

PUBLIC HEARING
before
ASSEMBLY LEGISLATIVE OVERSIGHT COMMITTEE

Held:
May 18, 1977
Freeholder Meeting Room
Middlesex County Administration Building
New Brunswick, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Martin A. Herman (Chairman)
Assemblyman Alan J. Karcher (Vice-Chairman)
Assemblyman William J. Maguire
Assemblyman Peter Shapiro

ALSO:

Steven B. Frakt, Research Associate
Legislative Services Agency
Committee Aide

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LEGISLATIVE OVERSIGHT COMMITTEE
before
SUBCOMMITTEE ON HEALTH

Re: 100-100000
May 18, 1977
Greenwich Meeting Room
Middlesex County Administration Building
New Brunswick, New Jersey

MEMBERS OF COMMITTEE PRESENT:
Assemblyman Martin A. Hansen (Chairman)
Assemblyman Alan J. Karcher (Vice-Chairman)
Assemblyman William J. Hughes
Assemblyman Peter Chapiro

Also:
Steven B. Frank, Research Associate
Legislative Services Agency
Committee Staff

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ASSEMBLYMAN MARTIN A. HERMAN (Chairman): I would like to welcome everyone and thank the Middlesex Board of Freeholders and Mr. McHugh, the County Administrator, for making this facility available. My name is Assemblyman Martin Herman. I am here with Assemblyman Karcher and Assemblyman Maguire.

This public hearing has been called to provide the Assembly Legislative Oversight Committee with public comment on the rule-making procedures of State agencies. The Committee has been studying this issue for several months and has already received a number of valuable comments and suggestions from interested parties who responded to a Committee questionnaire on the subject.

The questionnaire was distributed to all registered lobbyists and was given further distribution by the State Chamber of Commerce which reprinted it in a mailing to its members. We will be glad to supply a questionnaire to anyone who desires one. Please leave your address with the Committee staff. Mr. Frakt will be glad to oblige you.

The Committee has also sent a lengthy questionnaire to the Commissioner of every Executive Department in order to gather information on the formal and informal practices of State agencies in promulgating rules and responding to public concern over rules. We have to date received responses from all but one Department.

The objectives of the Committee study are threefold: to determine whether the Administrative Procedures Act has proven effective in fostering the adoption of rules in a consistent, uniform, open, fair, and understandable manner - and, I would certainly underscore the latter - "fair and understandable manner"; two, to determine whether the formal and informal rule-making procedures adequately promote public awareness and participation in rule-making procedure; and, three, to determine whether administrative rules accurately reflect legislative intent, and if they do not, what should be the legislative response, if any.

Our efforts are in response to the growing public concern that government has become unwieldy, unresponsive, and uncontrollable, and that government regulations intrude unnecessarily upon too many aspects of our lives. We do not exclude the Legislature's role in this study. We believe that both the Executive and the Legislative Branch share responsibility for contributing to a public impression that ours is becoming a government by regulation rather than a government by law.

Hopefully, with the beginning of these hearings, through the course of this year and subsequent thereto, we will be able to help change that impression and make a real and substantive contribution to the public good.

We appreciate the comments that will be made today. We welcome them. We only ask that you keep in mind that we are reviewing general procedures for making rules and implementing legislative intent. While you will obviously be citing specific examples where you feel there has been abuse, it is not the task of this Committee to become involved in the particular problems generated from a specific rule. We will, of course, pass on your complaints to the appropriate standing committee which deals with the department on a regular basis.

I would like to make a couple of general comments. This is the first of what I hope to be a series of regional and county meetings.

I will very briefly turn this meeting over to Assemblyman Karcher who is the Vice Chairman of this Committee to act as host for today's proceedings. It is my desire and hope that we will have future regional and county meetings

where the other Assemblyman who sit on this Committee will put forth an effort to develop the format that I believe Assemblyman Karcher has developed today in what will be the first - again - of, hopefully, many such meaningful public hearings.

I would suggest that in the event you have written testimony, if you can, make a copy of it available to the Committee. That would be appreciated. I would further suggest to you that if you wish to amplify your remarks in writing, you are more than welcome to do so. Mr. Frakt will give you the name, address, and place as to where those remarks can be sent and in what form they should be mailed. Above all, I certainly appreciate your attendance here today. I wish to say in advance, since I cannot stay for the entire day, that this hearing will go to 1:00 and will reconvene at 2:00.

I certainly appreciate not only Assemblyman Maguire's presence here today but I would like to extend a special thanks to Assemblyman Karcher for establishing for us the format that we are going to use. Alan, the meeting is yours.

