

MSD BOARD OF DIRECTORS

FEBRUARY 25, 1977

E X E C U T I V E S E S S I O N

BOARD MEMBERS IN ATTENDANCE

Ray Miller, Chairman
Lyle Salquist
Robert Schumacher
Mel Gordon

ADVISORS IN ATTENDANCE

Dean Gisvold, Attorney
Anne Kelly, MSD Lobbyist
John Wight, City of Portland

PRESS IN ATTENDANCE

Jack Pement, Oregon Journal

STAFF IN ATTENDANCE

Charles C. Kemper
Merle Irvine
Cordell Ketterling
Jean Woodman

The Board met in Executive Session under the authority of ORS 192.660 (2)(d) to give consideration to on-going legislation and its relationship to current litigation with the collection industry.

Mr. Gisvold reviewed amendments to HB 2683 as presented by the collection industry Attorney, Dale Harlan, attempting to analyze its affect on litigation underway with the industry. The amendments were contained in a letter written by Dale Harlan and dated February 25, 1977. Neither the Board nor Mr. Gisvold had time to give previous review to the letter. The Board instructed Mr. Gisvold on continued negotiation sessions with industry representatives.

The Executive Session adjourned at 4:00 P.M., to return to public meeting.

DALE M. HARLAN
ATTORNEY, P.C.
2202 S.E. LAKE RD.
MILWAUKIE, OREGON 97222

654-9533

February 25, 1977

BOARD OF DIRECTORS
METROPOLITAN SERVICE DISTRICT
1220 SW Morrison Street
Portland, Oregon

Gentlemen and Mrs. McCready:

I met with your attorney, Dean Gisvold, on February 17th, and at that time I received my first copy of HB 2683. He gave me an "Amended Summary" of proposed Amendments to his Bill, which included 13 Amendments. I gave him a first draft of the Solid Waste Industry's proposed Amendments which were 6 in number plus the addition of two sections to the Bill amending ORS Chapter 268 concerning Solid Waste Collection and MSD. I met with Mr. Gisvold yesterday, and he gave me four Amendments, two of which were new. This letter supersedes the rough draft of my letter of February 24th to Mr. Gisvold.

Attached are two documents:

1. Proposed Amendments to HB 2683 which are still 6 in number, a reference to the amendments for three sections of ORS Chapter 268 which we seek, and a Summary.

2. The exact language of our proposed Amendments to ORS Chapter 268.

Our amendments and additions are limited or summarized as follows:

(1.) We see no reason to amend ORS 268.300 as requested in Section 1. of HB 2683.

(2.) We call attention to problems with section 3. of the Bill, but we have no objections.

(3.) We believe the civil penalties proposed in Section 4. need more elaboration.

(4.) We ask that language be added to Subsection(1) of Section 5. of the Bill for pass-through of the Service or User Charges.

(5.) We see no need to amend ORS 459.065 as proposed by Section 6. of the Bill. That would dilute Solid Waste authority of cities and counties for local administration without any apparent gain to Metropolitan Service District. The change from "cities and counties" to "Local Government Unit" would spread authority through six different types of public corporations plus "any other local government unit."

February 25, 1977

(6.) We see no need to amend ORS 459.095 dealing with the authority of DEQ. MSD does not need the additional power requested. The power rests with DEQ and should remain there.

Our second attachment explains the amendments proposed to ORS Chapter 268 to protect the Solid Waste Franchises issued by cities and counties.

Respectfully submitted,



DALE M. HARLAN, Attorney for
Solid Waste Entities:

DH:e

CLACKAMAS COUNTY REFUSE DISPOSAL ASSN., INC
MULTNOMAH COUNTY DISPOSAL ASSN., INC.
OREGON STATE DROP BOX ASSN., INC.
PORTLAND AREA SANITARY OPERATORS
TEAMSTERS LOCAL 281
WASHINGTON COUNTY REFUSE DISPOSAL ASSN., INC.

PROPOSED AMENDMENTS TO HB 2683

I. Amendments to HB 2683 as Drafted

1. Remove Section 1. There is no need to amend ORS 268.300.

2. We have no objection to Section 3, but in fairness, we think we should call these matters to the Board's Attention:

(a) Recyclers may object to Sec. 3 because it would appear to require even those who "pick up" Solid Waste to use a District's "disposal system". (See Lines 29-31, p. 2).

(b) Cities or counties may object to irrevocable release of flow control to a Metropolitan Service District. The City of Portland in its joint resolution of support of the District specifically reserved Flow Control to the city.

(c) The Board of MSD may want to remove the word "sanitary" as modifying the word "landfill" on p. 2, line 19. The District may have to shred and spread some waste that would not need daily compaction or cover as required with a "sanitary landfill".

3. On Section 4., proposing to amend ORS 268.360 on the District's police power, we believe the Bill should go further than to specify that civil penalties "shall be established, imposed and collected in the same manner" as "under ORS Chapter 468." This proposal, I believe, is unenforcible and unconstitutional. It would not provide Due Process to an alleged violator. Subsections (3) and (4) should be deleted and additional sections should be added with the same essential provisions as those set out in ORS 468.090-468.140, dealing with the enforcement powers of DEQ and provision should be made that there is no double punishment by both DEQ and MSD for the same infraction or violation.

4. With reference to Section 5., we agree that more adequate language is needed concerning the District's authority to collect Service or User charges. However, more adequate provision must, also, be made for pass-through of service or user charges than the language proposed to me yesterday by Mr. Gisvold. I may do a separate memorandum of explanation or at least provide comments to the Board as to why we feel this way. At the very least, a sentence should be added at the end of the sentence on line 24, p. 3, to the following effect:

"Those who collect or transport solid or liquid waste for compensation shall be allowed a reasonable time to obtain approval from cities and counties for pass-through of the costs of such charges to the generator of solid and liquid waste before such charges are imposed or increased."

OR

"No imposition or increase of such a charge shall become effective less than 90 days after the District sends notification of the imposition or increase to those who collect or transport solid or liquid waste for compensation."

OR

"~~Except in an emergency, declared by the unanimous vote of the District Board,~~ an Ordinance approving imposition or an

increase in such a charge shall not become effective until
(6) 90 days after passage."

5. We object to Section 6. There is no need to amend ORS 459.065. That section now provides that cities and counties can do certain things in a cooperative way. The proposed amendment would say that "Local Government Units" could do those things. "Local Government Unit" is defined in ORS 459.005(6) as:

- (a) A city;
- (b) A county;
- (c) A Metropolitan Service District;
- (d) Sanitary District formed under Chapter 450;
- (e) Sanitary Authority formed under Chapter 450;
- (f) County Service District formed under Chapter 451;
- (g) Regional Air Quality Control Authority formed under Chapter 468; or
- (h) Any other local government unit responsible for solid waste management.

The section being amended provides for joint or regional franchising of "service" (which includes collection, transportation, disposal, or resource recovery); for joint preparation and implementation of solid waste management plans; for establishing a regional solid waste management system; for regional disposal sites; for employment of persons to operate the sites; and "For promotion and development of markets for energy and materials from resource recovery."

I feel certain that any reflection would indicate that it would not be reasonable to so dilute solid waste control to any "Local Government Unit" as the MSD Bill proposes. Instead of having just MSD as the government entity in Resource Recovery, as we propose to accomplish in the other amendments, this would put Sanitary Districts, Sanitary Authorities, County Service Districts, Regional Air Quality Control Authorities, etc. into the field. No amendment is needed in this section which deals only with local administration. The amendments sought by MSD should be to the chapter of laws dealing with MSD. That is Chapter 268.

6. We see no need to amend ORS 459.095 as proposed by Section 7. of the Bill. The reason: The District is already getting broad, new authority under Section 3. We could add "Resource Recovery" to the "purpose" preamble of proposed Section 3. and accomplish the desired purpose without disturbing the powers of local units of government. 459.095 already provides that solid waste management regulations adopted by Local Government Units cannot conflict with the rules and regulations of the Department of Environmental Quality. MSD's plans are supposedly approved by DEQ. We do not need separate provisions that also say that the actions of Local Government Units shall not conflict with MSD. The proposed change is undoubtedly unconstitutional by infringing on constitutional powers of cities and counties and it would mean that every local official would have to worry about both DEQ and MSD legislation.

