

PUBLIC HEARING

before

ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE

on

ACR-3022

(Amends the Constitution to allow the Legislature
to establish a law for settling the rental of riparian lands;
may be less than fair market value under certain conditions)

Held:
May 4, 1983
Room 316
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Raymond Lesniak (Chairman)
Assemblyman John O. Bennett
Assemblyman Elliot F. Smith

ALSO PRESENT:

Mark O. Smith, Research Associate
Office of Legislative Services
Aide, Assembly Agriculture and Environment Committee

New Jersey State Library

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ASSEMBLYMAN RAYMOND LESNIAK (CHAIRMAN): Okay, our first witness will be Mr. Tucker, representing the Save the School Fund. Would you identify yourself, please?

JACK TUCKER: My name is Jack Tucker, and I am here today to testify on behalf of former Senator Fairleigh Dickinson, Jr., who is Chairman of Save the School Fund, Inc.

Let me begin by saying that Senator Dickinson very much wanted to appear personally before this Committee. He was going to appear before the originally scheduled hearing yesterday; however, he had to be out of town today. I am sure when you have the formal hearing, he will appear in person.

Mr. Dickinson lives in Ridgewood and is a lifetime resident of Bergen County. About ten years ago he was a State Senator from Bergen County. During his time in office he was particularly interested in the reclamation or the development of the Meadowlands, and in fact, as most of you know, he was a prime mover in the passing of legislation which led to the development of the HMDC.

During this time he became extremely interested in the question of riparian rights for the people of New Jersey. In addition, the Senator has always had a deep interest in education.

It is for these dual reasons that I appear on his behalf today. As all of you know, the issue of riparian rights is directly related to the issue of financing public education in New Jersey. We feel that riparian lands have always been a key resource for the funding of public education and continue to be so today. We feel that if New Jerseyans do not act carefully, deliberately, and intelligently on this matter, they will inadvertently sell the next generation's school children down the river, and they will default on the moral obligation to provide quality public education to the very people upon whom one day, at a time not far distant, all of us will greatly depend on.

I attempt today, in ten minutes or so, to address several things. Number one, our goal in relation to the current legislation; number two, the needs of the School Fund between now and the year 2000; and number three, our concerns about the current riparian climate and the current legislation.



I think our goals are clear to all of you. As our name implies, we are concerned with perpetuation of the Fund for the Support to Free Public Schools and the protection of its constitutionally pledged assets so that the Fund will continue to grow at a rate necessary to assure its financial soundness.

Let me make it clear that I am a firm believer that riparian rights are the property of the State, and therefore the people of the State. Further, riparian revenues have been pledged to the School Fund by the Constitutions of 1844 and 1947. During the past 137 years, this Fund and the revenues from riparian lands, that are its only asset, had been respected by countless Legislatures as an inviolate public trust that produces millions of dollars for education.

I feel that the system has worked well all of these years and really need not be changed at all. I must view with a degree of skepticism the claims of some that the system proves burdensome to the small homeowner. This seems to fly in the face of fact.

In recent years the system has been used in settling claims in the Meadowlands, and no major crises emerged. There were no outcries from citizens or media in those areas, and perhaps rightly so, for the facts show that the burden just did not exist.

As you know, Save the School Fund last year reviewed the records of the TRC for the decade of Fiscal Years 1972 to 1981. We found that there were 224 grants issued to homeowners, and that the average grant was \$1,722. We also found that 51% of the grants were \$1,000 or less, and that 20% were \$500 or less. We also found that only 14% of the riparian revenues during this period came from homeowners.

ASSEMBLYMAN LESNIAK: Are you testifying for or against this proposal?

MR. TUCKER: We are testifying for it, but with qualification.

Today this experience seems disregarded in the wake of outcry from other parts of the State, as the areas we mapped and the Legislature seems determined to respond to these pressures, as evidenced by the constitutional amendments of 1981 and 1982. As you



know, we opposed those amendments, for we felt they were unnecessary, in that they endangered the School Fund and education.

We are, however, realistic enough to recognize that there continues to be strong pressure for change in long-standing riparian procedures. We recognize that homeowners, particularly in the shore area, feel a sense of apprehension concerning their titles and riparian claims.

We do, however, remain disturbed that there is such pressure despite the lack of hard facts concerning the extent of claims and the value of those claims.

Accordingly, and with the above-stated reservations, we support Assemblyman Lesniak's legislation, as offering a just balance between lessening the fear of homeowners and protecting the School Fund and education in New Jersey.

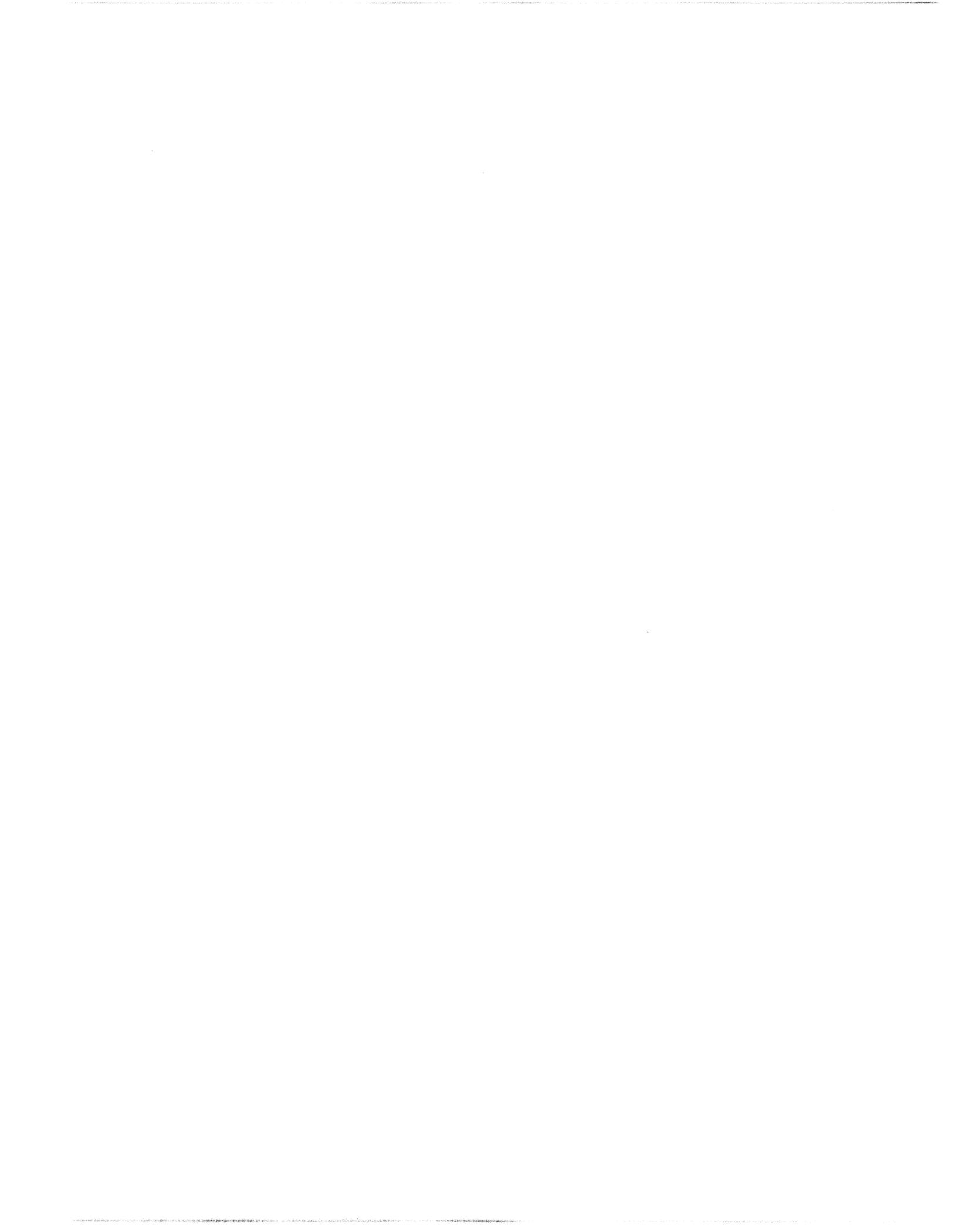
Before going into some other things, I would like to deal with the needs of the School Fund.