ASSEMBLYMAN KARCHER: Thank you. I think we are going to begin with Stanley Bey who has, as far as I know, the only time problem.

S T A N L E Y B E Y: Assemblyman and gentlemen of this hearing: I would like to introduce myself to you. I am Stanley Bey, speaking in behalf of the Russell-Stanley Corporation of Woodbridge, my company and our 150 employees. I would like to express some thoughts with respect to recent happenings involved in the closing of Kim Buc of Edison for liquid chemical waste disposal. A recent decision by the State to close this source has created hardship and confusion to many industries in our Middlesex County area.

The closing of Kim Buc is not contested by myself because I neither fully know the facts nor am I qualified to render any judgment with regard to this decision. What I can do is tell you that the State in its desire to see to the best interests of all concerned has actually established a dangerous situation, created openings for illegal operations, and has hammered one more ill gesture into the fouled atmosphere between New Jersey Government and the concerned business community.

Let me address myself to each one of these points.

The Dangerous Situation -- Waste disposal is presently being collected and stored mostly, I believe, on the properties of factories and locations where they are generated, usually in steel drums. This situation is extremely hazardous and probably in some instances illegal. Storage next to buildings causes potential health and danger hazards to employees and the surrounding community as well as to the plants and facilities involved.

Illegal Operators -- The newspapers are reporting periodically that chemical waste is being dumped on piers in Jersey City and under the Pulaski Skyway. These are just two recent examples. Both of these situations are the result of disposal - if you can call it that - by illegal operators. Chemical wastes have been found on farms in Monmouth County too. Where does this end? When our ground is contaminated? The cost for these clean-ups is being directly borne by the taxpayer and I can tell you they are outraged. True, indictments have been presented and some few culprits caught, but this is not the answer because, gentlemen, it just doesn't go away by itself.

New Jersey and the business community -- When there is a ruling to

close down certain types of operations, there has to be a down stream look by the agencies making these rulings about the net effect of what will happen when they do act. Did anyone consider alternative disposal methods for industry? How industry would pay for it? Who would be responsible for these plans? It appears the answer was the ostrich put his head in the ground hoping wastes and sludge would just go away or not happen.

The State must provide answers. A list of areas in New Jersey that would accept chemical wastes was issued. Yet, upon contact, not one dump would accept a common waste such as paint sludge.

So, gentlemen, where is it all going? I do not know but I suspect that the situation, as it now stands, is probably worse than the Kin Buc problem because we really don't know where the wastes are going.

I would like to close my statement by thanking you for this opportunity to express the frustrations of a small businessman and I think you for this public forum so that some beneficial result, some consciousness level raising upon the part of State agencies can occur. Thank you.

ASSEMBLYMAN KARCHER: Thank you, Mr. Bey. I have a question or two but I would like to know whether anyone else has a question first.

ASSEMBLYMAN HERMAN: Mr. Bey, two questions, if I may. As legislators involved in a separate branch of government, versus the Administrative branch of government, what do you see as the legislative response in the rule-making process? What do you think we ought to be doing?

MR. BEY: You ought to be putting in laws, or with your laws put certain restraints upon the actions of State agencies. In other words, they must be responsible, as I stated in my presentation, for what happens later on. They can't take a myopic view of what they are doing and just say, "Stop waste dumping" - period. They must say, "All right. We want it controlled. We want to know what we are going to do with it." They must come up with alternative plans, no matter what type of ruling they come up with - whether it be waste or something else. There has to be answers.

ASSEMBLYMAN KARCHER: As far as you expressed your frustrations, you are not a large user are you? You don't have a large problem, do you, as far as the quantity of what you have to dispose of?

MR. BEY: Relatively small.

ASSEMBLYMAN KARCHER: You are not, yourself, in the disposal business?

MR. BEY: No, I am not.

ASSEMBLYMAN KARCHER: So, you, as far as what was happening, were really a third party? This almost happened to you vicariously, is that correct?

MR. BEY: This happens to us because we are the people who deliver our waste for disposal to people like Kim Buc and they are in business because of us - or were in business because of us.

ASSEMBLYMAN KARCHER: Were you ever aware, prior to when you were notified as a customer, that any of this was going on - that there was any rule-making function whatsoever that might affect your business?

MR. BEY: Only what we read in the newspaper.

ASSEMBLYMAN KARCHER: Did the people you did business with inform you directly as to how they would give you any advance warning and say that the business might change or they would have to change their rates or that you might have to find another source?

MR. BEY: Nothing.

ASSEMBLYMAN KARCHER: This all came as a shock to you?

MR. BEY: Very much so.

ASSEMBLYMAN KARCHER: By the way, Mr. Herman's colleague, Mr. Stewart, has something that addresses itself to the problem you spoke of with regard to the economic impact.