II. Amendments to Existing Law

The Solid Waste Industry requests appropriate changes in ORS 268.030, 268.310, and 268.320 to take out the present power which creates a threat to present Franchises by allowing Metropolitan Service Districts to collect and transport solid waste under agreements. This, and the limited time to pass through the User Fee, are the only things the Solid Waste Industry is asking of a substantive nature. Our other amendments are only intended to make the MSD

Chapter into a workable body of law to give MSD unquestioned dominance and control over disposal, flow control, and resource recovery.

III. Summary

We are not objecting to Sections 2, 3, 8, 9, 10, 11, 12, 13, 14, or 15. We are not objecting to any of the amendments proposed by Mr. Gisvold to his own Bill, ie. the 13 amendments in his "Amended Summary" of 2/17/77, or the 4 amendments submitted to me on 2/24/77, unless otherwise noted.

We are not questioning everything Mr. Gisvold has done by any means. His nine proposed new sections of law and the later proposed seventeen amendments to those new sections of law and amendments of existing law are met with our 6 modest requests on his 26 changes, plus the basic request in our 3 proposed amendments to remove the power of MSD to enter into collection and transportation of Solid Waste.

Respectfully submitted,



DH:e

DALE M. HARLAN, Attorney for
Solid Waste Entities:

CLACKAMAS COUNTY REFUSE DISPOSAL ASSN., INC.

MULTNOMAH COUNTY DISPOSAL ASSN., INC.

OREGON STATE DROP BOX ASSN., INC.

PORTLAND AREA SANITARY OPERATORS

TEAMSTERS LOCAL 281

WASHINGTON COUNTY REFUSE DISPOSAL ASSN., INC.

THE SOLID WASTE INDUSTRY'S PROPOSED ADDITIONS TO HB 2683

On January 19, 1977, we responded to the request of Subcommittee No. 5 Joint Ways and Means Committee of the Oregon Legislature to a request to join DEQ and MSD in making a report concerning the present status of the Court Cases, issues that should be clarified on MSD powers, and Industry's request for any legislative changes. We requested that DEQ serve as moderator of meetings of the parties to resolve all legal and practical matters. We urged the subcommittee to approve a budget to continue paying MSD staff and continue the program through the rest of this biennium.

At that time, I gave Mr. Gisvold and other representatives of MSD a copy of my report to Subcommittee No. 5. As requested, we sent Industry's proposed changes in ORS Chapter 268 to the Subcommittee Chairman under date of January 24th. However, HB 2683 as drafted by Mr. Gisvold contained none of the requests made by Industry. These requests have been the subjects of negotiating sessions between Industry and MSD on January 26th, February 10th, and February 24th.

Industry requests the following amendments to ORS Chapter 268 on Metropolitan Service Districts concerning the power of such Districts to collect and transport solid and liquid wastes by agreements with cities, counties, or other public corporations:

1. We request that that power be removed in ORS 268.310(2) by deleting the language in brackets and underlined:

"(2) Subject to the requirements of ORS 459.005 to 459.045, 459.065 to 459.105, 459.205 to 459.285 and subsections (1) to (3) of 459.992, dispose, and provide facilities for disposal of solid and liquid wastes (and, by agreement with other public corporations, cities, or counties in accordance with this chapter, collect and transport such wastes.)" *sludge*

2. We propose that ORS 268.030 be amended as follows:

(1) By removing the present (3)(c) which reads:

"(c) Local aspects of those public services that are transferred to the district by agreement between the district and other public corporations, cities or counties." *g ed / s u s*

(2) We would insert a new subsection in ORS 268.030 as follows:

why
"(4) The voters of a District may, from time to time, and in the exercise of their power of the initiative, or by approving a proposition referred to them by the governing body of the district, authorize the district to assume additional functions and determine the number, qualifications, and manner of selecting members of the governing body of the district."

(3) We would, also, add the following section to ORS 268.030:

wo
"(5) Franchising solid waste and waste collection service shall be the responsibility of cities and counties, subject only to the power of a district to require any person or class of persons who generate,

collect or transport solid or liquid waste, to make use of the disposal sites or facilities of the district, or facilities designated by the district."

why

3. Section 268.320 should be repealed. Proposed subsection (4) to be added to 268.030 contains the exact language of subsection (1) of 268.320. This would be putting the present 268.320 where it belongs, in Section 268.030, and allow the district to deal with the metropolitan aspects of additional functions when approved by the voters. In addition, a district-wide vote could not deprive a city or home rule county of its sole Constitutional power to deal with local aspects of governmental functions, so there is no reason for ORS 268.320(2). Thus, the entire section 268.320 would be affected as outlined.

why

4. We would propose to add a new section to HB 2683 for a new provision in ORS Chapter 268. It would read as follows:

no

"Section _____. The definitions of ORS 459.005 shall apply to this chapter."

Respectfully submitted,



DALE M. HARLAN, Attorney for
the Solid Waste Industry

DH:e

msd METROPOLITAN SERVICE DISTRICT

1220 S.W. MORRISON, ROOM 300, PORTLAND, OREGON 97205 222-3671

FEBRUARY 25, 1977

TO: MSD BOARD OF DIRECTORS
FROM: MSD STAFF
SUBJECT: HB 2863 AMENDMENTS AND LITIGATION NEGOTIATIONS

THE FOLLOWING IS A SYNOPSIS OF THE NEGOTIATIONS WITH THE TRI-COUNTY SOLID WASTE COLLECTORS POLICY COMMITTEE REPRESENTED BY DALE HARLAN FOR THE:

CLACKAMAS COUNTY REFUSE DISPOSAL ASSN.
MULTNOMAH COUNTY DISPOSAL ASSN.
OREGON STATE DROP BOX ASSN.
PORTLAND AREA SANITARY OPERATORS TEAMSTER LOCAL 281
WASHINGTON COUNTY REFUSE DISPOSAL ASSN.

JANUARY 4, 1977

MSD STAFF MET WITH JOHN TROUT TO TRY TO IDENTIFY AREAS OF COLLECTION INDUSTRY'S CONCERNS. AGREED TO MEET WITH TRI-COUNTY POLICY COMMITTEE.

JANUARY 27, 1977

MSD STAFF AND RAY MILLER MET WITH TRI-COUNTY POLICY COMMITTEE AND DISCUSSED THE FOLLOWING ISSUES:
1. USER FEE AS A METHOD OF FINANCING SOLID WASTE DISPOSAL.
2. PASS THROUGH USER FEES TO CUSTOMER.

3. REQUIRING GARBAGE HAULERS TO TAKE SOLID WASTES TO MSD CERTIFIED FACILITIES OR DIVERTING PAPER LOADS FROM DEMOLITION FILLS.
4. NET DUMP FEE WILL INCREASE OVER PRESENT DISPOSAL FEE.
5. CONCERN ABOUT MSD OPERATING SOLID WASTE COLLECTION BUSINESSES.
6. UTILIZING WEIGHT AS A METHOD OF DETERMINING QUANTITIES OF SOLID WASTE.
7. BURNING OF RDF IN BOILERS COULD CAUSE AIR POLLUTION PROBLEMS.
8. INCREASED DISPOSAL FEES WILL IMPACT COMMERCIAL COLLECTORS GREATER THAN RESIDENTIAL COLLECTORS.
9. CURRENT STATE LEGISLATION FAVORS IMPLEMENTATION OF RESOURCE RECOVERY PROGRAM THROUGH LOCAL JURISDICTIONS - INTERGOVERNMENTAL AGREEMENTS.

ITEMS 1 AND 5 SEEMED TO BE THE GREATEST CONCERN. WE AGREED TO MEET AGAIN.