As you know, New Jersey statutes require that a reserve of 1-1/2% of the nominal value of school bonds be maintained within the School Fund as a guarantee of security against default by outstanding local school bonds. This means that virtually all school bonds in the State have an AA rating, making them more easily marketable, and at lower costs to taxpayers.

To determine the level needed to assure that there will be sufficient money in the School Fund to guarantee future bonds, we commissioned Dr. Stan Wilentz, Professor and former Chairman of the Economics Department of Columbia University, to prepare a 17-year analysis of school needs. Before reviewing these findings, it should be noted that in the decade of the 70's, New Jersey's capital expenditures for public schools were 69% below the national average. This was due in large part to a school building boom. In the 50's and the 60's, the result was a large stock of usable school buildings.

This stock can be expected to depreciate in the next decade. Combined with the need for schools in growth areas of the State, this will spur an increase in bond issues during the latter part of the century.

Here are some of the key findings of Dr. Wilentz's study:



(refers to posters)

As you can see in the areas marked yellow, school population will start to increase in five counties -- Cape May, Ocean, Atlantic, Bergen, and Warren -- and will continue to increase from now until the year 2000.

Between 1982 and 1985, in most of the other counties, we will experience a decline in public school population, but from 1985 through the year 2000, there will be a definite increase, as marked by those yellow areas, with the exception of two counties, Hudson and Essex.

Overall, the school population between now and the year 2000 will increase approximately 20%. Geographically you can see from here where that growth is going to occur.

The highest growth areas, ironically, are going to be Ocean County, Atlantic County, and Cape May County, which are areas affected by riparian claims, the revenues of which protect the School Fund which will help aid in the construction process.

This is a summary of what the School Fund needs between now and the year 2000. Here you can see the change in population using 1980 as an index year of 100; the year 2000 index increases to 119. It is estimated that during this period 465,000 new school spaces -- a space is the area required by a student -- will be needed. It is estimated that that is going to cost around \$3 billion. It is estimated that there will be \$4.4 billion in outstanding school bonds by the year 2000; it is estimated that the School Fund will have to increase to \$65 billion in order to support those bonds. That is based on 1-1/2% reserve, which some economists say is rather conservative.

This means that \$41 million is needed in the School Fund during the next 17 years, and it means that the average annual increase in the Fund should be in the area of \$2.4 million.

Before offering final comment on the proposed constitutional amendment, I think it can prove beneficial to take a moment to look at the present attitudinal climate concerning the riparian situation.

As you know, the Attorney General issued an opinion in mid-March concerning the elements of fair market value and the latitude



of the TRC in arriving at a grant price. His opinion has been viewed by many as a solution to the riparian question. One newspaper columnist said, "The immediate view was that the Attorney General had the answer to one of the most volatile questions in the State."

It is important that we recognize that it is, in fact, not a solution. This opinion, the way we understand it, has two parts. First, it says that fair market value may be interpreted to apply only to the value of land and does not include improvements. We and others have serious questions as to the constitutionality of this interpretation, for it seems to contradict long established case law in statutory precedent.

Second, the opinion reaffirms the practice of the TRC in considering good-faith payment of taxes by the homeowner when determining the value of the claim grant.

We say reaffirm, because in the New Jersey Riparian Rights Handbook published by the State of New Jersey, County and Municipal Government Study Commission in November of 1979, it states on Page A43 and in Section 13:1B-13.9, that in determining a fair market value of the property for riparian grants or leases, the TRC "shall take into account the action of a claimant under color of title, who in good faith made improvements or paid taxes, or both on the lands in question."

So, in balance, we feel that a constitutional amendment is necessary to truly achieve what one newspaper columnist I quoted earlier called "the answer to one of the most volatile questions in the State."

The proposed amendment will do this and will do so for a number of reasons. Above all, it is a sound approach; it is workable; it is practical; and it is pragmatically acceptable because it offers a just accomodation to the many concerns on this issue.

The amendment differs from others in the past in that it deals with less than fair market value only on leases. This approach makes sense when it is recognized that we are dealing with a finite resource. Leasing reinforces the concept that riparian lands are a State asset, and it also reinforces the principle of environmental prudence in disposing of our natural resources.



This amendment differs from the others, in that it is just and offers homeowners the lowest possible lease cost, provided the needs of the School Fund are met, and it assures that the needs of the School Fund will be met.

This amendment differs from others in the past, in that it offers simplicity for both the homeowner and the TRC. By having the option of a nominal annual rental that is quite affordable, homeowners need not negotiate with the TRC, nor assume the burden of proof that they acted in good faith in order to achieve a rental that is less than fair market value. This will expedite settlements. The same applies to non-residential property, since there is no distinction in the amendment.

And since the lease is perpetual and transferable, the title cloud will be quickly dissipated.

While we agree with all parts of this amendment, we do have reservation about one thing that is not part of it; it does not spell out implementation. We feel it is crucial that implementing legislation be prepared and adopted before the public is asked to vote on this amendment. The public must fully understand what it is voting for.

We assume that such legislation will be a by-product of these hearings. We have no firm position on whether the lease amount will be determined, based on a fixed-fee parcel of land, or whether it will be based on assessed valuation, perhaps even tied to a base year with an inflation factor.

Part of our reticence is a direct result of the lack of firm estimates concerning the extent and value of riparian claims. Assemblyman Lesniak's estimate of \$350 an acre seems to be reasonable, and it also seems to easily meet the needs of the School Fund. This is an area that must be studied in detail as soon as possible.

In conclusion, we repeat that we feel this amendment is necessary. It is workable; it is practical; it is fair; and we urge its passage.

ASSEMBLYMAN LESNIAK: Thank you very much for your testimony, Jack. Could you stay for just a minute?

MR. TUCKER: Sure.



ASSEMBLYMAN LESNIAK: Do we have any questions from the Committee?

ASSEMBLYMAN BENNETT: Except for the fact that the Attorney General issued the opinion that he did, would you still be supporting an attempt to do the constitutional amendment, or would you be in the position that you would want things to stay as they are right now?

MR. TUCKER: As I said, we felt the system was working, but it is also quite clear that a change is going to be made from somewhere, so we would have to support--

ASSEMBLYMAN LESNIAK: I would like to add to that too. Senator Dickinson will be here at some later point in time to speak for himself. But I do want to say, he has said to me during many conversations and during a lengthy conversation, that he does have a deep abiding concern about some of the hardships out there. We do know that there are hardships out there. He does have a deep abiding concern for that. He has an equal concern. There are attempts to alleviate those hardships. We do not destroy the integrity of the School Fund. This is the reason for his support of the proposal that we have before us.

Are there any other questions? (no response) Thank you, Jack.

ASSEMBLYMAN BENNETT: Excuse me. Those charts-- As far as the population growth is concerned, was the Pinelands taken into consideration?

MR. TUCKER: There is only growth within public schools.

ASSEMBLYMAN BENNETT: I know, but they are projecting-- Well, counties that are covered by the Pinelands Plan, where growth is going to be checked--

MR. TUCKER: Yes. It took into consideration--

ASSEMBLYMAN BENNETT: (interrupting) --are the highest in growth improvement areas. That is what I was curious about.

ASSEMBLYMAN LESNIAK: Are you talking about Ocean County?

ASSEMBLYMAN BENNETT: Well, Ocean, for starters, and then you have Cape May County, and you have Atlantic County.

MR. TUCKER: You are dealing with highest percentage growth. The actual growth is 42,000.



ASSEMBLYMAN BENNETT: Well, no. The only thing that I am thinking about is, that chart would kind of dispel the theory that the Pinelands are going--

MR. TUCKER: (interrupting) To limit growth.

ASSEMBLYMAN BENNETT: Limit growth in the Pinelands Area.

ASSEMBLYMAN LESNIAK: Well, except to the extent -- we're not really on the bill -- without the Pinelands Protection Act, the growth could probably be two or three times that.