ASSEMBLYMAN HERMAN: It is on the Governor's desk.

ASSEMBLYMAN KARCHER: The Governor hasn't signed it yet. It would require that there be - just as there is an environmental assessment done on major projects - an economic impact assessment done as to the impact of pending legislation. Thank you, Mr. Bey.

Our next witness will be Emil Borch.

E M I L K. B O R C H: Assemblyman, Freeholders, my name is Emil Borch. I am Vice President and General Manager of Amboy Terminal Company. I am here, however, representing Middlesex County Industrial Association. The members of that organization are Amboy Terminal Company, American Cyanamid Company, Bird & Son, Carborundum, Chesebrough-Pond's, Chevron, Elizabethtown Gas, Hatco, the News Tribune, Shell Oil Co., Union Carbide, and Realco Chemical Company.

We, when we heard of this Oversight Committee, were extremely pleased to find that someone finally was deciding that the people who are becoming subordinate to their government rather than being served by their government were going to have a voice and were going to be asked to present a position.

I think what I heard in just the last five minutes - that you have an economic impact bill in front of the Governor - has pleased me no end. It is a pleasure to come down where the atmosphere is one of positive thinking rather than "get lost."

Our concern is that we feel the State of New Jersey passes legislation without, (a) a study of the real impact it will have on the area businesses - that is why I am elated about your reference to the economic impact act you referred to just a moment ago - (b) giving enough attention to how the law will be executed and, (c), training people who are going to enforce the law to be able to go out into the field and enforce it intelligently without saying, "Well, we will have to have a legal case before we understand this ourselves." That is most frustrating and I think you can understand that industry is being overwhelmed with different people moving in from one corner or the other with new laws that the people themselves who are there to enforce these laws do not quite understand.

We expect industry to react immediately to the law. This is very good. However, in this case, for instance, I was only given nine days advance notice to tell what it is that we in industry dislike about New Jersey. There must be something wrong with it because thousands of companies are leaving and I am not in favor of saying any more. Thank goodness we have a new spirit in Perth Amboy, partially as a result of Freeholder Otlowski's breath of fresh air approach.

Each company has numerous experiences that add up to our frustration at what we call "bureaucratic madness." We would like to take this opportunity to ask you if we could be invited back so that we could put together a detailed, documented catalog of all the frustrating experiences that all these companies I just referred to have had over the last couple or few years and present them

to you and all the other people in authority who are hoping for and looking for advice as to how to run the State in a smoother fashion. Do I have that invitation?

ASSEMBLYMAN KARCHER: Sure. In fact, I think Mr. Frakt can provide you with a questionnaire. We will also accept any written documentation of any kind that you want to submit, or any of the companies in your association.

MR. BORCH: We were somewhat frustrated by the short time we had to try and prepare this. Most large companies can't just come down here and say their piece because they have to clear it through "umpteen" channels.

ASSEMBLYMAN KARCHER: Right.

MR. BORCH: I don't have to clear it with anybody, so they picked me to come down here.

To summarize, government in New Jersey, as we see it, is a process of uncertainty. We think that the inspiration behind the legislation is sound. We think people's hearts are in the right place. We think that they want to do right but the end result is uncertainty in administration, uncertainty in execution, uncertainty in understanding what it is all about, and then feeling frustrated by not knowing what is right and what is wrong.

We are, obviously, up a wall with the taxes, the pollution people, the water people, the OSHA people, the EPA people, the State, county, city, and so on and so forth. Environmental impact study people - we have read about them in the paper enough to know how they are preventing people from wanting to do business in the State of New Jersey.

The fact that I can't get all this information you asked for in 9 days should be obvious to you and I hope you will let us come back again. We thank you in advance for that opportunity. Companies need time to document all this research and we need from you and your past legislation, guidelines as to how we should go about doing our business.

For example, - and this is just a small example - someone came by one plant and knocked on the door and said, "All your tanks have to be painted white." The fellow said, "Well, this is a brand new stainless steel tank. It glistens in the sun. Do I have to paint it white?" The answer was, "It says here it has to be painted white, so paint it white." Well, that type of reasoning is what I am saying is the thing that frustrates companies who are trying to do business.

I apologize for not being able to discuss things in detail but I have a brief summary of our tax grievance which, if I may, I would like to read, per se.

Property Tax Committee - (a) Industry expects to pay its fair share of taxes in New Jersey. It is recognized that if the community cannot survive without taxes, industry cannot survive. However, it is asked to pay more than its share. It has been the custom to introduce many new tax bills each year which call for industry to be taxed in a different manner as compared to the private resident. There are so many of these measures in the hopper that we can't even list them all here. However, they all call for a degree of classification. In each case, industry would be called on to pay more by virtue of the fact that it would be placed in a different and less desirable class.