FEBRUARY 10, 1977

MSD STAFF AND BOB SCHUMACHER MET WITH TRI-COUNTY POLICY COMMITTEE. DISCUSSED HARLAN LETTER OF FEBRUARY 10, 1977 (SEE ATTACHMENT I). HARLAN WOULD PROVIDE CLARIFICATION IN LETTER NEXT DAY (SEE ATTACHMENT II)

FEBRUARY 11, 1977

MSD BOARD MET AND DISCUSSED WITH JOHN TROUT AND DREW RYAN THE HARLAN LETTER OF FEBRUARY 11, 1977. BOARD AGREED TO CONTINUE NEGOTIATIONS IN GOOD FAITH TO GET AN EARLY RESOLUTION SO THAT THE HEARING COULD PROCEED AT

FEBRUARY 17, 1977

THE LEGISLATURE ON HB 2683. SOME-
TIME IN THIS PERIOD THE BILL WAS
DIRECTED TO HOUSE LOCAL GOVERNMENT
COMMITTEE (GLEN OTTO CHAIRMAN).
GISVOLD RECEIVED AMENDMENTS FROM
DALE HARLAN (SEE ATTACHMENT III).
MSD STAFF AND RAY MILLER AND SID
BARTELS MET WITH TRI-COUNTY POLICY
COMMITTEE TO REVIEW HARLAN'S AMEND-
MENTS. BARTELS HAD A COUPLE OF
PROBLEMS:

1. NOT SEEING THE NEED OF PULLING
"COLLECTION" FROM ORS 268.
2. REDEFINING TRANSFER STATION IN
ORS 459.

GUSTAFSON (WAYS AND MEANS #5 COMMIT-
TEE) CALLED KELLY (MSD) AFTER DIS-
CUSSING WITH OTTO (OTTO AGREED)
THAT HEARING SHOULD BE HELD AT
EARLIEST POSSIBLE DATE AFTER A
MEETING WITH HARLAN AND KELLY AND
OTTO. KELLY CALLED HARLAN TO MEET
MARCH 2, 1977, WITH THE UNDERSTANDING
THAT HARLAN WOULD CANCEL IF THE MSD
BOARD DID NOT WANT TO PROCEED. ON
FEBRUARY 24, 1977 (BEFORE MSD BOARD
MEETING), HARLAN CANCELLED MEETING
WITH KELLY AND WOULD NOT AGREE TO
SET ANOTHER MEETING AT THIS TIME.

FEBRUARY 19, 1977

GISVOLD RECEIVED AND CORRECTED
HB 2683 WITH HOWARD RANKIN (BOND
COUNSEL) AND RAY UNDERWOOD (ATTORNEY
GENERAL DEQ) INPUT (SEE ATTACHMENT
IV).

FEBRUARY 23, 1977

GISVOLD WORKED OUT AN AGREEABLE DEFINITION OF TRANSFER STATION (SEE ATTACHMENT V).

KELLY SET UP MEETING WITH HARLAN AND GUSTAFSON ALSO ON MARCH 2, AT 10:30, HOWEVER, HARLAN WAS EVASIVE ABOUT MEETING.

FEBRUARY 24, 1977

HARLAN AGREED ON FEBRUARY 17, 1977, TO A HEARING ON MARCH 3, 1977, WITH OTTO'S COMMITTEE BUT LATER WHEN OTTO MET WITH KELLY OTTO SAID HARLAN WAS PUSHING FOR A MARCH 14, 1977, HEARING. HARLAN ALSO WON'T COMMIT TO MEET WITH OTTO ON MARCH 4, 1977 (OTTO'S LAST DATE TO SCHEDULE A MARCH 7, 1977 HEARING). MSD HAS BEEN PUSHING FOR A MARCH 2 OR MARCH 7 HEARING DATE.

RECEIVED ANOTHER LETTER FROM HARLAN INCLUDING ADDITIONAL CHANGES (SEE ATTACHMENT VI).

THE STAFF AND YOUR COUNSEL HAS MADE EVERY EFFORT TO WORK OUT A SETTLEMENT. THE 90-DAY PASS-THROUGH PROVISION WOULD REQUIRE MSD TO PASS A USER FEE ORDINANCE ON APRIL 1, 1977, TO START RECEIVING FUNDS JULY 1, 1977. AT BEST GUESS WITH THE WAY THINGS ARE GOING, A MAY 1, 1977, DATE SHOULD BE EXPECTED IF THE BILL IS PASSED. GUSTAFSON HAS SAID THAT ADDITIONAL STAFF FUNDS AFTER JULY 1, 1977, ARE NOT TO BE RELEASED TO MSD.

STAFF RECOMMENDATION FOR BOARD ACTION

1. THAT THE MSD STAFF CONTINUE NEGOTIATIONS WITH THE COLLECTION INDUSTRY IN ACCORDANCE WITH DIRECTION PROVIDED IN EXECUTIVE SESSION.
2. THAT THE COLLECTION INDUSTRY BE NOTIFIED OF A DATE AFTER WHICH FURTHER NEGOTIATIONS WOULD MAKE IT DIFFICULT FOR MSD TO IMPLEMENT USER FEE.
3. THAT A SPECIAL BOARD MEETING BE SCHEDULED FOR FRIDAY, MARCH 4, 1977, FOR FINAL CONSIDERATION OF PROPOSED AMENDMENTS.
4. IN THE EVENT THAT NEGOTIATIONS APPEAR TO BE PROGRESSING TOO SLOWLY TO MEET THE ABOVE SPECIFIED DEADLINE, OR THAT NO AGREEMENT CAN BE REACHED, THE STAFF SHOULD PREPARE:
 - A) A FULL REPORT ON RELATIONS WITH THE COLLECTION INDUSTRY, AND THE REPORT BE MADE AVAILABLE TO THE LEGISLATURE AND PRESS.
 - B) A WRITTEN JUSTIFICATION FOR EACH KNOWN ELEMENT OF NEGOTIATIONS WITH THE COLLECTORS WHICH CANNOT BE MUTUALLY AGREED TO AND THAT THIS JUSTIFICATION BE PRESENTED TO THE PRESS AND LEGISLATURE AFTER BOARD APPROVAL AT THE SPECIAL MEETING OF MARCH 7, 1977.

STAFF RECOMMENDATION FOR BOARD ACTION

1. THAT THE MSD STAFF CONTINUE NEGOTIATIONS WITH THE COLLECTION INDUSTRY IN ACCORDANCE WITH DIRECTION PROVIDED IN EXECUTIVE SESSION.
2. THAT THE COLLECTION INDUSTRY BE NOTIFIED OF A DATE AFTER WHICH FURTHER NEGOTIATIONS WOULD MAKE IT DIFFICULT FOR MSD TO IMPLEMENT USER FEE.
3. THAT A SPECIAL BOARD MEETING BE SCHEDULED FOR FRIDAY, MARCH 4, 1977, FOR FINAL CONSIDERATION OF PROPOSED AMENDMENTS.
4. IN THE EVENT THAT NEGOTIATIONS APPEAR TO BE PROGRESSING TOO SLOWLY TO MEET THE ABOVE SPECIFIED DEADLINE, OR THAT NO AGREEMENT CAN BE REACHED, THE STAFF SHOULD PREPARE:
 - A) A FULL REPORT ON RELATIONS WITH THE COLLECTION INDUSTRY, AND THE REPORT BE MADE AVAILABLE TO THE LEGISLATURE.
 - B) A WRITTEN JUSTIFICATION FOR EACH KNOWN ELEMENT OF NEGOTIATIONS WITH THE COLLECTORS WHICH CANNOT BE MUTUALLY AGREED TO AND THAT THIS JUSTIFICATION BE PRESENTED TO THE LEGISLATURE AFTER BOARD APPROVAL AT THE SPECIAL MEETING OF MARCH 4, 1977.

2/10/77

Subject: Negotiations for Agreement on MSD Program and Legislation with MSD Executives and Board Members.

The Tri-County Solid Waste Management Council has reaffirmed Industry's request as set forth in the meeting with Ray Miller and Chuck Kemper for MSD on January 26th.

