangered Species Act. Resolution of these issues will have a disproportionate impact on the eastern half of the state, and the views of the legislature are largely divided along these same geographic lines. Governor Kitzhaber has told local governments he is sensitive to their

concerns, but he advocates flexibility and maintains that he needs to have as many options as possible available to him and the legislature to meet the challenges presented by these issues.

Proponents offer several responses to this argument. First, it is precisely because this is such a dynamic time, with unusually great call for local governments' resources to fund traditional programs, that the measure is needed. Unfunded mandates represent tacit policy choices because they require local governments to re-allocate their resources to fund new or expanded programs. It is unfair to have this policy choice made in a vacuum, by legislators who have willfully chosen not to learn the cost of programs for local government. Measure 30 does not prohibit the state from acting where action is required nor does it prohibit local governments from agreeing to share the cost of programs. It would require, however, that local governments' concerns be considered as part of the legislative process. Second, proponents note that such concerns assume that governments can solve all problems. They believe this measure is a conscious statement that local governments, given the severe limitations on their ability to raise funds, cannot solve all problems and should not be forced to betray their primary missions in a vain attempt to do so. Third, and most cynically, some proponents have noted that talk of the impending cataclysm this measure portends is belied by the fact that nineteen other states have similar laws in place and the sky has yet to fall.

5. Other Concerns About the Measure

Another concern raised by witnesses was with the provision that allows the legislature to fulfill the requirement that it fund a mandate by permitting local governments to implement user fees. This was objectionable to some witnesses as regressive taxation. There was also a concern that the legislature would frequently use this provision to avoid accountability for tax increases. In fact, one national observer pointed to Oregon's relatively restrictive tax structure—no sales tax and existing and proposed property tax limitations—as a particular impediment to satisfying the full funding requirement of Measure 30.

As a consequence of the limited funding options available to the legislature, the legislative authorization of user fees for more local services seems inevitable if the measure passes. Also, laws passed as initiatives or referenda, which have lately saddled local governments with large costs, are expressly excluded. As a result, one may question the efficacy of Measure 30, particularly on a long-term basis.

Two other measures on the November 1996 ballot, if passed by voters, may further complicate the implementation of Measure 30 by restricting the ability of local governments to impose the new user fees mentioned by the measure. Measure 46 would require all local governments and the state government to obtain the approval of a majority of *registered* voters to increase an existing tax or to impose a new tax. Measure 47 would would require approval of "a majority of voters

voting in a general election in an even numbered year, or other election in which not less than 50 percent of the registered voters eligible to vote on the question cast a ballot" to impose new or additional levies against real or personal property.

V. CONCLUSIONS

Your Committee's views on Measure 30 depend, in large part, on philosophical notions regarding the appropriate balance between state and local governments, concerns that Measure 30 would cause an inappropriate shift in that balance of power to local governments and concerns about unclear and ambiguous language of this measure. Your Committee is particularly concerned about the breadth of the measure and potential ambiguities in its interpretation which could profoundly impair the authority of state agencies in their dealings with local governments and adversely affect the ability of state and local governments to adequately fund our public schools—perceived by many Oregonians as a top priority for government at all levels.

Bumper sticker philosophy cannot solve the problems unfunded mandates present to local governments. Your Committee believes the issues presented by Measure 30 are profound, complex and largely intractable. As long as the demands we place on our governments continue to outstrip our willingness to pay for them, and as long as this state remains geographically and politically diverse, complaints will be voiced and questions raised about the fairness of our political system. Measure 30, in effect, questions the fairness of Oregon's existing political system and structure. Unfortunately, Measure 30 does not present Oregon voters with clean answers to this question.

Proponents present legitimate considerations, but they assume that the proper balance of state government requires the legislative body to fully fund every activity it mandates. There is a common-sense, checkbook-balancing appeal to that approach, and several members of your Committee were persuaded that the philosophy underlying the measure is sound.

Other Committee members had reservations. A compelling argument advanced against the idea underlying the Measure is that some issues are important enough to transcend the notion that only those who pay have the right to make the rules. In particular, witnesses cited civil rights laws and environmental and land use regulations as areas where the state government should enact a uniform policy on a statewide basis whether it has the wherewithal to fully fund the legislation or not.