(b) New Jersey features a large degree of uncertainty for the industrial taxpayer. For example, a manufacturer wishing to locate in New Jersey cannot discover how much of his property will be taxed as real versus that which is personal and therefore exempt. We have no definition and the court

cases vary widely. We view this type of uncertainty as a potent deterrent to new industry locating in New Jersey.

With industry leaving New Jersey and with the State of New Jersey having hired 6,200 more employees in the last three years, somewhere along the line there is going to be a budget deficit, obviously, and somewhere along the line this requires even more taxes.

I can't answer how you are going to solve this but I hope you will consider the fact that this is at cross purposes with trying to keep industry in New Jersey. Coming from Perth Amboy, you can see these giants who have left, so that speaks for itself. We are trying to stop that trend and I think some progress is being made.

We also, in my case, are trying to set up a plant similar to ours in Texas and we talked to the people in Huston. I have never seen so many red carpets in my life as those people down there would roll out. They pointed out the advantages and people say, "Well, maybe they pay low wages." They don't really pay low wages in Huston. Huston tax and wages are a little bit higher than they are around this area. So, it isn't the "running down to get cheap labor" bit. But, their productivity is twice what it is around here. They have much less feather bedding union work rules. I can go on and on.

Take National Lead as an example of the illness of the State. That is unheard of down there. They want to do right. People are cheerful. Productivity is higher. They are not insisting on job descriptions and rules for this and rules for that. So, we take the union's attitude - and in a lot of cases there aren't any unions, even though they are large companies, and the reason why you don't have unions is because they do right by the people so there is no need to join a union - and the whole atmosphere and there is much better productivity.

Around here, we are all worried about unions this and unions that and I imagine the people who pass legislation are worried about them too. I think the time has come where the little man is beginning to outnumber organized labor and the guy who is paying the bill is saying, "Get this off my back. Please take care of Mr. and Mrs. John Doe. Give us a break so we don't have to leave the State." Because people who are from New Jersey like New Jersey. We don't want to move our businesses out of New Jersey. So, when I tell you to go to Texas, I just want you to go there and find out how to do it. I am not trying to leave New Jersey.

The liquid waste story that was presented before me - what a horror story that is. This gentleman pointed out to you that drums are being thrown underneath the Turnpike and the docks in Jersey City. That is true. He didn't mention the cost. What I heard was that it costs \$55 a drum to get a drum of waste moved to a legitimate place and the nearest one, I heard, was up in Niagra Falls, New York and then on top of the \$55 per drum you have to pay for the transportation. That is absurd. Therefore, if a mafia knocks on the door and says, "Hey, bud, we will take it for \$10 a drum" -- he just told you where they dump it.

So, if you are from out-of-state and you hear all these tales of woe, you are obviously going to think twice. Statistics that I picked up from a business organization point out that New Jersey is the 44th least desirable state in the Union to do business in.

So, your Committee is certainly welcome. I like New Jersey. I have four kids born here. My roots are here. If you are saying you are going to let the people rule, you are half way home.

In summary, your intentions are good. I can't interpret the exact nature of the problem, therefore, I am going to present this to you in a catalog later on. You are getting all our support. As a matter of fact, if you want to address these companies all at one time, I am certainly inviting you to be one of our guest speakers.

In the meantime, before you pass any more laws, please get big government off our backs, all government off our backs. If you could pass a bill that says the objective of this is to reduce the number of bills that are being passed or pass a bill saying everybody is going to give you 8 hours work for 8 hours pay - or something wild like that - then we would know that a new spirit is prevailing in the State and perhaps then we could all get together and make New Jersey the potential that it really is.

I want to thank Mayor Otlowski for reminding me to come here. I don't know whether he is to be blamed for only giving me 9 days notice or not but I do thank him for that. We are going to work with you on anything along these lines. Thank you very much.

ASSEMBLYMAN KARCHER: Thank you. Are there any questions?

ASSEMBLYMAN MAGUIRE: Mr. Borch, earlier in your presentation you made reference to the fact that there are State employees charged with the enforcement of certain rules and regulations and they are really not sure of their job, as to how far they should go in enforcing these rules and regulations. Have you any specific instances where this has happened to you?

MR. BORCH: Oh, yes, numerous instances. But that has not happened to me, it has happened to the companies that I represent and that will be cataloged in that presentation we are going to give you.

ASSEMBLYMAN MAGUIRE: I wish you would address yourself to that.