ASSEMBLYMAN BENNETT: But that is the zoning, and the Plan has been taken into consideration with those figures?

MR. TUCKER: Yes, it has.

ASSEMBLYMAN BENNETT: That was my question. Okay.

ASSEMBLYMAN LESNIAK: Mr. Morford?

J A M E S M O R F O R D: Thank you Mr. Chairman. I am James Morford, Director of Governmental Relations for the New Jersey State Chamber of Commerce.

Nearly a year ago, on June 18 of 1982, the State Chamber presented to your Committee a short statement regarding two Assembly Concurrent Resolutions which were directed to the long-standing and, as yet, unresolved problem of the ownership of certain lands deemed to be riparian.

One of these resolutions, ACR-116, sought, unsuccessfully, to minimize the adverse impact upon property owners whose land titles have been under a cloud of doubt ever since the court ruling in the early 1960's altered the long accepted concept of what constituted riparian land.

In the years following that decision, the State Chamber supported legislative moves to redefine the term "riparian lands" as being what it had always been accepted as being, prior to the decision. Those legislative moves never came to fruition, and the cloud of doubt regarding title to vast acreages in all but a few counties remains to this day.

Aside from the direct impact upon the owners of affected properties, the Chamber has been concerned with a broader aspect of the problem. As long as clear title cannot be obtained for such

substantial amounts of land in New Jersey, word inevitably circulates in the world of business that New Jersey is not an advisable place to make real property investments. We recognize that most lands subject to this title question are either recreational or residential -- not business property. But such a distinction is not often made in corporate offices elsewhere in the nation when new facilities are being planned.

In essence, this long-standing failure to fairly resolve the riparian lands title problem continues to work against the best economic interests of our State.

Assembly Concurrent Resolution 3022, while not a final answer to the problem, offers, in our view, a relatively attractive alternative for adversely affected property owners. Because voters last November defeated the proposal to permit such owners to purchase riparian grants from the State at less than fair market value, that question, obviously, immediately can be brought before the voters.

ACR-3022, however, opens the way for at least some affected property owners to be free to sell or transfer their properties despite the cloud of a potential State riparian claim. By authorizing the State to lease such lands to the owner at less than fair market value, such owner may -- for what promises to be a moderate annual rental fee -- gain the ability to sell or transfer the property without concern for whatever claim the State may eventually assert under the current definition of "riparian lands."

Because the rental fees would, under ACR-3022, go directly to the Fund for Free Public Schools -- as riparian grant sales moneys do now by constitutional requirement -- the Fund, in our view, would not be jeopardized by the leasing proposal.

We note that the present annual needs of the Fund, a sum in the neighborhood of \$3.5 million, is virtually identical to present interest earnings of the Fund.

It has been suggested -- and the State Chamber supports the suggestion -- that these Fund earnings should be allowed to remain in the Fund rather than, as now, being turned over to the General Treasury. The amount involved is small with respect to the annual



State budget, but it would be of substantial help in supporting the Fund and, at the same time, lowering the collective obligation to the Fund to be raised by riparian leases.

During the course of review of ACR-3022 by the members of the Chamber's Economic Development Advisory Committee, some questions arose regarding implementation of the leasing program, assuming that voters give the authority to the Legislature to do so. Those questions relate to matters such as the stability of rent levels; the relative fairness of bases for calculating specific rental fees -- by acreage or by land usage; retention of an owner's right to subsequently purchase land under lease; assurance that leases will be in perpetuity; and the impact of the administrative costs which will have to be borne by the School Fund.

We expect that such questions will be addressed when, and if, implementing legislation for the plan is developed. Perhaps the suggestion was well taken, if possible, that implementing legislation be developed to go as a companion with this.

In summary, ACR-3022 is an innovative, partial response to a long-standing problem that needs to be resolved. It does not preclude subsequent moves to settle the riparian lands ownership question by legislation or by constitutional amendment.

But, we believe it will be welcomed as an important new option by many property owners.

We thank you, Mr. Chairman.

ASSEMBLYMAN LESNIAK: Thank you, Jim. Jim, I will be looking, as I often do, for the Chamber's help on the enabling legislation itself.

MR. MORFORD: Fine. We will be happy to, particularly through that Committee, and I know that they have met with you in the past.

ASSEMBLYMAN LESNIAK: Are there any questions from the Committee? (no response) Thank you very much.

MR. MORFORD: Thank you.

ASSEMBLYMAN LESNIAK: Now we will hear from John Weingart from DEP.



J O H N W E I N G A R T: Thank you. I am John Weingart, still Acting Director of the Division of Coastal Resources. The Division of Coastal Resources serves as the staff to the Tidelands Resource Council. I am here to speak in opposition to the resolution, largely because I think it is unworkable, and to a second extent because I think the Tidelands situation is getting better than it is publicly perceived. I think one of the problems facing DEP is how to alter that perception.

The problem is, that we have no records that would give a valid basis for determining how many acres of riparian lands claimed by the State, ungranted by the State in the past, into which you could divide the \$2.4 million a year that the School Fund needs -- or whatever that amount is -- to come up with a cost per acre.

The records that have been kept for the past 100 years on this issue are not good. I don't say that proudly, but it is just a reality. We have records for each piece of property in which someone has asked for a riparian grant or license in the past.

Often the maps in 1900, for example, that were submitted were drawn by hand. The council or its predecessor may have amended the map or the grant in 1930, using a map of a different scale, but the maps often don't correlate. The problem for any individual site in determining exactly how much area the State currently claims is massive.

A distinction needs to be made between the maps that the Tidelands Council has adopted with such fanfare over the last year -- those are the claim maps. They show the area in which the State can legitimately claim areas now which were formally flowed by the tide. They don't show areas in which the State gave up its claims through some previous grant or license. What is needed to show that are conveyance maps, which would be overlayed on top of the claims maps, and the difference between the two, which show the areas in which the State still has valid claims. That is going to be a significantly lesser area than is shown on the claims maps that created all of the fear.



We have asked the Treasurer's Officer for permission to use some of the money from the School Fund to prepare these conveyance maps and to "digitize" them on computers, so that we would be able to come up with the kinds of calculations that would be necessary to determine what real costs we would need per acre and how many acres there are. That is a time-consuming process. We are close to getting the Treasurer's approval, but it is really going to be a five-year process once we get that approval, before we would have the kind of information that we don't have today. We would have it perhaps for one or two counties in the interim step and be in much better shape to deal with the implications of this.

The other part of this that seems difficult to me is, Tidelands people want to do something with their land. The people come to the Council and say, "I want to get a grant or a license for my land." That is 75 to 100 people a year, and then they get a grant or a license. We have no records showing the names and addresses of every landowner of potentially riparian land, and we would have to generate that in order to send them the bills for their licenses or their leases under this proposal.

That would mean, you would be directly involving probably thousands of people against whom there is a riparian claim on their land, but who now live perhaps in apprehension, but a large extent are uninvolved with the process. When they go to sell their land, they will have clouds on their titles and they will have legitimate problems.

ASSEMBLYMAN LESNIAK: If I may?

MR. WEINGART: Sure.

ASSEMBLYMAN LESNIAK: My intent would be, in our enabling legislation-- Basically, I think right now we are just putting heads in the sand. It is not just apprehension when people want to sell their homes or when their heirs want to inherit their homes and then oftentimes sell them off, that they find that there is a substantial claim against it. I think this legislation can be implemented in a way different from the way that you expressed it, but setting a fixed rate -- for instance, \$350.00 an acre, which would amount to about \$50.00



for the average building. And then, by dedicating the interest from the School Fund back to the School Fund, to the extent that rental does not generate the \$3.5 million, we would accomplish two things: Those people who want to sell their homes would be able to, very easily, by just executing this perpetual, assignable lease, and in effect, clear their property. At the same time, DEP, only to the extent that they want to stop the interest in the Fund from going to the School Fund, as opposed to general revenues, can act in their own leisurely manner. So I hope that you do not oppose me on this; if we generate some enabling legislation, I think we can take a large part of the burden away, and at the same time, I don't think you can put your head in the sand and say that there is no problem.