Industry's minimum requirements for support of the Bill drafted by Legislative Counsel (LC 1882) at the request of Sub-Committee No. 5 of the Joint Ways and Means Committee of the 59th Legislative Assembly, has been discussed, and we respectfully request agreement on the following points:

1. The power of Metropolitan Service District to assume duties and responsibilities on Solid Waste Collection, based on agreements with cities and counties, would be taken out of ORS Chapter 268.

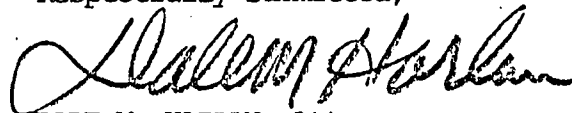
2. A statutory limitation would be put on the amount of User Fee or Service Charge. This would mean that no more than say 20% of the cost of planning, building, and operating MSD's program would ever be funded out of User or Service Charges. The balance would be from the sale of recycled or resource recovered materials.

3. A strong statement of intent would be added to the User or Service Fee Statute to the effect that User Fees would not be put into effect until there was every effort made to make it possible for said User Fees to be passed through to the producers of Solid Waste and Waste.

4. MSD and DEQ would give their wholehearted support and such assistance as possible to early Franchising of collection in the County of Multnomah and the City of Portland. It would be the intention that this Franchising be accomplished within the next three to four months.

5. No attempt would be made in the proposed Legislation to take away the authority and power of cities and counties to have exclusive authority in Franchising the collection of Solid Waste. We realize that MSD would want the power to control the flow or where Solid Waste would be disposed of.

Respectfully submitted,



DALE M. HARLAN, Attorney

DH:e

DALE M. HARLAN
ATTORNEY, P.C.
2146 S.E. LAKE RD.
MILWAUKIE, OREGON 97222

654-9533

February 11, 1977

THE BOARD OF DIRECTORS
METROPOLITAN SERVICE DISTRICT

Subject: Legislative Program

Gentlemen and Mrs. McCready:

The Policy Committee of Local 281, which is made up of representatives of all of the trade associations for Solid Waste Collectors in the MSD area took pleasure in meeting with your Chairman, Ray Miller and Charles Kemper on January 26; and we met with Commissioner Robert Schumacher and Charles Kemper yesterday. Ron Perkins has attended the meetings and been very helpful with his input. All of us are trying to arrive at a Legislative Program that will eliminate the legal problems of all concerned.

Mr. Kemper has agreed to report on our negotiations to date and to seek authority from the Board to continue those negotiations so that hopefully there is agreement and we can present unified support to the corrective legislation. In the meantime, I have suggested to him that it would be well for MDQ to request that a hearing not be scheduled on the bill introduced in Sub-Committee No. 5 Ways and Means until we see if we can't agree on all amendments which should occur in the next couple of weeks.

The requests that Industry has made have been well received by your representatives, but there appears to be a problem at arriving at a statutory limitation on the percentage of cost of the MSD Solid Waste Program and facilities that would be borne by the Disposal or User Fee. The things Industry are asking be included in the Legislation are as follows:

1. Removing the threat that Metropolitan Service District could assume duties and responsibilities on Solid Waste Collections, based on agreement with cities and counties. Such power now is found in ORS Chapter 268. Removing this power would not be with the intention of or would it interfere with flow control.
2. The aforementioned statutory limitation on the percentage of the cost of the program that would ever be required from Disposal or User Fees.
3. A strong statement of intent by statute in the User Fee section of ORS Chapter 268 to the effect that the District would make every effort to assist cities and counties in seeing that the User Fee could be passed through to the producers of Solid Waste and Waste, before it was imposed and on later increases.

February 11, 1977

4. That no legislation be adopted that would take away the authority and powers of cities and counties to have exclusive jurisdiction in franchising the collection of Solid Waste. MSD would have exclusive jurisdiction on disposal. Any attempt to remove the authority of home rule cities and counties in collection would probably be unconstitutional in any event under the Oregon Constitution.

Our fifth point is not involved in the legislation, but we ask continued wholehearted support and assistance from MSD and DEQ to accomplish early franchising of collection in the County of Multnomah and the City of Portland. Based on the progress to date it is hoped that this can be accomplished within the next three or four months.

I regret that prior commitments will probably make it impossible for me to reach your meeting in time to participate in any dialogue on this matter today, but I will make the effort if my earlier commitment takes less time than I expect.

Thank you very much for your consideration of this report.

Respectfully submitted,



DALE M. HARLAN, Attorney
Local 281 Policy Committee

DH:j

Received 4/17/77
from Dale Nairan

PROPOSED AMENDMENTS TO HOUSE BILL 2683

The Solid Waste Industry proposes that the following Sections be added to House Bill 2683:

Section 16. ORS 268.030 is amended to read:

268.030. (1) This chapter is enacted in order to provide a method of making available in metropolitan areas public services not adequately available through previously authorized governmental agencies.

(2) To this end not more than one district may be established under this chapter in any metropolitan area.

(3) Subject to the limitations of state law, the district may provide:

(a) Metropolitan aspects of sewerage, solid and liquid waste disposal, control of surface water, and public transportation; and

(b) Metropolitan zoo facilities; and

(c) Local aspects of those aforementioned public services that are transferred to the district by agreement between the district and other public corporations, cities or counties.

Section 17. ORS 268.310 is amended to read:

268.310. A district may:

(1) Acquire, construct, alter, maintain and operate interceptor, trunk, and outfall sewers and pumping stations and facilities for treatment and disposal of sewage as defined in ORS 468.700 and engage in local aspects of sewerage transferred to the district by agreement with other public corporations, cities or counties in accordance with this chapter.

(2) Subject to the requirements of ORS 459.005 to 459.045, 459.065 to 459.105, 459.205 to 459.285 and subsections (1) to (3) of 459.992, dispose, and provide facilities for disposal, of solid and liquid waste (and, by agreement with other public corporations, cities or counties in accordance with this chapter, collect and transport such wastes).

for Board

for Board

(3) Control the flow, and provide for the drainage, of surface water, by means of dams, dikes, ditches, canals and similar necessary improvements.

(4) Provide public transportation and terminal facilities for public transportation, including local aspects thereof transferred to the district by one or more other public corporations, cities or counties through agreements in accordance with this chapter.

(5) Acquire, construct, alter, maintain, administer and operate metropolitan zoo facilities.

In addition, we would propose the following changes in the text of the fifteen sections of House Bill 2683 as written:

1. With reference to Section 1. amending ORS 268.300 and the language in the proposed new subsection (2), we would suggest:

(a) Removing the word "other" in the first line.

(b) Removing the words "of this" in the second line and inserting the word "the" before "state", and removing the word "of" at the end of the second line.

(c) Inserting the words "unit of" before "local" in the third line.

2. With respect to the new Section 3. which is to be added to Chapter 268 and the proposed subsection (1), we would suggest changing the word "transfer facilities" in the subsection to "transfer stations."

3. With reference to Section 5. to amend ORS 268.540, we would suggest:

(a) That subsection (1), which is being amended under the proposed language, contain this additional sentence:

"Before any such service or user charge is imposed or increased, a district shall give any person or class of persons who pick up, collect, or transport solid or liquid wastes for compensation to disposal sites or facilities designated by the district, a reasonable opportunity to seek any necessary rate increase to pass through said service or user charge to the person or class of

OK

OK if
redefine
transfer
station

No -
suggested
60 or 90
day delay
before fees
became
effective.

too
broad,
Rankin
says no.

persons who generate the solid or liquid wastes."

This is one of DEQ amendments Nalain agreed with DEQ language

(b) We would suggest that the words in the proposed new subsection (4) of ORS 268.540 stating that a district may borrow money from the Pollution Control Fund "without limitation" are in error. The words "including without limitation, money from the Pollution Control Fund" should be changed so that the proposed subsection would read as follows:

"(4) A district may, with the approval of a majority of the members of its governing body, borrow money from the state or its agencies or departments, and from the Pollution Control Fund, subject to the limitations of ORS 468.220."