MR. BORCH: You are going to get that. Most of it has to do with the uncertainty about the laws we are obliged to abide by.

ASSEMBLYMAN MAGUIRE: I'll wait.

ASSEMBLYMAN HERMAN: One question.

MR. BORCH: Yes.

ASSEMBLYMAN HERMAN: Do you feel, speaking on behalf of the Association that you represent and individually, that the primary problem with business being done in New Jersey today is the bureaucracy - the rule-making procedure - or the laws themselves? If you had to weight it for me, where would you say the primary problem you face is?

MR. BORCH: The laws versus what?

ASSEMBLYMAN HERMAN: In other words, we - the Legislature - pass laws and there are rules and regulations passed which implement them. Is it the general-- What I am trying to get at is, based on your experience and the experience of your Association, do you find it to be the nature of the law or is it the implementation of the law?

MR. BORCH: That is a good question. It is the implementation. We don't find too much wrong with the laws, per se. We want clear skies and clean water for our children and the next generation. It is the interpretation of how to go about all of this that is harassing industry. It is the people who come

to enforce laws and they say, "We don't have the forms to go with this new law yet, so here is one copy. Will you please have this typed in your office and zerox some copies and then fill them out and send them back to us?" We then ask a question and they say, "We don't even know what it is yet because it hasn't gone to court yet." There is an uncertainty surrounding the good intentions of unskilled people trying to tell you what to do with your business and it comes across as if they are more concerned with throwing the weight of law around than they are the implementation of the end result of the law.

ASSEMBLYMAN HERMAN: All right. Fine. Would you leave a card with your name and address and phone number?

MR. BORCH: Yes.

ASSEMBLYMAN HERMAN: Thank you.

MR. BORCH: Thank you for giving me this opportunity.

ASSEMBLYMAN KARCHER: Mr. Capestro.

STEPHEN CAPESTRO: I would like to welcome your Committee to Middlesex County, Assemblyman Herman, Assemblyman Maguire and especially our capable Assemblyman Karcher.

My name is Stephen Capestro, a member of the Middlesex County Board of Freeholders and Vice President of the New Jersey Association of Counties and Chairman of its Legislative Committee.

I am here today to comment on behalf of Freeholders throughout the State on the rule-making procedures of the various departments.

ASSEMBLYMAN KARCHER: Steve, can I interrupt you for a second so that we can welcome another member of our Committee who is younger than I am and getting younger every day, as I am approaching 34 rapidly. I would like to introduce Peter Shapiro from Essex County.

MR. CAPESTRO: Freeholders, as legislators ourselves in twenty-one of the State's counties, are familiar with your problem of maintaining legislative intent, on into the implementation of the laws you pass. While some of the laws you pass are not always entirely clear in their meaning, it is the responsibility and obligation of those charged with interpreting them and establishing the rules by which they are made to work, to make their operation as clear as possible.

We are frequently beset by complicated guidelines and regulations which becloud your legislative intent and make it almost impossible for us as Freeholders to carry out your will in various programs. In addition to unclear regulations, tight deadlines and guidelines which go beyond the spirit or original intent of the act, there is often the question of funding.

While we recognize your problems in providing funds, we at the county level are often caught short by being given a new job to do with little or no funding to back it up. That can mean only one thing, we have to finance it out of the property tax, our major source of revenue.

In the recent past we have been given such programs as Juveniles in Need of Supervision and the Public Contracts Law on tight deadlines and with little or no funding to mount them into operation. However, we are now engaged in developing the guidelines for the new Solid Waste Management Districts side-by-side with the consultant, to the end that we can instill some practical "know-how" into these rules before we have to enforce and live by them.

In relation to the four charter counties of Atlantic, Hudson, Mercer and Union, it would appear that many department heads and rule-makers

have not learned that this is a new and different county form of government, unlike the other traditional seventeen counties, requiring special consideration in the matter of guidelines and regulations. Several rulings of the Attorney General's office have been set aside by the courts because they have not fully recognized the special nature of the charter counties.

Two things would improve the matter of rule-making and I recommend them to your Committee: 1. Departmental makers of rules, regulations and guidelines need orientation and special instructions, to the end that their actions may be consistent and designed to preserve the intent of the legislature.

2. The Legislature needs special review staff capability to go over all such regulations prior to their enactment, to be sure that they do not change, subvert or extend the intent of the act.

Thank you for your hearing. I might add, Mr. Chairman, that I think in the last two years there has been a great spirit of cooperation between the Legislature and county government and we see great improvement in that area.

ASSEMBLYMAN KARCHER: Does anyone have any questions?