MR. WEINGART: Oh no. I don't mean to do that. I would be happy to work with you on the enabling legislation.

ASSEMBLYMAN SMITH: Mr. Chairman, may I ask a question along that same line?

ASSEMBLYMAN LESNIAK: Yes.

ASSEMBLYMAN SMITH: Where do you get your funding for your mapping?

MR. WEINGART: The receipts that are generated come out of the School Fund.

ASSEMBLYMAN SMITH: This was something that I think was unclear to many people. I was enlightened to that fact when we went through this the last time. You also mentioned this additional mapping. Why can't the money come from the same area?

MR. WEINGART: It can. It requires approval from the Treasurer. That is what we are trying to get.

ASSEMBLYMAN SMITH: Okay. Is there anything you need legislatively to do that?

MR. WEINGART: If we are turned down by the Treasurer, there might be. We would come back for that.

ASSEMBLYMAN SMITH: Then I think that is an important thing to keep in mind because certainly you are moving ahead in a direction so people know, and you get the right number of acres or the right number of square feet, or whatever necessary, to get your leases or sales, or whatever you need.



MR. WEINGART: It would also lead to making quicker decisions, which would help too.

ASSEMBLYMAN SMITH: Right.

ASSEMBLYMAN LESNIAK: There is also another problem.

ASSEMBLYMAN SMITH: I think we all stand ready to help in that direction.

ASSEMBLYMAN LESNIAK: There is also another problem that really hasn't materialized; that is, when people with claims on their properties stop paying property taxes. We are going to have a lot of mayors pounding on our doors. So, I really think that we ought to go forward with the enabling legislation, if this constitutional amendment would allow us to. I am confident. I am optimistic that we can take much of the administrative burden off of the Department in this regard.

MR. WEINGART: Can I make one more point?

ASSEMBLYMAN LESNIAK: Sure.

MR. WEINGART: Regarding the Attorney General's opinion -- the points made by Mr. Tucker about that-- That opinion has been floating around for a number of years, and it is written in the Riparian Rights Handbook. It has been the opinion-- The Tidelands Council--

ASSEMBLYMAN LESNIAK: (interrupting) You're not talking about the latest opinion?

MR. WEINGART: I am talking about his opinion on fair market value that came out, I guess, in March, saying that the Council--

ASSEMBLYMAN LESNIAK: (interrupting) Oh, you are talking about that.

MR. WEINGART: I am talking about that, yes. Saying that the Council can charge less than fair market value and take it by taking into account good-faith efforts to improve the land. Mr. Tucker said that--

ASSEMBLYMAN LESNIAK: (interrupting) And also does not have to include any improvements.

MR. WEINGART: Right. That's right.

ASSEMBLYMAN LESNIAK: That opinion has been what?



MR. WEINGART: That opinion was-- Mr. Tucker said that opinion was in the Riparian Rights Handbook.

ASSEMBLYMAN LESNIAK: No, he didn't. He didn't say that.

MR. WEINGART: No, there was reference to that ability by the Council to be able to do that, as I understand him.

ASSEMBLYMAN LESNIAK: There was a reference to the Riparian Rights Handbook concerning payment of property taxes.

MR. WEINGART: Right. As an indication of good-faith.

ASSEMBLYMAN LESNIAK: And not to include the structure.

MR. WEINGART: Right. But that reference, which was more limited than the Attorney General's opinion, was something that the Tidelands Council was unwilling to use outside of the Hackensack Meadowlands. So, the Attorney General's opinion does change the attitude of the Tidelands Council, because they -- just last week -- applied it to their first case outside of the Meadowlands, based on the authority they have gotten from the Tidelands Council. The estimates by the Council and the DAG assigned to the Council is that that can lower the assessment for property to 80%. There are still going to be some hardship cases.

ASSEMBLYMAN LESNIAK: What account?

MR. WEINGART: Taking into account good-faith improvements on the land.

ASSEMBLYMAN LESNIAK: I'm sure it can.

MR. WEINGART: Right.

ASSEMBLYMAN LESNIAK: I don't know whether or not it can be appealed though, but I am sure it can.

MR. WEINGART: Well, that's the question. But, I think it is noteworthy, that the opinion was signed by the Attorney General himself, which is rare, and there hasn't been an action yet to challenge it, so we don't know that yet.

ASSEMBLYMAN LESNIAK: You call it noteworthy; I call it foolhardy. I just don't see, quite frankly, that there is any basis in law for it. That will be decided by people other than--

MR. WEINGART: (interrupting) That's true.

ASSEMBLYMAN LESNIAK: (continuing) --those wearing black robes, nine of them or seven of them.

MR. WEINGART: This is certainly true. And if it stood, the question is whether there would be a need for the referendum.

The other point I wanted to make is that, one that does not say that there should or should not be legislation, but that the Tidelands Council is a vastly different body than it was a year ago, and there have been new appointees to the Council. It is a much more responsible body in that one of the worst things that used to go on was, there used to be delays just because the Council couldn't get a quorum for meetings. It now has a group of people who I think are really dedicated to trying to solve this problem, who recognize the problems that are involved with this. Applications are being processed much more quickly, and I think with a much greater sense of equity than they may have been in the past. That is an improvement that is hard to quantify, but it is real.

I would be happy to work with you on enabling legislation, but I do see -- as I understand the legislation -- real problems in our being able to implement it in a way to generate the kind of revenue that the School Fund needs.

ASSEMBLYMAN LESNIAK: Thank you. Is there anyone else to testify at this time?

ASSEMBLYMAN BENNETT: John, would it be possible, at the next public hearing, the formal public hearing, to have a member of the Tidelands Council present?

MR. WEINGART: Certainly. The Chairman?

ASSEMBLYMAN BENNETT: Well, it depends on what their schedules are.

CHARLES CAVANAUGH: My name is Charles Cavanaugh. I am a licensed real estate broker with offices in Margate, New Jersey. I would like to thank the Assembly Agriculture and Environment Committee for the opportunity to appear before you today to present the position of the New Jersey Association of Realtors on Assembly Concurrent Resolution 3022.

As Chairman of the Realtors Association's Riparian Land Committee, what I say today represents the official position of the 16,000 members of the New Jersey Association of Realtors. But, before



I begin, I would like to commend the sponsor of the resolution for the enormous amount of time which he has spent in the past 18 months in order to resolve the problems facing the thousands of property owners, who find the State claiming all or a portion of their property as a result of the riparian lands doctrine.

Despite what we feel has been a good-faith effort on the part of Assemblyman Lesniak, the New Jersey Association of Realtors is opposed to the concept embodied in ACR-3022; namely, the leasing of lands to their owners -- at less than fair market values.

Many who are familiar with NJR's position in support of the 1982 riparian lands question will look upon our opposition to ACR-3022 as being inconsistent with our past policy. Nothing can be further from the truth.

ASSEMBLYMAN LESNIAK: Can I ask a question?

MR. CAVANAUGH: Surely.

ASSEMBLYMAN LESNIAK: What was your position on the first constitutional amendment?

MR. CAVANAUGH: We have supported it--

ASSEMBLYMAN LESNIAK: (interrupting) In the past.

MR. CAVANAUGH: We supported the one in the past; we supported the one that failed last year. So, we are batting 500 at this time.

ASSEMBLYMAN LESNIAK: We are batting zero for supporting the first one. If that didn't happen in the past, I don't think we would be having all of these problems.

MR. CAVANAUGH: I think there would still be the question--

ASSEMBLYMAN LESNIAK: (interrupting) It would still be the question, but we wouldn't have the serious problems and we would have some time--

MR. CAVANAUGH: (interrupting) I think there would not be the gut fear on the part of the property owners.

ASSEMBLYMAN LESNIAK: I think you would see a lot more transactions taking place, too. It never was a problem before, until the maps were filed.



MR. CAVANAUGH: It came to be a problem when the title companies began to put exceptions into their title insurance policies, which reserved the rights of the State as to the riparian claims. And, when the owners couldn't resolve them, they couldn't go to settlement. That is when the problem was resolved, and frankly, Assemblyman, I think that is when you became concerned with the ability of your constituents to transfer title to their lands.