4. With reference to the proposed Section 6. of the Bill amending ORS 459.065, Industry's position is that the Collection Franchises issued by cities and counties should not be interfered with. We would, therefore, suggest that ORS 459.065(1) (a) be amended by striking the language in parenthesis in the following quotation from the provision:

OK

"(a) For (joint or regional franchising of service or the) franchising or licensing of disposal sites."

5. We would suggest that Section 7. to amend ORS 459.095 is far too broad. We would suggest that ORS 459.095(1) amendments are requested for the district merely to insure flow control, and thus the proposed language need only refer to "resource recovery" and not to "solid waste collection service or solid waste management." We would, therefore, suggest that the section should read as follows:

OK if take out "relative to resource recovery" & make it "effecting resource recovery or solid waste disposal"

459.095. (1) No ordinance, order, regulation or contract relative to resource recovery (regulation) shall be adopted by a local government unit if such ordinance, order, regulation or contract conflicts with regulations adopted by the commission pursuant to ORS 459.045 or with a solid waste management plan or program adopted by a metropolitan district and approved by the department

or any ordinances or regulations adopted pursuant to such
plan or program.

*OK if
redefine
transfer
station*

6. With reference to Section 8. where it is proposed to amend ORS 468.220,
we suggest that the language added in (1) (d) with reference to "transfer" should
be expanded by adding the word "station" after the word "transfer" in those
subsections (d) and (e).

Respectfully submitted on behalf of the
Solid Waste Industry entities listed below:

1. CLACKAMAS COUNTY REFUSE DISPOSAL ASSOCIATION, INC.
2. MULTNOMAH COUNTY DISPOSAL ASSOCIATION, INC.
3. OREGON STATE DROP BOX ASSOCIATION, INC.
4. PORTLAND AREA SANITARY OPERATORS
5. TEAMSTERS LOCAL 281
6. WASHINGTON COUNTY REFUSE DISPOSAL ASSOCIATION, INC.

Dale M. Harlan

DALE M. HARLAN, Attorney

House Bill 2683

Sponsored by JOINT COMMITTEE ON WAYS AND MEANS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Authorizes metropolitan service district to enter into intergovernmental contracts. Specifies district's authority over solid and liquid waste disposal. Authorizes district to seek enforcement of its rules by injunction or civil penalty up to \$500 per day for violations. Authorizes that service or user fees may be imposed for construction, expansion or maintenance of facilities or equipment. Expands borrowing and repayment authority of district including borrowing from Pollution Control Fund. Authorizes issuance of revenue bonds to operate, maintain and repair all district's property.

CONTACTED WITH

W/ H. RANCINE

DEP INPT

2/19/77

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

A BILL FOR AN ACT

1 Relating to local government;
2 Relating to local government; creating new provisions; and amending ORS 268.300,
3 268.360, 268.540, 459.065, 459.095 and 468.220.

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

5 Section 1. ORS 268.300 is amended to read:

6 268.300. (1) A district shall constitute a municipal corporation of this state, and a
7 public body, corporate and politic, exercising public power. It shall have full power to
8 carry out the objectives of its formation and to that end may have and use a seal, have
9 perpetual succession, sue and be sued in its own name, and enter into contracts.

10 of (2) A district may enter into contracts or other agreements with any agency
11 of the Federal Government, of this state or of any local or regional government-
12 tal agency in this state; and, subject to the prior approval of the Legislative
13 Assembly, enter into any compact with another state.

No

14 [(2)] (3) Except as this chapter provides to the contrary, the powers of the district
15 shall be vested in the governing body of the district.

16 SECTION 2. Sections 3 and 9 to 15 of this Act are added to and made a part of ORS
17 chapter 268.

18 SECTION 3. For purposes of solid and liquid waste disposal, a district may:

19 (1) Build, construct, acquire, improve, operate and maintain sanitary landfills,
20 transfer facilities, resource recovery facilities and other improvements, facilities or
21 equipment necessary or desirable for the solid and liquid waste disposal system of the
22 district.

23 (2) Sell, enter into short or long-term contracts, solicit bids, enter into direct
24 negotiations, deal with brokers or use other methods of sale or disposal for the products
25 or by-products of the district's facilities.

26 (3) Require any person or class of persons who generate solid or liquid wastes to
27 make use of the disposal sites or facilities of the district or disposal site or facilities
28 designated by the district.

29 (4) Require any person or class of persons who pick up, collect or transport solid or
30 liquid wastes to make use of the disposal sites or facilities of the district or disposal
31 sites or facilities designated by the district.

O.K.

32 (5) Grant or enter into contracts, licenses or franchises to one or more persons for
33 the purposes described in subsection (1) of this section and set and collect fees from the
34 person or persons holding such contract, license or franchise.

1 (6) Prescribe a procedure for the issuance, administration, renewal or denial of
2 contracts, licenses or franchises granted under subsection (5) of this section.

3 (7) Regulate the service or services provided by contract, license or franchise and
4 order modifications, additions or extensions to the equipment, facilities, plan or services
5 as shall be in the public interest.

6 Section 4. ORS 268.360 is amended to read:

7 268.360. (1) For purposes of its authorized functions a district may exercise police
8 power and in so doing adopt such ordinances, rules, and regulations as a majority of the
9 members of its governing body considers necessary for the proper functioning of the
10 district.

11 (2) In addition to the provisions of ORS 268.990, violation of the district's
12 ordinances or rules may be enjoined by the district upon suit in a court of
13 competent jurisdiction.

14 (3) In addition to any other penalty provided by law, any person who
15 violates any ordinances or order of the district pertaining to one or more of its
16 authorized functions shall incur a civil penalty not to exceed \$500 a day for each
17 day of violation.

18 (4) The civil penalty authorized by subsection (3) of this section shall be
19 established, imposed and collected in the same manner as civil penalties are
20 established, imposed and collected under ORS chapter 468.

21 Section 5. ORS 268.540 is amended to read:

22 268.540. (1) A district may impose and collect service or user charges in payment
23 for its services or for the purposes of financing the planning, design, engineering,
24 construction, operation, maintenance, repair and expansion of facilities,
25 equipment, systems or improvements authorized by this chapter.

26 (2) A district may seek and accept grants of financial and other assistance from
27 public and private sources.

28 (3) A district may, with the approval of a majority of members of its governing
29 body, borrow money from any county or city with territory in the district.

30 (4) A district may, with the approval of a majority of members of its
31 governing body, borrow money from the state or its agencies or departments,
32 including without limitation money from the Pollution Control Fund.

33 (5) Notwithstanding 294.305 to 294.520, the authority to borrow granted
34 under this section ^{INCLUDES} the authority to enter into agreements to repay such money
35 subject to such terms and conditions as the parties may agree.

BY ENTERING INTO LOAN OR GRANT CONTRACTS OR BY THE ISSUANCE OF BONDS, NOTES OR OTHER OBLIGATIONS.

^[4] SUCH BORROWING OF MONEY

1 (6) A district may provide that bonds or loans may be secured by a lien and
2 pledge of all or any part of the revenues derived by the district from the
3 facilities constructed from the proceeds of such bonds or loans.

4 Section 6. ORS 459.065 is amended to read:

5 459.065. (1) The Legislative Assembly finds that carrying out the provisions of ORS
6 459.005 to 459.105 and 459.205 to 459.285 by *[cities and counties]* local government
7 units is a matter of state-wide concern. In carrying out the provisions of ORS 459.005
8 to 459.105 and 459.205 to 459.285, a *[county or a city]* local government unit may
9 enter into any agreement which the *[county or city]* local government unit determines
10 is desirable, for any period of time, with the department, any local government unit or
11 other person:

SUCH BORROWING OF MONEY
DISPOSAL IS A MATTER OF STATEWIDE CONCERN

12 (a) For joint or regional franchising of service or the franchising or licensing of
13 disposal sites.

14 (b) For joint preparation or implementation of a solid waste management plan.