ASSEMBLYMAN MAGUIRE: Stephen, I have one. I guess it has to do with us mandating a service but not funding it. Do you have any specifics that you can leave with us?

MR. CAPESTRO: I think the greatest example is GINS where three months later we knew about the law and had to fund it within 30 days.

ASSEMBLYMAN MAGUIRE: Could you give us another one?

MR. CAPESTRO: Off the top of my head I think there are several we are going to present to your Committee in a written statement.

ASSEMBLYMAN KARCHER: I think the two recommendations you made are the two that we have concentrated on and kind of focused our efforts on. One is with regard to -- Are you aware or do you know of anyone who is aware of who actually, physically writes rules?

MR. CAPESTRO: No.

ASSEMBLYMAN KARCHER: Are there such things? Do those people really exist? Has anybody ever seen one in flesh and blood?

ASSEMBLYMAN HERMAN: Supposedly, each Department has one.

ASSEMBLYMAN KARCHER: Has a rule-maker?

ASSEMBLYMAN HERMAN: Has a rule-maker.

ASSEMBLYMAN SHAPIRO: When I was employed, prior to my election, in the Department of Transportation, I once was called upon to draft something. That is first hand evidence.

ASSEMBLYMAN KARCHER: That's why we are in trouble.

ASSEMBLYMAN HERMAN: Now we know it needs reform.

MR. CAPESTRO: Mr. Chairman, I can say that there are many cases when we have learned of a new law in the newspapers that was in effect and the Board of Freeholders knew nothing about it.

ASSEMBLYMAN KARCHER: Do you mean to tell me, Steve, you don't read this. I thought everybody read this.

MR. CAPESTRO: I read it religiously but by the time we get it, it has been implemented. Thank you, Mr. Chairman.

ASSEMBLYMAN KARCHER: Thank you.

Mrs. Graves, do you have a time problem?

MRS. GRAVES: Pete Lafen, from the League for Conservation Legislation

is going to speak for that organization and for the Sierra Club.

ASSEMBLYMAN KARCHER: Fine. Thank you.

P E T E R L A F E N: Assemblymen, my name is Pete Lafen. I am speaking on behalf of the League for Conservation Legislation. The League is a coalition of over 60 environmental organizations and individual members that are affected in many ways by different rule-making procedures of various Departments throughout the State Government.

Modern State Government is responsible for an increasing number of complex regulatory tasks. The demands and threats of technology today and the concern for greater human justice and the actions of our State and Federal Judiciary as well as those of the State Legislature make rule and regulation procedures of primary concern to anyone who is advocating good and efficient government.

Our government of laws has responded to the challenge of modern complexity with the delegation of technical and substantive issues to administrative agencies by a general grant of power and direction from the State Legislature. The wisdom, of course, supporting this theory is that it is beyond the capacity of legislators in the normal course of their duties to concern themselves with the technical minutia involved in the enforcement of these laws and that the State already employs persons, even if they seem to be anonymous at times, who are supposed to be qualified administrators and who are familiar with these technical areas and capable of implementing the rules in accordance with legislative wishes.

Now, as I have said, we are a society based upon rule of law and to function efficiently we need good laws, especially good regulations because, as we have heard today, they are the cutting edge of State Government; the effect the government has upon the people are these regulations. By good regulation, I would define it as something that is fairly drawn, promptly issued, clearly written, and that is responsive to the authorizing legislation.

There are a number of specific problems that members of our organization have asked me to bring to your attention and a number of possible solutions. The first that we are concerned with is delay. Under current procedures, agency rule-making is at least a year-long operation, in general. Delay in rule-making frustrates the public intent because many times it is a long process and a long fight in order to achieve legislation in response to very serious pressing problems. So, delay only causes those problems to continue when many times the solutions are fairly clear for action.

However, I must point out in fairness that New Jersey is better than other states. I have worked in New York State and other areas where regulations would go unwritten for years at a time and it is merely, I think, a matter of funding and appropriation that is completely within the competence of the Legislature to remedy. Another remedy that is very available to the Legislature is to simply write deadlines into law for the completion of regulations.

Another problem that I have heard and that perhaps is concerning many people statewide is the problem of non-responsiveness of administrative regulations to legislators. I have come in contact with this primarily by the objections of state legislatures that I have come to meet who say that they cannot recognize, on occasion, where the regulations come from or they say that an agency has overreached its authority granted under certain legislation.

We view this as a three-fold problem. First, of course, is the practical problem of the amount of legislation passed. It really makes it impossible for the most conscientious legislator to understand the implication of every bill that comes across his desk in the Assembly or Senate Chamber, especially when you consider that our State Legislators are donating their services on a part time basis and that they have very serious limitations in the amount of staff and office facilities that are available to them in the State Capitol. In other words, many times the legislators, I am afraid, are not really aware of what action the legislation has taken in these areas.