The proposal in 1982 was a solution, though while not perfect, because it didn't treat all forms of property equally, it did give the owners an opportunity, for a nominal fee, to purchase their property. I might paranthetically express that we find it a little bit of a contradiction in an owner having to purchase his property, but, it did give them an opportunity for a nominal fee, I would say, to clear up the title to their property.

ASSEMBLYMAN LESNIAK: All right. Let's get the terminology straight. You are talking about record owner. I was talking about holder of--

MR. CAVANAUGH: (interrupting) Yes, sir. Record owner. Correct. That opens another door, but I won't touch on that at this time.

Since January, the New Jersey Association of Realtors has attended a number of meetings, at which the riparian lands problem has been discussed. We participated in discussions which eventually led to the bill under consideration today. The more NJAR heard about this proposal -- the proposal to offer a long-term lease or leases in perpetuity -- the more we became concerned about the tremendous number of new problems that would be created as we attempted to solve the other problems. Our Association feels that the (inaudible) gap solutions in ACR-3022 do not outweigh the problems, and thus, our opposition to this bill.

Let us look at what NJAR believes to be the real issues. First, we have the financial stability of the State School Fund, which is the vehicle that provides the security for the bonds of local school districts. This Fund is required to have a reserve of 1-1/2% of the nominal value of school bonds to be maintained within the Fund as a



quarantee of security against default by the local school districts.

Second, we have the property rights of tens of thousands of real property owners in 17 of our 21 counties.

The New Jersey Association of Realtors would like to be more specific; however, when you consider that perhaps as many as 250,000 acres are involved, it is not possible at this time to hazard more than a guess at the correct number.

Those within the Department of Environmental Protection -- as I think the prior witness mentioned -- who should know the answer are equally in the dark. They don't have the records available to them as to whom the property owners are or what properties are involved.

The issues are not difficult to understand, and NJAR feels that these solutions should be equally easier to bring into focus. Let us, for a moment, review the basic problems we see in ACR-3022.

First, the bill calls for the Legislature--

ASSEMBLYMAN LESNIAK: (interrupting) Can I just ask you another question?

MR. CAVANAUGH: Sure.

ASSEMBLYMAN LESNIAK: Would you prefer the status quo?

MR. CAVANAUGH: No.

ASSEMBLYMAN LESNIAK: Are you going to offer an alternative?

MR. CAVANAUGH: Yes. I think it would be rather irresponsible not to.

First, the bill calls for the Legislature to set criteria by which the rental shall be fixed for a lease on any lands subject to riparian claims. The lease may be less than the State fair market value; however, the annual revenues derived from the rentals shall be adequate in the judgment of the trustees to the School Fund to maintain the fund at a level which will carry out the public purpose of the Fund.

Yes, the administrative cost of any program established shall be borne by the School Fund. What, in effect, does ACR-3022 really do? Well, it will allow the Legislature to set the criteria or fees for the lease of riparian lands despite the fact that no one in State government can guesstimate the amount of property or the interest that



the State now claims. If we don't know the number of acres involved, and we don't know who the property owners are, how can a reasonable fee be established at this time?

ASSEMBLYMAN LESNIAK: I thought I suggested one a while back.

MR. CAVANAUGH: What was that, sir?

ASSEMBLYMAN LESNIAK: That we take a nominal figure, that of \$350.00 an acre, which is based on a guess. It is not a total "in the dark" guess, but it is a guess.

MR. CAVANAUGH: Was this the figure which was in Senator Dickinson's study?

ASSEMBLYMAN LESNIAK: Right. I'm talking in terms of enabling legislation, in that we dedicate the interest from the Fund to make up any difference.

MR. CAVANAUGH: That is embodied in the balance of my testimony; part of that is embodied in the balance of my testimony.

Gentlemen, we feel that what ACR-3022 proposes could be a nightmare. Would the leases that are granted have the same fee and perpetuity, or will they be adjusted as the need arises? That is the question.

ASSEMBLYMAN LESNIAK: Excuse me?

MR. CAVANAUGH: Will the fee which is established, a nominal fee, which you proposed--?

ASSEMBLYMAN LESNIAK: (interrupting) That's why, quite frankly, I was hoping that at least your Association would give us a chance to draft some enabling legislation before you closed the door on us. I see your testimony, quite frankly, as just not keeping the door open in terms of that. As I correct in that assumption?

MR. CAVANAUGH: No. No, sir.

ASSEMBLYMAN CAVANAUGH: You are giving me an impression.

MR. CAVANAUGH: No. I am not trying to. I have to say that sitting here in the room -- I know that you have worked on this in the past -- I am impressed by your empathy for the property owners and your compassion for the people who weren't able to transfer title to the property which they inherited or purchased.



ASSEMBLYMAN LESNIAK: I would feel a lot better if you said that you are not closing the door concerning this constitutional amendment if the enabling legislation can answer the problems that you are eliciting now.

MR. CAVANAUGH: Well, we feel that these questions must be addressed before, and not after, the public is requested to vote in November.

ASSEMBLYMAN LESNIAK: Okay. But, if they are, will you at least reassess your position? I'm not saying change it.

MR. CAVANAUGH: Certainly. I'm not saying we will change our position, but we will certainly take another look at our position if all of the questions which have been--

ASSEMBLYMAN LESNIAK: (interrupting) Well, that is very important to me, in terms of what I do in the next month or so.

MR. CAVANAUGH: Well, as I said, we feel that these questions should be answered before and not after the public is asked to vote.

ASSEMBLYMAN LESNIAK: I agree.

MR. CAVANAUGH: In addition to the problems above, the Tidelands Resources Council has no idea -- as you have heard Mr. Weingart say -- as to who the property owners are now and how to reach them.

Finally, NJAR feels that ACR-3022, in permitting the cost to administer this bill to be borne by the Free school-- To allow this Free School Fund to bear the cost of this, we feel, would be irresponsible. In fact, we don't have the slightest idea of how much we are talking about in terms of money.

We would point out further what a problem--

ASSEMBLYMAN LESNIAK: What I would like you to do is, don't hold back.

MR. CAVANAUGH: I'm not. (laughter) We have known each other long enough for you to know that I am not.

We would further like to point out that the problem, as seen by the real estate professionals-- One point we would like to make is, it would be irresponsible to come before you today to merely criticize and not put forth an alternative to the proposed resolution.



Therefore, let me detail -- I changed some of the details as I sat and listened to the other people testify earlier -- a program which NJAR feels is equitable to all concerned and yet is not an administrative nightmare.

We have been led to believe that this Free School Fund to meet its mandate must have a reserve of 1-1/2% of the value of outstanding school bonds as a guarantee of security against default by one of our local school districts. Informed sources, such as former Senator Dickinson, indicate that the new revenue of between \$3.5 million and \$4 million must be generated by the School Fund each year to maintain the necessary reserve.

NJAR suggests that the \$3.5 million to \$4 million could be achieved at the present time, if the interest on the present \$38 million to \$40 million which is in the Fund, stays with the Fund and isn't siphoned off to the General Treasury to balance the State budget. I think we are somewhat in agreement there.

ASSEMBLYMAN LESNIAK: Yes, we are, but we will still need a constitutional amendment.

MR. CAVANAUGH: We understand that. Yes. Therefore, we urge this Committee to sponsor legislation that would amend the Constitution to dedicate all of the interest on the moneys of the Free School Fund back to the School Fund. With just a modest compounding, the moneys generated will far exceed the lease program in ACR-3022, and the administrative cost which ACR-3022 mandates will be paid out of the School Fund.

The problem would be solved insofar as the revenue needs of the School Fund are concerned, to meet the separate obligations of the School Fund, thus freeing the State to adopt a more realistic program to clear up the title problems created by the "formerly flowed-by-mean high tides" doctrine forced on us by the courts of the 1960's.

NJAR believes that a major step in this direction was taken when Attorney General Kimmelman, in his Opinion #3, which he issued back in March, stated that the Tidelands Resources Council has the discretion to grant the State's interest in Tidelands upon which improvements have been made in good faith by the record owner, under



color of title for a price based upon a reasonable estimate of the fair market value of the State's interest without such improvements.