15 (c) For establishment of a regional solid waste management system.

16 (d) For cooperative establishment, maintenance, operation or use of regional
17 disposal sites, including but not limited to resource recovery facilities.

18 (e) For the employment of persons to operate a site owned or leased by the county or
19 city.

20 (f) For promotion and development of markets for energy and materials from
21 resource recovery.

22 (2) Authority granted by ORS 459.005 to 459.105 and 459.205 to 459.285 to local
23 government units is specific and is in no way intended to restrict the general authority
24 granted under ORS 190.010 to 190.030, 190.110 and ORS *[chapter]* chapters 203 and
25 268.

26 Section 7. ORS 459.095 is amended to read:

27 459.095. (1) No ordinance, order, regulation or contract relative to solid waste
28 collection service or solid waste management *[regulation]* shall be adopted by a local
29 government unit if such ordinance, order, regulation or contract conflicts with
30 regulations adopted by the commission pursuant to ORS 459.045 or with a solid waste
31 management plan or program adopted by a metropolitan service district and
32 approved by the department or any ordinances or regulations adopted
33 pursuant to such plan or program.

34 (2) Solid waste management regulations adopted by a sanitary district or sanitary
35 authority shall be limited to regulations supplemental to the rules adopted by the

1 commission pursuant to ORS 459.045 and necessary to meet special local conditions.

2 Section 8. ORS 468.220 is amended to read:

3 468.220. (1) The department shall be the agency for the State of Oregon for the
4 administration of the Pollution Control Fund. The department is hereby authorized to
5 use the Pollution Control Fund for one or more of the following purposes:

6 (a) To grant funds not to exceed 30 percent of total project costs for eligible projects
7 as defined in ORS 454.505 or sewerage systems as defined in ORS 468.700.

8 (b) To acquire, by purchase, or otherwise, general obligation bonds or other
9 obligations of any municipal corporation, city, county, or agency of the State of Oregon,
10 or combinations thereof, issued or made for the purpose of paragraph (a) of this
11 subsection in an amount not to exceed 70 percent of the total project costs for eligible
12 projects.

13 (c) To acquire, by purchase, or otherwise, other obligations of any city that are
14 authorized by its charter in an amount not to exceed 70 percent of the total project costs
15 for eligible projects.

16 (d) To grant funds not to exceed 30 percent of the total project costs for facilities for
17 the disposal of solid waste, including without ^{BEING LIMITED TO} [limitation] transfer and resource
18 recovery facilities.

19 (e) To make loans or grants to any municipal corporation, city, county, or agency of
20 the State of Oregon, or combinations thereof, for planning of eligible projects as defined
21 in ORS 454.505, sewerage systems as defined by ORS 468.700 or facilities for the
22 disposal of solid waste, including without ^{BEING LIMITED TO} [limitation] transfer and resource
23 recovery facilities.

24 (f) To acquire, by purchase, or otherwise, general obligation bonds or other
25 obligations of any municipal corporation, city, county, or agency of the State of Oregon,
26 or combinations thereof, issued or made for the purpose of paragraph (d) of this
27 subsection in an amount not to exceed 70 percent of the total project costs.

28 (g) To advance funds by contract, loan or otherwise, to any municipal
29 corporation, city, county or agency of the State of Oregon, or combination
30 thereof, for the purpose of ^{PARAGRAPHS (b) AND} [paragraph (d)] of this subsection in an amount not to
31 exceed 70 percent of the the total project costs.

32 [(g)] (h) To pay compensation required by law to be paid by the state for the
33 acquisition of real property for the disposal by storage of environmentally hazardous
34 wastes.

1 [(h)] (i) To dispose of environmentally hazardous wastes by the Department of
2 Environmental Quality whenever the department finds that an emergency exists
3 requiring such disposal.

4 (2) The facilities referred to in paragraphs (a)[, (b) and] to (c) of subsection (1) of
5 this section shall be only such as conservatively appear to the department to be not
6 less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants
7 from the Federal Government, user charges, assessments and other fees.

8 (3) The facilities referred to in paragraphs (d), [and] (f) and (g) of subsection (1) of
9 this section shall be only such as conservatively appear to the department to be not
10 less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants
11 from the Federal Government, user charges, assessments and other fees.

12 (4) The department may sell or pledge any bonds, notes or other obligations
13 acquired under paragraph (b) of subsection (1) of this section.

14 SECTION 9. For the purpose of carrying into effect all or any of the powers
15 granted to metropolitan service districts, a district may from time to time issue and sell
16 revenue bonds without the necessity of the voters of a district authorizing the bonds.
17 Proceeds from the sale of such bonds may be used to cover the costs incurred in issuing
18 such bonds, and preliminary work incident to carrying out such purposes and powers,
19 including but not limited to planning, engineering, inspection, accounting, fiscal, legal
20 and trustee expenses, the costs of issuance of bonds, engraving, printing, advertising
21 and other similar expenses, and to pay interest on the outstanding bonds issued for any
22 project during the period of actual construction [and for such period of actual
23 construction] and for such period thereafter as a district may determine, and to
24 establish, maintain or increase any reserves for debt service on the bonds [and for
25 working capital.] Such revenue bonds shall not in any manner or to any extent be a
26 general obligation of a district nor a charge upon any other revenues or property of a
27 district not specifically pledged thereto.

28 SECTION 10. (1) Revenue bonds issued under sections 9 to 15 of this 1977 Act
29 shall be authorized at a meeting by ordinance of the governing body. The ordinance
30 may provide for the creation of special trust funds and may authorize the appointment
31 of a trustee to administer the funds, and may obligate a district to set aside and pay
32 into a special trust fund for the purpose of securing revenue bonds, all or any portion of
33 its revenues, regardless of the source from which derived, then existing or which
34 thereafter come into existence, not otherwise pledged or committed for other purposes.
35 The governing body may, in addition thereto, pledge or mortgage for the payment of the

1 principal of and interest on and premium, if any, of any issue of such bonds any
2 property of a district not pledged for other purposes. Notice that action upon the bond
3 ordinance will be taken at the designated meeting of the governing body, shall be given
4 for a period of not less than two consecutive weeks, prior to such meeting, by
5 publication thereof once each week in a newspaper of general circulation, published
6 within the corporate boundaries of the district or, if there be no such newspaper, by
7 posting such notice for a period of not less than two weeks in three public places in the
8 district.

9 (2) The money in an special trust fund created by an ordinance authorizing an issue
10 of revenue bonds shall be used solely for the purposes provided therefor by the
11 ordinance.

12 (3) The ordinance may obligate the district, and the district shall have power to fix,
13 levy and collect such rates, rentals, fees and other charges for the use and services of all
14 or any of its facilities, which revenues may be pledged to the payment of the principal
15 of and interest on and premium, if any, of the revenue bonds or any of them and if so
16 pledged shall be sufficient to produce revenues, along with other lawfully available
17 funds, adequate to pay the costs of the operation, maintenance and repair of any or all
18 district properties; to pay or provide for the payment of the principal of and interest on,
19 and premium, if any, of such revenue bonds or any of them, including any reserves for
20 such payment; and to produce such additional amount of revenues therefrom as the
21 district may covenant with the holders of such revenue bonds.

22 (4) The ordinance may provide that in the event the money in a special trust fund is
23 insufficient to pay the revenue bonds to be paid out of the fund, such revenue bonds
24 shall be payable out of any part or all of other nonpledged revenues of the district.
25 Whenever all bonds and expenses thereof have been paid so that no charge remains
26 upon such special fund, the governing body may, by ordinance, transfer any balance
27 remaining in such fund to its general fund, discharge the trustee, if any, and dissolve
28 the special fund. Any trustee authorized to administer the fund may, subject to
29 approval of the governing body, invest and reinvest moneys in the special fund in any
30 security or securities in which the State of Oregon may by law invest.

31 (5) If the governing body fails to set aside and pay revenues into a special trust fund
32 as required by the ordinance authorizing the issuance and sale of the bonds secured by
33 the fund, a holder of any of such bonds may bring suit against the district to compel
34 compliance with the provisions of the ordinance in the circuit court of the county in
35 which the district has its principal office.