Because of the state's restrictive tax structure and the limited amount of state funds available to reimburse local governments for complying with state mandates, it is likely the legislature and state agencies will try to avoid the consequences of Measure 30 would in a number of different ways, none of them very desirable for effective state governance.

The possibilities include: (1) failing to pass laws or to adopt rules that have disproportionately high price tags for some local governments or unnecessarily restricting the scope of such laws or rules, even if they address issues of statewide significance; (2) authorizing the imposition of more user fees for local governments to comply with state laws and regulations; (3) referring potentially costly measures to the voters or further exploiting the initiative process. The net result is a dilution of political accountability and a further weakening of our representative government. Your Committee also fears that passage of Measure 30 may prompt cities and counties to simply choose not to comply with unpopular mandates on the grounds they are "not fully funded." This can only exacerbate the existing political tensions within the state and undermine fundamental notions of statehood.

Uncertainties and ambiguities in the measure will likely result in expensive and needlessly divisive lawsuits. Ultimately, your Committee agreed with many of the sentiments expressed by Governor Kitzhaber in his message vetoing similar legislation this past session. Your Committee believes the governor ought to be given the opportunity to address this issue through the creation of the "partnership" proposal he has articulated in his recent Executive Order on the subject. Your Committee was also impressed with the need to address critical issues of statewide concern during the next four years and the fear that those issues would not be as effectively addressed if Measure 30 were to become law. The majority of your Committee concluded there was merit to this argument and believed it was appropriate to give the governor an opportunity to fulfill his commitment to work more closely with local governments and to respect their concerns. The experience of other states and the proponents' own admission that the details of the measure will probably need to be worked out through litigation persuaded your Committee that Oregon needs to retain the certainty and flexibility that the present system currently offers.

Your Committee sympathizes with the plight of local governments, particularly the counties and cities with smaller populations that simply lack necessary funds and cannot realize the economies of scale achieved in more populous areas. Nonetheless, your Committee is persuaded that Measure 30 is not the appropriate solution to this legitimate grievance and that there are more creative and less formal and less far-reaching means of resolving this issue. Finally, your Committee questions the wisdom of enacting yet another amendment to further clutter our already unwieldy state constitution and we are convinced the supermajority override provision is another large and unhealthy step away from representative government in Oregon.

VI. RECOMMENDATION

Your Committee unanimously recommends a "No" vote on Measure 30.

Respectfully submitted,

Mary Jane Aman
Anne W. Glazer
Kathleen Hartshorne
Nancy Lipsett
Doug Menely
Tod Northman
Karen Unger

Thane W. Tienson, chair
Jay Formick, research advisor
Paul Leistner, research director

ACKNOWLEDGEMENTS

The Committee wishes to thank its research advisor, Jay Formick, for his guidance in preparing this report.

VII. APPENDICES

A. Witness List

Robert Cantine, Association of Oregon Counties
Gary Carlson, Association of Oregon Industries
Scott DeFife, National Conference of State Legislatures
Ed Edwards, Oregon School Employees Association
Randy Franke, Marion County commissioner
David Frohnmayer, president, University of Oregon
Roger Hamilton, Public Utilities Commission
Janet Kelly, professor of political science, Clemson University
Lynn Lundquist, Oregon state representative
Denise McVay, Portland General Electric
Jeff Millner, attorney, Miller, Nash, Wiener, Hager & Carlsen
Peter Sorenson, Oregon state senator
Beverly Stein, chair, Multnomah County Commission
Dick Townsend, executive director, League of Oregon Cities
Greg Wolf, growth management advisor, Office of the Governor
Judy Zelio, National Conference of State Legislatures

B. Resource Materials

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- 68th Oregon Legislative Assembly—1995 Regular Session. *House Joint Resolution 2.*
- Cantine, Robert R. "*Measure 30: The Facts,*" unsigned fact sheet.
- Cantine, Robert R. Information in Response to Questions Concerning HJR 2, background material prepared and provided during the legislative session.
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- Hosansky, David. "*The Pioneering States,*" *Congressional Quarterly* at page 3609, Dec. 31, 1994.
- Kelly, Janet M. *Anti-Mandate Strategies: Reimbursement Requirements in the States*, Sept. 1994.
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