It is also our opinion that the price set by the Council for a grant in the State's interest, where the State's claim to record title is in dispute, may be adjusted to reflect an evaluation of the State's ability to successfully establish the claim of ownership.

ASSEMBLYMAN LESNIAK: I agree with that.

MR. CAVANAUGH: I would hope that--

ASSEMBLYMAN LESNIAK: (interrupting) The second part.

MR. CAVANAUGH: The Attorney General's opinion, when adopted, will be an operating procedure where the simple procedure of the grant process should open the door for property owners to clear their titles for a nominal fee. The funds which would be generated for the School Fund--

ASSEMBLYMAN LESNIAK: (interrupting) Excuse me. I'm sorry. For a nominal fee?

MR. CAVANAUGH: Yes. Just to give you an example: There is approximately \$38 million to \$40 million in the Fund now. If there are, say, 250,000 acres -- one of the figures which has been mentioned--

ASSEMBLYMAN LESNIAK: (interrupting) Are you saying that the Attorney General's opinion will give the Tidelands Council the ability to clear title for a nominal fee?

MR. CAVANAUGH: We think it could be done for a nominal fee.

ASSEMBLYMAN LESNIAK: How--?

MR. CAVANAUGH: How nominal?

ASSEMBLYMAN LESNIAK: Yes. We had an estimate of 80% before.

MR. CAVANAUGH: Eighty percent for what?

ASSEMBLYMAN LESNIAK: For one case. What was the fair market value of that?

MR. WEINGART: It could be updated. The one case, the Tidelands Council has--

ASSEMBLYMAN LESNIAK: (interrupting) Up to 80%.

MR. WEINGART: Yes. One case in which the Tidelands Council has used the Attorney General's opinion was not nominal. They knocked the price down from \$45,000 to \$13,000. That's not nominal.



ASSEMBLYMAN LESNIAK: That's not a nominal fee. We feel that it is a lot of money, \$13,000, for property that you have already paid for.

MR. WEINGART: That is not the case of a homeowner.

MR. CAVANAUGH: To finish giving my example, if there are 250,000 acres out there, subject to the State's claim, and if we were to have the interest on the Fund rededicated back into the Fund, and then we were able to get legislation passed which would allow the property owner to get clear title to his property for a nominal fee -- I'm just going to pick a figure say, \$100.00 an acre, that he would get title -- that would generate another \$25 million immediately. Add that to the existing \$40 million in the Fund, and at \$65 million in the Fund, if you just compound that at a very simple 8% interest rate, and if anyone has any question that we can get rid of \$65 million at 8%, I can assure you that the realtors in New Jersey will find people wanting to buy mortgages at that price.

But, in any event, that would generate somewhat in excess of \$4.8 million, more than enough estimated to keep this Fund solid.

At this time, based upon our dialogue here--

ASSEMBLYMAN LESNIAK: (interrupting) Don't proceed. I have a thought that I want to run by you. One concern I would have-- That sounds attractive at first, but one concern I would have, though, would be that to a great extent, we have to be careful not to reward people who are wrongdoers.

MR. CAVANAUGH: We know this. We are talking about the people who purchased a home 15, 18 years ago. I might state that a lot of testimony indicates how a lot of people feel, that the Tidelands and riparian lands are simply lands that are along the coast. That is just not so. There are many inland properties.

ASSEMBLYMAN LESNIAK: In Elizabeth.

MR. CAVANAUGH: That's right.

ASSEMBLYMAN LESNIAK: We couldn't just, by constitutional amendment, dedicate the funds. That wouldn't solve anything but give the Fund more money.

MR. CAVANAUGH: That's right.

ASSEMBLYMAN LESNIAK: You have to go beyond that.



MR. CAVANAUGH: That's right. And it may be then the opposition to changing in order to allow them to sell at fair market value which would moderate their position. In other words, to Save the School Fund.

Frankly, we have as much concern--

ASSEMBLYMAN LESNIAK: (interrupting) I think they have moderated their position, but not enough to satisfy them.

MR. CAVANAUGH: That's correct. We have as much concern with saving the School Fund as they do. We just don't think the School Fund should be saved at the expense of a few property owners throughout the State. Many of the people have lived in their homes and now discover that because some tidal creek ran under their land back in 1870, they don't own the property on which their house sits, which maybe they were born in or they inherited from their parents, or they bought in 1944.

ASSEMBLYMAN LESNIAK: How would the Governor feel about dedicating this interest in the School Fund?

MEMBER OF AUDIENCE: I think you could have a very interesting conversation about that.

ASSEMBLYMAN LESNIAK: Okay.

MR. CAVANAUGH: We also have a question on the effect of the tax rules in a municipality. If I have to approach somebody who is going to sell his land, and tell him that he has to enter into a lease in perpetuity with the State for \$50.00 or \$100.00, I think the buyer of that, realizing that he is going to have to pay rent, may elect to take some steps to avoid paying his taxes.

ASSEMBLYMAN LESNIAK: It was our intent, in terms of enabling legislation, to require that they continue to pay off the property.

MR. CAVANAUGH: Well, I think you will find people who would question the fact they had to pay taxes to municipalities-- I will use Elizabeth.

ASSEMBLYMAN LESNIAK: They may question it, but they will still have to pay it.

MR. CAVANAUGH: They may, and then there may be the men in the robes whom you spoke of earlier.

ASSEMBLYMAN LESNIAK: No, no. There is nothing wrong with it as a part of the lease provision requirement.



MR. CAVANAUGH: It is still a question which has arisen in many minds.

ASSEMBLYMAN LESNIAK: Sure.

MR. CAVANAUGH: We feel that possibly -- I'm not saying definitely -- if all of these questions were satisfactorily answered, we might moderate our position.

But, at this time, in conclusion, we would like to urge that the Committee reject ACR-3021, and not release the bill.

ASSEMBLYMAN LESNIAK: We have already released it.

ASSEMBLYMAN SMITH: You have to release it to have a public hearing.

MR. CAVANAUGH: I guess that our next step would be to urge--

ASSEMBLYMAN LESNIAK: (interrupting) That's not to say it can't be amended on the floor or recommitted to this body. My mind is never closed to any suggestions.

MR. CAVANAUGH: In general, I think you get the thrust. We want to resolve the same problem you want to resolve. We have more concern, as realtors, with the property owners in the State than we have-- I'm not saying we have no concern. We have a deep concern for the Free School Fund. We have children who attend schools.

ASSEMBLYMAN LESNIAK: I just want to make clear to you that these interests have to be balanced by the mere fact of the voters speaking out last November, showing that any solution that does not maintain the integrity of the School Fund is not going to flow.

MR. CAVANAUGH: We are aware of that.

ASSEMBLYMAN SMITH: You want attractive bond ratings in an attractive community, as far as you are concerned.

MR. CAVANAUGH: That's right. I live in a very attractive community because it has a very attractive bond rating.

In conclusion, I would like to say that we stand behind you to help you accomplish the goals of what we are both trying to accomplish. We just don't feel that a lease in perpetuity, with the questions which have yet to be answered, will resolve this now. I would like to, again, thank you for the opportunity.



ASSEMBLYMAN LESNIAK: I thank you for your help. I recognize that questions do have to be answered. We intend to answer them, and work hard in that regard to arrive at a "final solution," hopefully, as best as possible.

MR. CAVANAUGH: Fine. Thank you.

ASSEMBLYMAN LESNIAK: Thank you. Is there anyone else? (no response) This public hearing is now closed.

(HEARING CONCLUDED)



A P P E N D I X

to

ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE HEARING

on

ACR-3022

Held:
July 11, 1983
State House Annex
Trenton, New Jersey

* * * * *



I N D E X

Opening Statement
submitted by
Senator Raymond J. Lesniak

Statement and Supporting Materials
submitted by Jack Tucker
Save The School Fund, Inc.