1 SECTION 11. The revenue bonds issued and sold under sections 9 to 15 of this
2 1977 Act:

3 (1) Shall be deemed to be for all purposes negotiable instruments, subject only to
4 the provisions of the bonds for registration, and need not comply with requirements of
5 the Uniform Commercial Code.

6 (2) May be issued in one or more series, bear such date or dates, mature at such
7 times and in such amounts, be in such denomination or denominations, be payable at a
8 designated place or places within or without the State of Oregon or at the fiscal agency
9 of the State of Oregon, be equally and ratably secured without priority or be entitled or
10 subject to such priorities on all or any portion of the revenues of the district and,
11 notwithstanding any other provision of law to the contrary, bear such rate or rates of
12 interest, and contain such other terms, conditions and covenants as the governing body
13 may determine.

14 (3) Shall contain a recital that principal of and interest on and premium, if any, on
15 the revenue bonds are payable solely out of revenues and property of the district
16 pledged to the payment thereof by the ordinance of the governing body authorizing the
17 issue of which the bonds are a part.

18 (4) May be in coupon form with or without privilege of registration or may be in
19 registered form, or both, with the privilege of converting and reconverting from one
20 form to another.

21 (5) May contain covenants of the district to protect and safeguard the security and
22 rights of holders of any such bonds and such other terms and conditions, in conforming
23 with sections 9 to 15 of this 1977 Act which the governing body in its discretion
24 determines are necessary or desirable to protect the district or increase the
25 marketability of the bonds. Sections 9 to 15 of this 1977 Act and any such ordinance
26 with constitutes a contract with the holders of the bonds and the provisions thereof
27 shall be enforceable by any holder or any number of holders of the bonds, as the
28 governing body may determine.

29 (6) Shall be in the form prescribed by the governing body and shall be signed by the
30 chairman and by the vice chairman of the district, either manually or by their printed,
31 engraved or lithographed signature. However, at least one signature must be manual,
32 with the seal of the district or a facsimile thereof printed, engraved or lithographed
33 thereon or affixed thereto. Coupons if any, attached to the bonds need bear only the
34 printed, engraved or lithographed facsimile signature of the chairman and the vice
35 chairman. Pending the preparation and delivery of definitive bonds, a district may

1 issue interim certificates or temporary bonds, exchangeable for definitive bonds when
2 such bonds shall have been executed and are available for delivery. Such interim
3 certificates or temporary bonds may contain such terms and conditions as the board
4 may determine.

5 (7) May be issued with the right reserved to the governing body to redeem the bonds
6 at par or at par plus a premium, in such order, and at such time or times prior to the
7 final maturity date or dates of the bonds, as the ordinance may provide or as otherwise
8 determined by the governing body, upon publication, at least 30 days before the
9 redemption date, of at least one notice of the intended redemption in one issue of a
10 newspaper specializing in financial matters published in any of the cities of New York,
11 New York; Chicago, Illinois; or San Francisco, California; as the governing body may
12 provide in the ordinance, and of one such notice in one issue of a newspaper of general
13 circulation published within the corporate boundaries of the district; provided that if a
14 bond to be redeemed is then registered notice of the intended redemption of such bond
15 may be given by the mailing, at least 40 days before the redemption date, of at least one
16 such notice to the registered owner, in lieu of the publication thereof. However, failure
17 to so mail such notice shall not affect the proceedings for such redemption.

18 **SECTION 12.** (1) A district shall have the power, at any time and from time to
19 time after the issuance of bonds under sections 9 to 15 of this 1977 Act have been
20 authorized, to borrow money for the purposes for which such bonds are to be issued in
21 anticipation of the receipt of the proceeds of the sale of such bonds and within the
22 authorized maximum amount of such bond issue.

23 (2) Bond anticipation notes shall be issued for all moneys so borrowed under the
24 provisions of this section. Such notes may be issued for a period not to exceed one year
25 and may be renewed from time to time for periods of not exceeding one year, but each
26 such note, including renewals, shall mature and be paid not later than the fifth
27 anniversary of the date the original note was issued. Such notes shall be authorized by
28 ordinance of the governing body and shall be in such denomination or denominations,
29 shall bear interest at such rate or rates approved by the governing body, shall be in
30 such form and shall be executed in such manner, all as the governing body shall
31 prescribe. Such notes may be sold at public or private sale in the manner and at such
32 price or prices as the governing body shall determine, provided that if such notes be
33 renewal notes, they may be exchanged for notes then outstanding on such terms as the
34 governing body shall determine.

1 SECTION 13. The governing body may from time to time sell revenue bonds
2 authorized to be issued and sold pursuant to sections 9 to 15 of this 1977 Act at public
3 or private sale, in the manner and at such price or prices as it shall determine.

4 SECTION 14. Revenue bonds, including refunding revenue bonds issued under
5 sections 9 to 15 of this 1977 Act, shall be considered to be bonds or obligations of a
6 political subdivision of the State of Oregon for the purposes of all laws of the state.

7 SECTION 15. Sections 9 to 15 of this 1977 Act are additional, alternative and
8 supplemental authority for a district and shall not abrogate any power, right or
9 authority otherwise granted by law to a district.

 "Section 16. From the
proceeds of the bonds authorized by ORS 468.195, the Depart-
ment of Environmental Quality may loan or grant funds, as
provided under ORS 468.220, to the Metropolitan Service
District of Portland, Oregon, in an amount not to exceed
11.3 million dollars.

 "Section 17. This Act being necessary for the imme-
diate preservation of the public peace, health and safety,
an emergency is declared to exist, and this Act takes effect
on its passage."

2/24/77

ATTACHMENT V

Transfer Station means a site, facility, or container used for the handling or transfer of solid wastes delivered by the public or by a solid waste collection service prior to disposal included but not limited to a large hopper, railroad, gondola, or barge.

ATTACHMENT VI

ROUGH DRAFT

DALE M. HARLAN
ATTORNEY, P.C.
2202 S.E. LAKE RD.
MILWAUKIE, OREGON 97222
654-9533

Received from
Dale Harlan
2/24/77

February 24, 1977

MR. DEAN P. GISWOLD
Hardy, Buttler, McEwen, Weiss & Newman
Attorneys at Law
Standard Plaza Building
Portland, Oregon

Subject: NEGOTIATIONS TO ATTEMPT TO REACH JOINT MSD-SOLID WASTE
INDUSTRY AGREEMENT FOR SUPPORT OF HB 2683

Dear Dean:

As I have indicated to you in our various conferences, one of the problems we are having in trying to work out mutually acceptable Legislative changes is the attempt to amend both OPS Chapter 268 and Chapter 459. We had presumed before the Session of the Legislature began that MSD of Portland would have some proposed Amendments for Chapter 268. However, we were told on several occasions that no such Legislation was contemplated. If we had known earlier that Amendments would be sought to either or both Chapters, we could have been working on them these many months.

This letter is a follow-up to our conference of February 17th when I submitted the proposed Amendments of the Solid Waste Industry to HB 2683, and you likewise submitted Amendments to the same Bill that you said came as a result of your study and suggestions from Bond Attorney Howard Rankin and DEQ Attorney Ray Underwood.

For today's conference between you and me, I outline the areas for consideration as follows:

I.

Industry desires amendments in these areas:

1. Amendment to the present ORS 268.310 now entitled "Powers of District" in §(2) to remove the present authorization of the District by Agreements with "other public corporations, cities, or counties" to "collect and transport solid and liquid wastes." The Board has both formally and informally told the Solid Waste Industry Collectors on frequent occasions that they never intended to use this power, and they saw no reason not to remove it. However, the communication from MSD Staff to the MSD Board of Directors under date of 2/11/77, Item 1., raises questions about the elimination of the provision that should be resolved by further discussion if the District is serious about those questions. I had understood in the negotiations between Industry and representatives

of MSD that there would be no such questions.