Secondly, there is a political problem. When someone is voting on a law that is admittedly in the general public good, that action doesn't change the response of his individual constituent who is affected by the law. Naturally, someone who is regulated or affected is more likely to voice his opinion of the law to the legislator and make his impact known than, perhaps, a far greater number of people who are benignly affected and, in fact, helped by the law. So, there is a political problem of the type of response that legislators are made aware of.

Finally, because of the complex nature of the problems that we are addressing today, there has been a tendency in State Government and perhaps across the country also to legislate goals and results with a decreasing attention to a concern for the mechanics of enforcement. The result is to grant power for very good causes without direction and goals without methods which presents problems for the most conscientious of state administrators when it comes to enforcing concrete solutions.

I think at this point I would like to cite some specific remedies that currently exist and could be enforced to correct these problems. I will try to use DEP as an example because it is the organization that I am most familiar with and they have a number of programs that I think could be implemented across the board to improve the state administrative response.

The first is public participation. This aspect of DEP procedures deserves much praise because of the efficiency and justice that is fostered by public participation in agency rule-making. Public comment on proposed regulations allows the department and department officials to gauge the specifics of a problem that must be addressed and the practical and political implications of the different regulatory approaches that can be taken. It also makes available to the State the opinions of many concerned experts outside of State Government and eliminates many unintentional hardships from ever being enacted into regulation. Basically, it keeps the state agencies in touch with the people.

Two specific areas that I would refer the Committee to in gauging DEP's public participation would be first the office of Coastal Zone Management. They maintain excellent public contact through regular meetings and an extensive mailing list and they really operate in the open to take advantage of resources of people and organizations across the State in order to operate what is admittedly a very sensitive task in regulation and a very complex set of responsibilities.

The second Division that I would specifically cite would be the Division of Water Resources. Now, we are faced with a very sensitive and politically active issue in the question of Pine Barrens water quality. But, I think the DEP should be praised because despite the fact that this is

a serious problem that will have some segments of New Jersey's population upset, regardless of the outcome, DEP has held three public hearings in the localities to be affected in order to gauge public comment and, once aware of the great disparity of opinion that was voiced, they have organized four citizen task forces with representatives of all of the potentially aggrieved groups to work with Department rule-makers to see whether there can be an accommodation between legitimate local desires, implemented through the use of local expertise, that still will be in harmony with the requirements of the Federal Law that requires the Department to act and, in a greater sense, is an expression of the national will of the people.

Of course, there is the avenue of legal recourse for those who feel aggrieved by regulations, especially in cases where regulations go beyond the scope of existing legislation. There have been limited numbers of cases in the last few years that have challenged DEP regulations and I think this shows two aspects of agency rule-making. First, it indicates the quality of work done by the Department and, secondly, it also indicates the broad grants of authority that have been made by the Legislature which make it a difficult legal problem to challenge regulations.

There are existing legislative controls that today influence agency rule-making. The Legislature retains control, of course, of budgetary appropriations and an ability to amend enabling legislation which acts, I think, as an implied check on any expansion of agency power. And, political pressure that may be somehow categorized as different from public pressure, can certainly influence regulations, even in the later stages, even once things have been drafted. Specifically, I would cite the recent oil spill regulations where they were withdrawn and the relaxation of the sulfa standards in South Jersey where there was a definite problem with existing regulations and there were changes made to benefit the aggrieved parties.

I would first suggest, under the aegis of proposed remedies, the possibility of instituting a more extensive system of legislative history. New legislation can arrive at a Department without any real guidance or history as to the legislative intent and it is quite unfair for the State Legislature to stand silent and then criticize the Department for not following the legislative intent when none is clearly available for the people who are back in the cubbyholes drafting the regulations. If the Legislature took the step of transcribing committee hearings and public hearings and made that legislative history along with the more comprehensive statement from committees, it would first provide guidance to the Department for more responsive rule-making and, second, provide a real legal tool to those aggrieved by Department excesses to challenge the regulations in the court. Of course, this would imply additional cost for transcription and staff help but I think that this approach would be minimal in cost in comparison to some of the other solutions and would not result in the shifting of political responsibility within the State Government.

The concept of legislative oversight has been coming up in several bills, notably the Wild and Scenic Rivers Bill and the Energy Department Bill and A-2323, which would amend the Administrative Procedure Act. We feel that there are many serious practical problems presented by legislative oversight. First, would be the problem of time. As I have already stated, what is needed is clear and prompt rule-making and all of the proposals for legislative over-

sight would delay an already long time for implementation. An additional problem that is raised by these proposals is that if a regulation is vetoed or acted upon by the Legislature, there is no clear time limit set for the submission of new regulations and I think that could cause problems, especially if there is a difficulty in communication between the Legislature and the State agency.