Statement submitted by
William Halsey
New Jersey State Chamber of Commerce

Letter submitted by
Philip J. Cocuzza, CAE
Executive Vice President

* * * * *





New Jersey Senate

TRENTON

OPENING STATEMENT

Submitted by

SENATOR RAYMOND J. LESNIAK

before the

ASSEMBLY
AGRICULTURE AND ENVIRONMENT
COMMITTEE

Trenton, New Jersey

July 11, 1983

I wish to thank the Committee and its Chairman, Bob Hollenbeck, for having a public hearing today to give the legislature an opportunity to address a perplexing and complicated problem effecting tens of thousands of New Jersey residents -- riparian claims.

By this time, I know that the Committee is familiar with the issue of riparian claims and its relationship to the fund for the support of free public schools. I will, therefore, just briefly outline ACR-3022 and summarize its intent and the need for its approval by the legislature and the voters of the State of New Jersey.

Last year, the legislature passed a proposed Constitutional amendment designed to give the legislature statutory authority to establish criteria whereby good-faith purchases of property by those persons who have been paying property taxes and have been making improvements on their property and who have only recently discovered that they are subject to the state's riparian claims (and, some property owners are still not aware that the State of New Jersey has laid claim to all or part of their property,) may clear title to their property for a fair and reasonable sum of money without the current restraints of having to again pay fair-market value for property they had previously purchased.

Last year's proposed amendment failed for a myriad of reasons, but the most important reason for its disapproval by the voters of New Jersey was its failure to give adequate

protection to the preservation of the school fund.

The Constitutional amendment proposed today will guarantee that the school fund will continue to have sufficient monies available to serve as a source of school construction bonds -- the chief use of this fund -- by dedicating the interest from the fund back in to the fund rather than into the General Treasury: A sum in excess of \$3 million per year. This will break the nexus between riparian sales and the fund and thereby give the legislature the statutory authority it sought last year to enact enabling legislation to effectively deal with this problem, while also affording the school fund the protection it needs.

Now that I have made the intents of this legislation clear, I will leave the technical explanation of the proposal to Dick McManus, former counsel to Governor Byrne and currently counsel for the school fund. He has also assisted me on this proposal. However, I do want to state that it is urgent that we act now to pass ACR-3022 in order that the residents of New Jersey will likewise have the opportunity to act on this proposal expeditiously. Recent surveys and estimates project over 4000 homes are partially or entirely within the state riparian claim lines, while tens of thousands of other homeowners have riparian claims on the unimproved portions of their properties. These homeowners are unable to sell their property because of these claims and ultimately could lose ownership of their property that they legitimately paid for and have paid property taxes on. In addition, municipal

and county governments and boards of education currently have title to property which may actually be owned by the state. No fair remedy to this problem can be achieved without the approval of ACR-3022.

In closing, I would like to thank Senator Dickinson for his determined efforts not only to protect the school fund but also to ensure that property owners are not unfairly burdened. Together Senator Dickinson and I have drafted a proposal we feel will deal with both concerns in a fair and equitable manner. I trust this committee will agree.

Respectfully submitted,

Raymond J. Lesniak
Senator, District 20

SAVE THE SCHOOL FUND

A Committee of Concerned Citizens Dedicated to Preserving Riparian Revenues for New Jersey Schools

Fairleigh S. Dickinson, Jr.
Chairman
Edgewood

TESTIMONY ON BEHALF OF
FAIRLEIGH S. DICKINSON, JR. AND
SAVE THE SCHOOL FUND, INC.
CONCERNING ACR-3022
JULY 11, 1983

My name is Jack Tucker and I am here today to testify on behalf of former Senator Fairleigh S. Dickinson, Jr., Chairman of SAVE THE SCHOOL FUND, INC., A Committee of Concerned Citizens Dedicated to Preserving Riparian Revenues for New Jersey Schools. Senator Dickinson very much wanted to appear personally before this committee unfortunately, he had to be in New England today and asked that I appear to express his views and the views of our organization on the proposed constitutional amendment as set forth in ACR-3022 committee substitute.

We testified at length on the original ACR-3022 and provided detailed information as to the needs of the school fund. We strongly support the present bill and are testifying today on its behalf. For the record, I'd like to enter a few facts concerning school needs, but will not go into detail as we previously did.

I think our goals are clear to all of you. As our name implies, we are concerned with the perpetuation of the Fund for the Support of Free Public Schools and the protection of its constitutionally-pledged assets so that the fund will continue to grow at a rate necessary to assure its financial soundness.

As you know, New Jersey statutes require that a reserve of 1-1/2% of the nominal value of school bonds be maintained within the School Fund as a guarantee of security against default by outstanding local school bonds. This means that virtually all school bonds in the state have a AA rating, making them more easily marketable and at lower cost to taxpayers.

To determine the level of income needed to assure that there will be sufficient money in the School Fund to guarantee future bonds, we commissioned Dr. Stan Willis, Professor and former Chairman of the Economics Department of Columbia University, to prepare a 17-year analysis of school needs. Before reviewing those findings, it should be noted that in the decade of the 70's, New Jersey's capital expenditures for public schools were 69% below the national average. This was due in large part to a school building boom in the 1950's and 60's that resulted

in a large stock of useable school buildings. This stock can be expected to depreciate in the next decade. Combined with a need for schools in growth areas of the state, this will spur an increase in bond issues during the latter part of the century.

Here are the key findings of Dr. Willisz's study:

- . Between 1982 and the year 2000 New Jersey's public school population will increase by 19.9%. School population will increase in 19 counties and decrease in two (Hudson and Essex). Population will increase considerably in Cape May (101%), Ocean (70.1%) and Atlantic (66.6%).
- . This population will require 465,700 new school spaces at a current price cost of \$2.7 billion.
- . By the year 2000 it is estimated that the volume of outstanding school bonds will have grown from \$1.6 billion in 1985 to \$4.4 billion.
- . The school fund, in order to continue to provide the 1.5% reserve in the year 2000, will need to grow to a minimum of \$65 million.
- . This means that the fund will have to increase at the minimum rate of \$2.4 million a year between 1983 and the year 2000.

We feel that the proposed constitutional amendment guarantees that the fund will have the necessary revenues to assure its financial soundness until the year 2000.

We also feel that the provisions for enlarging the board of trustees, including public members, and the requirement for annual certification of the needs of the fund, are positive safeguards for further assuring that the fund remains financially sound.

We salute the efforts of Senator Lesniak, members of this Committee, others of your colleagues, the Administration and various trade and public interest groups, in developing this constitutional amendment as a first step in arriving at a reasonable and workable solution to the riparian question that has troubled this state.

The interpretive statement notes that this amendment "would establish the separation of the fund from reliance on the sale of riparian lands for its support." The

committee statement of May 26 reaffirms that the breaking of the nexus "proposes to resolve the issue." We think it will also. The public gains by having the guarantee that the school fund will be financially sound and can be depended upon to guarantee bonds and thereby help to contain the cost of school construction. The breaking of the nexus also means that the complication of having riparian revenues pledged as assets of the fund is eliminated, thus making it easier for the Legislature and the Administration to institute the meaningful reform in riparian statutes that many people feel is needed to remove the title cloud which is proving worrisome to many small homeowners. We are quite sympathetic to the concerns on this question expressed by Senator Lesniak and Senator Gormley, and others, and encourage their efforts to enact responsible legislation that will enable homeowners to fairly and expeditiously obtain clear title to their homes. We see the development of such legislation as a companion to this constitutional amendment in arriving at a just solution to the riparian question.

In the course of developing this legislation, we remain confident that the Legislature will continue to be sensitive to the protection of the environment and the preservation of wetlands which are so important to New Jerseyans.

In conclusion, we strongly support this proposed constitutional amendment and urge its adoption.

Thank you.

