

PRESTON THORGRIMSON SHIDLER GATES & ELLIS

Metro Charter Committee
July 21, 1992
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B. Draft Charter Language.

(3) Limitations on Excise Tax Revenues. During the first fiscal year after this charter takes effect, the total revenues from all excise taxes imposed by METRO shall not exceed \$6,000,000. As used in this charter, "excise taxes" means taxes imposed on persons using the facilities, equipment, systems, functions, services or improvements owned, operated, franchised or provided by METRO. This tax revenue limitation shall increase, without voter approval, in each subsequent fiscal year in an amount equal to the rate of inflation for the previous calendar year. As used in this charter, the "rate of inflation" means the rate determined by the appropriate federal agency for increases in the consumer price index for goods and services in major cities in the western United States or the most equivalent rate.

(4) Limitations on Certain Tax Revenues. During the first fiscal year after this charter takes effect, the total revenues from all taxes imposed by METRO shall not exceed \$_____. This tax revenue limitation shall increase, without voter approval, in each subsequent fiscal year in an amount equal to the rate of inflation for the previous calendar year.

(a) Excise taxes, taxes approved by the voters of METRO, taxes imposed by the Metropolitan Service District as of January 1, 1993, payroll taxes in the amount specified in subsection 11(1) of this charter, and tax increment financing charges on property are excluded from this limitation.

(b) As used in this subsection, "taxes" do not include revenues from charges to individuals for the provision of goods, services, or property, revenues from the issuance of franchises, licenses, permits or approvals, and benefit assessments against property.

(5) Exceeding Any Tax Revenue Limitation. A tax revenue limitation for any fiscal year shall be reduced by an amount equal to any revenue collected in excess of the tax revenue limitation for the previous fiscal year. This reduction shall occur in a supplemental budget. In the event this reduction results in an adjusted tax revenue limitation of less than 80% of the amount previously budgeted for that fiscal year, the tax revenue limitation shall be further reduced. This further reduction shall be the amount of the inflation increase for that tax revenue limitation which was previously budgeted for the fiscal year. If any tax revenue limitation is reduced under this subsection, the reduced base and inflationary increases calculated from that base, shall become the applicable tax revenue limitation.

(6) Prohibition on Local Government Charges. Unless approved by the voters or allowed by intergovernmental agreement, METRO may not levy a charge upon local governments for the provision of regional planning services or other general functions of METRO.

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MEMORANDUM

To: Metro Charter Committee
Re: Draft Language on Finance Section of Proposed Charter
Date: July 21, 1992

A. Introduction.

At its July 18, 1992 meeting the Committee reached preliminary consensus on tax limitation and dedication provisions of the proposed charter. The features of this consensus are:

1. A limitation on the amount of excise taxes to \$6,000,000 in the initial year of the operation of this limitation. This tax base could increase by the annual rate of inflation.
2. The elimination of authority to charge local governments for planning functions (except presumably through an intergovernmental contract). This charge is presently allowed by ORS 268.513.
3. A limitation on the amount of "ordinance taxes" that could be imposed in any one year to a certain amount. This amount has not been agreed upon by the Committee. This tax base could increase by an inflationary factor. By "ordinance taxes," I assume the Committee means those taxes which are not approved by popular vote, are not excise taxes, are not imposed currently by Metro, and are not a payroll tax (if TriMet functions are assumed).
4. The exclusive dedication of collected excise taxes to planning functions, the compensation and staffing of the charter officers, and other government functions which are not substantially subsidized. The allocation of the dedicated taxes has not been decided. It would be set in the proposed charter. The council could change this allocation by ordinance after adoption of the regional framework plan and a determination that all local comprehensive plans are consistent with the regional framework plan.
5. These provisions would replace the current tax revenue limitation in Section 11(3) of the proposed charter.

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(7) Dedication of Excise Tax Proceeds. The proceeds from any tax limited by subsection (3) of this section shall, after providing for the costs of administration and any refunds or credits authorized by law, be placed in a special fund. The estimated amount of that fund shall be appropriated by the council in each fiscal year in the following amounts and for the following purposes:

a. ___% of the fund shall be used for the costs of regional planning by METRO;

b. ___% of the fund shall be used for the costs of staffing and compensating the council and president, compensating the manager [and auditor], and staffing the METRO policy advisory committee; and,

c. ___% of the fund shall be used for other government functions which are not substantially subsidized by user fees, special taxes or other dedicated revenues.

Notwithstanding these allocations, in the event the revenues in this special fund are reduced under subsection (5) of this section, the council shall reallocate this fund in the supplemental budget by maintaining the amount of funds previously appropriated for regional planning purposes and reducing the funds available for other purposes.

The percentage allocation of this fund set out in this subsection, but not its dedicated purposes, may be changed by ordinance after adoption of the initial regional framework plan and a determination by the council that all local comprehensive plans are consistent with the regional framework plan.

The required appropriations in this subsection shall not prevent the council from appropriating additional funds to these activities from other sources.

C. Comments on Draft Language and Concepts.

These types of revenue limitations are unique. I am not aware of models to use for these limitations. The suggested language is an initial draft and can, no doubt, be improved. In your deliberations on this language and these concepts, you may wish to consider the following:

1. It will be difficult to estimate in advance the revenues which are limited. This may mean that either the limitations will be exceeded regularly or the charges and taxes will be underlevied (and revenues reduced) to avoid violation of the limitations.

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2. An enforcement mechanism is necessary to deter violations of the limitations. The draft requires reduction of the limitation applicable in future years if there are excess revenues collected. This is a multiple year penalty. That is, the base is permanently reduced by the amount of revenues exceeding the limitation. You may want to consider a lesser sanction.
3. Whether the limitations are exceeded will not be known until after the end of the fiscal year when all revenues have been collected. At that point, the budget for the next fiscal year will have been adopted. Any change to that budget necessary to remedy violation of the limitation for the previous year, will need to occur in a supplemental budget. There may be practical and legal problems in changing the budget through a supplemental budget.
4. If the experience with acknowledgment of comprehensive plans for goal consistency is any measure, there may be a long period before all local comprehensive plans are determined to be consistent with the regional framework plan. (Comprehensive plan acknowledgment took nearly twelve years.) The regional planning costs throughout this period may not be constant.
5. The draft mandates appropriations from the excise tax fund for the described purposes. This presupposes that the costs of these activities will be the same or more than the dedicated fund. What happens if this is not the case, i.e., if the central overhead or planning costs do not increase at the same rate as inflation? There may be then a forced appropriation in excess of actual need.
6. What happens to the excise tax limitation if additional government functions are assumed by METRO? The present statutory limit on excise taxes is a percentage of gross revenues. This provides flexibility if additional functions are assumed (and gross revenues increase). The risk of a dollar limitation is that this flexibility will be lacking.

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By: _____
Timothy J. Sercombe