2. Industry would want consideration of some amendment to ORS 268.030(3)(c) to remove the possibility of a Metropolitan Service District assuming control of local aspects of Franchising Solid Waste Collection by agreement with cities and counties. This would involve consideration of whether an amendment was, also, needed to ORS 268.320(2).

II.

The language of the proposed HB 2683 as introduced:

1. The proposed Amendment to ORS 268.300 on the general powers of the District, by inserting the new §(2) referring to Agreements, seems objectionable and unnecessary for the following reasons:

(a) This would insert the very power concerning agreements, without any limitation on the subject matter of the contracts or agreements, that Industry wants removed in ORS 268.300.

(b) The language in the proposed §(2) in Section 1. of the Bill refers to agreements with "any local or regional governmental agency" and that is quite imprecise language. There is no definition of "local" in Chapter 268. There is a definition of "local government unit" in ORS 459.005(6), the chapter entitled "Solid Waste Control." There, "local government unit" is defined as a city, county, metropolitan service district, sanitary district under Chapter 450, sanitary authority under Chapter 450, county services district under Chapter 451, or regional air quality authority under Chapter 468. Thus, the reference seems far too broad on both who they can contract with, and the fact that there is no limitation on the subject matter of the contract.

(c) The authority sought here is probably unneeded because of ORS Chapter 190 provisions on "Intergovernmental Cooperation and Coordination."

2. I have raised some objections to the use of the word "transfer facilities" in proposed Section 3., §(1) and (2). The whole section is very broad in giving new, additional powers to the district, even though it refers to "solid and liquid waste disposal" and "disposal" is the one area of solid waste the District can now perform functions under ORS 268.030.

The language of the new section refers to not only transfer facilities, but resource recovery facilities, and "other improvements, facilities, or equipment necessary or desirable for the liquid and solid waste disposal system of the district." Could you not devise language that is more specific as to the needs of the District in disposal and resource recovery than this language?

3. With reference to Section 4. of the Act, I can see no immediate reason to object to §(2) concerning the District's power to seek injunctions. I think it already has that power. However, §(3) providing civil penalties of \$500 a day for violation of any ordinances or order of the district pertaining to one or more of its authorized functions, has to give anyone

February 24, 1977

representing the citizens some pause for concern. If we can correctly delineate the authority of an MSD and local government, maybe there is no reason for concern. But we must remember that under the Constitution, which not even the Legislature could change, cities have Home Rule power and there are Home Rule counties; and the latest cases certainly limit the authority of the Legislature to declare something to be a matter of statewide concern to the point where it will overrule the Constitutional power of cities and counties.

4.I, also, want to discuss with MSD Counsel and with the Solid Waste Industry the specifics of proposed §(4) of Section 4. of the proposed Act where you refer to the civil penalties being "established, imposed, and collected in the same manner as civil penalties are established, imposed, and collected under ORS Chapter 468." Perhaps it would be better to set forth the manner in Chapter 268 rather than make this cross-reference.

5. According to our conversation yesterday, you are suggesting to the MSD Board that Industry be given very, very limited protection as far as allowing time and providing for success in passing through Service or User Charges are concerned. First, let us consider the fact that perhaps it will be just a Service or User Charge until the facilities are on line. After that, it all becomes really a disposal cost. We have been assured repeatedly that no program would be undertaken and no facility would be built unless it was "economically feasible." The District staff seems to feel that it is an impossibility to put a limitation on what portion of the total cost will be borne by the collector and, thus, by the consuming public. Board Members seem to feel in our informal discussions with them that the limitation ought to be feasible.

You have suggested that Bond Counsel says that the best that could be added would be a sentence at the end of the present ORS 268.540(1) with these words:

"Except in an emergency, an ordinance increasing the user fee shall not become effective until 60 days after passage."

for necessary
In order to get permission in Franchised areas to pass through a User Fee, it might on occasions, to, in effect, make the same showing that is necessary to get a Rate Increase. A City Council or Board of County Commissioners might take the position that no increase be allowed in Collectors Rates unless a full Income Statement were presented from an accountant. As you know, it can sometimes take three or four months to get such a statement from an accountant. Furthermore, some City Councils only meet once a month, and you may not get on the agenda on the first try; and if you get on the agenda, it may not be passed on the evening in which you are on the agenda. In addition, there are a limited number of professionals who work on Rate matters, and a professional cannot be in two or three cities in one evening. Many of the City Councils hold their meeting on the same Monday or Wednesday or whatever of the month. So, more time is really needed.

Furthermore, the mere fact that a legal authority says you can pass through the charge does not collect it for you. Everytime Rates increase, for any reason, customers are lost. None of the jurisdictions have mandatory service. When customers are lost as a result of Rate Increases, the margins of profit is reduced, even though the rest of the customers more or less willingly pay the increase (after a lot of phone calls, explanations, and written communications explaining the increase customer to customer).

6. With reference to Section 6., proposing to amend ORS 459.065, I would call your attention to the fact that that refers to and is entitled by the chapter on Solid Waste Control "Local Government Agreement Authorized." The draftsman of the Bill, presumably at the behest of MSD, has stricken the present reference to cities and counties and proposes to talk about "Local Government Units." A "Local Government Unit" includes a Metropolitan Service District, a Sanitary District, a Sanitary Authority, a County Service District, Regional Air Quality Control Authority, or any other local government unit "responsible for solid waste management." That is the definition of ORS 459.005(6).

This language would, if changed to "Local Government Units", put ports, sanitary districts, sanitary authorities, regional air quality control authorities, county service districts, and other local government units into the business of preparing and implementing solid waste management plans, franchising service, establishing regional solid waste management systems, developing markets for resource recovered materials and energy, etc. I am sure a Metropolitan Service District does not want to see solid waste authority diluted to that extent. This section definitely needs amendment.

Furthermore, we do not see the necessity of adding the proposed sentence you have suggested to ORS 459.065 saying that "the Legislative Assembly finds that Solid Waste Disposal is a matter of statewide concern." We think that is already adequately covered in Chapter 459. Furthermore, this is the section referring to Local Governments and to cities and counties in particular.

7. In Section 7. of the proposed Act, you are trying to take a section that now deals with the fact that no local government unit shall adopt a Solid Waste Management Regulation that conflicts with regulations adopted by the Environmental Quality Commission and DEQ and turn that into something that provides that "no ordinance, order, regulation, or contract relative to Solid Waste Collection or Solid Waste Management" shall conflict with an ordinance, order, regulation, or contract or with a Solid Waste Management Plan or Program adopted by a Metropolitan Service District. This is a dramatic change and an infringement on the powers of cities and counties, and probably an unconstitutional change considering the Constitutional authority of Home Rule cities and Home Rule counties. We need to do much more work on this even if you and I agree that you are only really in need of authority to be paramount in the area of the disposal of Solid Waste and Resource Recovery.

February 24, 1977

8. I have no other comments and no objections that I have detected to any of the other many Amendments in your "Amended Summary" with reference to HB 2683, which you submitted to me on February 17th.

It is obvious that Industry awaits the guidance of the MSD Board on these negotiations, that Industry will then need to consider the guidance MSD gives its staff at tomorrow's meeting, and that much fine tuning will be necessary on behalf of both sides to get a Bill that even accomplishes what MSD intends, let alone a Bill agreeable to both sides. However, I do not think the task is insurmountable. I believe we are closer to agreement than we have been during the eight years of MSD's existence. I only wish we could have been working on these proposed Legislative changes during the interim between Legislative Sessions.

Respectfully submitted,

DH:e

DALE M. HARLAN, Attorney for
Solid Waste Industry Entities
Listed Below:

CLACKAMAS COUNTY REFUSE DISPOSAL ASSN., INC.
MULTNOMAH COUNTY DISPOSAL ASSN., INC.
OREGON STATE DROP BOX ASSN., INC.
PORTLAND AREA SANITARY OPERATORS
TEAMSTERS LOCAL 281
WASHINGTON COUNTY REFUSE DISPOSAL ASSN., INC.