1235N

ESTIMATED RESERVE REQUIREMENTS FOR THE FUND FOR THE SUPPORT OF FREE PUBLIC SCHOOLS

Year	Change in NJ School Population (1980 = 100)	New School Spaces Required	Cost at Current Price (\$millions)	Estimated Volume of School Bonds (\$millions)	Size of School Fund Needed to Provide 1½% Reserve (\$millions)	School Fund Growth Over 1983 (\$millions)
1980	100					
1985	94	28,600	\$ 42	\$1,600	\$24	\$ 0
1990	99	106,000	422	2,100	31	7
1995	113	210,900	1,221	3,300	49	25
2000	119	<u>120,200</u>	<u>1,021</u>	4,400	65	<u>41</u>
TOTALS		465,700	\$2,706			\$41
AVERAGE ANNUAL INCREASE IN SCHOOL FUND 1983-2000						\$2.4

SOURCE: SAVE THE SCHOOL FUND, INC., Rutherford, NJ

PROJECTED PUBLIC SCHOOL ATTENDANCE BY COUNTY

(ranked by by percentage growth 1982-2000)

<u>COUNTY</u>	<u>1982</u>	<u>1985</u>	<u>1990</u>	<u>1995</u>	<u>2000</u>	<u>PCT. GROWTH</u>
Cape May	11,700	15,000	17,400	21,300	23,500	101.0%
Ocean	60,200	69,100	78,200	93,000	102,400	70.1%
Atlantic	32,600	39,400	48,100	53,600	54,300	66.6%
Gloucester	37,500	34,700	39,600	48,400	54,000	44.0%
Sussex	24,400	22,100	25,500	30,300	34,300	40.6%
Somerset	32,300	29,600	32,300	39,000	43,100	33.4%
Hunterdon	17,600	16,000	17,600	20,800	22,600	28.4%
Morris	74,600	65,600	70,750	86,500	95,800	28.4%
Monmouth	89,100	81,200	85,900	104,600	112,700	26.5%
Bergen	119,000	119,100	122,200	140,200	150,300	26.3%
Burlington	66,500	60,300	64,800	76,300	84,000	26.3%
Mercer	46,500	46,300	49,200	55,600	58,500	25.8%
Middlesex	94,200	91,700	97,700	111,800	117,000	24.2%
Warren	16,100	16,200	17,300	19,400	19,600	21.7%
Cumberland	26,700	23,300	25,300	29,000	30,600	14.6%
Passaic	72,200	67,700	70,100	77,500	78,000	8.0%
Union	76,200	70,100	71,830	80,000	82,000	7.6%
Camden	82,900	72,800	76,800	86,500	88,700	7.0%
Salem	12,400	10,800	11,400	12,700	13,000	4.8%
Hudson	75,100	69,200	66,700	68,900	65,300	(13.0%)
Essex	136,900	113,300	111,200	116,800	114,400	(16.4%)
TOTAL	1,204,200	1,133,500	1,199,900	1,372,200	1,444,100	19.9%

Statement of the
New Jersey State Chamber of Commerce
before the
Assembly Committee on
Agriculture and Environment
Public Hearing ~~July 29~~ July 11, 1983
Regarding
Assembly Committee Substitute For
Assembly Concurrent Resolution No. 3022

#

Today's hearing marks the third time in little more than a year that the State Chamber has appeared before your committee in connection with the decades-old cloud of doubt that has surrounded riparian lands titles in New Jersey.

Your committee's substitute for Assembly Concurrent Resolution 3022, while seemingly concerned only with the constitutionally-dedicated Fund For The Support of Free Public Schools, is actually an important step toward resolving the complex, difficult and long-standing riparian lands title problem.

When we appeared before you on June 18 of last year, while Assembly Concurrent Resolutions 65 and 116 were under consideration we emphasized the following:

The concept of tideland property ownership rights in New Jersey was radically altered in the early 1960's in a court case known as "Sisselman vs Highway Department". In that decision, the definition of "riparian" land was broadened to encompass lands "ever flowed by tides". The court's addition of the word "ever" served to encompass innumerable additional parcels of land in many counties -- lands to which individual property owners had every reason to believe they held clear title and upon which they had paid property taxes for years -- even generations.

The Fund for the Support of Free Public Schools (which we will hereafter call simply "The Fund") entered this picture because it was and is supported by the sale of riparian land grants by the State. The Sisselman case decision, by greatly expanding the amount of land subject to ownership claim by the State, concurrently expanded the potential for income to The Fund.

It was not surprising, therefore, that those who were concerned with the welfare of public education in New Jersey opposed any effort to prevent The Fund from realizing this great new income potential.

You will recall that the referendum proposal of ACR 116 of 1982 would have amended the State Constitution to permit sale of riparian lands at less than fair market value for residential properties only.. That proposal was an attempt to help one class of property holder out of the ownership question precipitated by the Sisselman case.

Last month, on May 5, the State Chamber testified in support of the original ACR-3022 which sought to help all property owners caught in the bind of the ownership question. We supported that bill's concept of allowing such owners the right of long-term, less-than-market-value leasing of lands in question pending resolution of the State's potential claim upon their land. We recognized that this proposal was only a partial solution to the problem but it had the virtue of enabling owners to sell or transfer their land -- something that has been difficult and costly for them to do because, under the circumstances created by the Sisselman case, the title to their land is no longer clear.

The bill before you today represents a new and, in our view, constructive approach to the problem.

By providing, via constitutional referendum, that The Fund be authorized to retain the interest it earns each year (such earnings now go into the general treasury), the projected needs of The Fund can be met without significant dependency

upon the proceeds of riparian land grants sales. We understand this proposal is satisfactory to those concerned with the soundness of The Fund. And you may recall the State Chamber supported this concept in our testimony last month.

We must emphasize, however, that ACR-3022 Acs, by itself, will not resolve the problems long confronted by the owners of lands still subject to possible State ownership claims.

That aspect of the problem is addressed, however, by Senate Bill No. 1925 which is also before your committee and for which we urge your favorable support.

S-1925 would allow the sale of riparian grants to all affected property owners at less than fair market value subject only to certain environmental considerations. In fact, the bill specifically instructs the Tidelands Resource Council " . . . to take into account the actions of a claimant under color of title who in good faith made improvements or paid taxes, or both, on the lands in question".

It is important that S-1925 -- as well as ACR-3022 Acs -- receive favorable consideration. As we stressed in our statement to you last month, it is more than a matter of fairness to the property owners who have suffered for so long with ownership of their land under a cloud of doubt. As long as clear title cannot be assured for such substantial amounts of land in New Jersey (over 1,000 square miles in all but three or four counties, according to one estimate), word inevitably circulates in the world of business that New Jersey is not to be recommended as a place for real property investments of any kind. While it is impossible to assess the adverse economic impact of this unfortunate reputation, New Jersey's long-standing inability to clear up the riparian lands title question with fairness obviously works against the economic best interests of our State.

Before you now are the means to do so -- ACR-3022 Acs and Senate Bill 1925.

We hope you report them both out favorably for Assembly consideration.

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July 11, 1983

To the Members of the Assembly
Agriculture & Environmental Committee

RE: ACR-3022
S-1925

Gentlemen:

We would like to bring to your attention Assembly Concurrent Resolution No. 3022, the subject of a public hearing on July 11, 1983.

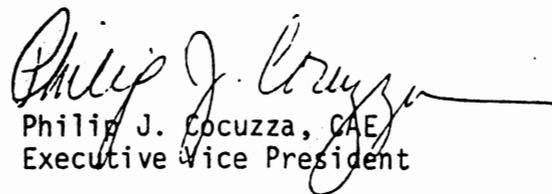
We encourage your full support of ACR-3022 in its effort to separate the Fund for the Support of Free Public Schools from its dependency on the sale of riparian grants. By retention of the Fund's own interest earnings, there would be no further need to mandate the sale of riparian grants at fair market value.

Separation of the Constitutionally-dedicated Fund from the State's General Treasury is in the best interest of the viable continuation of both programs. We only hope that strong support of the voter referendum will carry-out the purpose of ACR-3022 and bring to a resolution the long-standing controversy involving the riparian grant issue.

In conjunction with ACR-3022, we would also like to take this opportunity to voice our support for Senate Bill 1925. We feel passage of this bill is critical in that it would allow consideration of the value of land at the time of purchase and also improvements made by the current owner in determining "market value" for conveyance of clear title.

We therefore urge your support of both ACR-3022 and S-1925, and thank you for the opportunity to voice our concerns.

Very truly yours,


Philip J. Cocuzza, CAE
Executive Vice President

PJC:kt

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