Also, there are many areas where prompt action is absolutely necessary, such as the DEP regulation to protect the sea clam beds from over-fishing in 1975. While some of these procedures give emergency justification for quick action, there may be many borderline cases where that action is needed and the Department, for political reasons or other reasons, would be hesitant to act to protect the citizens of the State.

I think the most serious objection, though, is the expense and duplication that would be engendered by legislative oversight because it must be recognized that a State Legislature today does not have the staff capacity to engage in the detailed review of regulations and legislative committees themselves, if the individual regulations were referred to them, are only in part time and they lack the time to monitor those rules effectively. So, the legislative oversight provisions, consciously done, would mean a sizeable increase in the legal and technical support staff that would be spent for this project in Trenton. I think, realistically, we would be talking in terms of a new building and staff to fill it. I think this would be spending a lot of valuable tax money for services that could already be provided by the Department, with the proper provisions and proper drafting of legislation in the first place. If that sort of expenditure was not done by the State Legislature, then I am afraid the legislative oversight could very easily degenerate to a purely political response to private pressure that realistically can be done and does occur today when the situation merits it.

Then there are political implications of enacting legislative oversight provisions in that this would shift the responsibility for administrative action to the Legislature and I think this would make the Assemblyman and Senators not only responsible for the laws, but also for the rules of enforcement of those provisions.

Having had the opportunity to review regulations, the individual legislators would most likely be held far more accountable for the specific impacts upon their constituents. A shift away from the administration where there is some possibility for impartiality and neutrality may not be in the best interest of the State, especially when there are very serious decisions that affect a large number of people that come before an administrative agency for enforcement.

Another program that I would suggest that the Committee consider would be a consistency review provision where agency rule-makers would be required to consult with other departments prior to their rule-making so that new rules are consistent to the maximum degree possible with other regulations that impact on that particular area. A caveat with such a program would be that it should mandate a definite procedure and a time limit for the resolving of conflicts between the different regulatory schemes so that the State does not pay a very high price in delay for admittedly the beneficial goal of simplicity and clearness in its regulations.

In conclusion, I would state that we must recognize that administrative agencies are the cutting edge of State Government and as such will always be subject to public outcry. In order to see that that cutting edge cuts in the direction and to the extent desired by the legislators, we do not recommend the enactment of time consuming processes of legislative oversight requiring increased expenditures of taxpayer's dollars for services that should and can be performed by the administrative agencies. Rather, we recommend that the following be done to supplement existing controls upon legislative rule-making:

First, the institution of legislative history to provide guidance and legal direction for departments and aggrieved citizens.

Second, pre-rule-making consistency review by departments to avoid costly and conflicting impacts on citizens due to agency non communication.

Three, an examination by this Committee of DEP's fine procedures for stimulating and incorporating public participation in rule-making procedures so that recommendations can be made to other State agencies.

The pressures that fall upon agencies and the cause rule modifications and alterations are a natural and proper force in agency operations and we feel that these forces are often technical in nature and should not be politicized by referral to the legislative oversight or the Legislature in general. Above all, they should not be used as an excuse to hamstringing agency rule-making abilities altogether. Thank you.

ASSEMBLYMAN KARCHER: Are there any questions?

ASSEMBLYMAN SHAPIRO: I have one question. It concerns A-2323, Assemblyman Little's bill with regard to a legislative veto of administrative regulations. I am surprised at your opposition to this because I think in a sense you are overstating the cost of it. The amount of staff required - whether it is a new building required that you laid out or what - seems a little doubtful to me in that what we are talking about here is a veto rather than legislative passage of all regulations. We are talking about those rare instances, probably five or six a year at the most, where such scrutiny would be required and such doubt would have been cast on the executive agencies impingement on the legislative intent as to require an override. Do you really think there will be more frequent instances than that? Can you point to that many instances where the Legislature would be concerned beyond what is the usual rigmarole that comes out in the New Jersey Register - the stuff that we are not going to want to get into in great depth?

MR. LAFEN: Well, I think that is the question. If the Legislature is going to assume a role in supervising the rulemaking procedures, I think they are going to have to acquire a capability to monitor, in greater depth, these regulations because if they are truly concerned with the impact of the regulations on various constituent bodies, they are going to have to have the facilities to notice problems; they are going to have to be able to bring them to the attention of people. I think they are going to be assuming a role that the departments play now, where a good department will go out, to the maximum extent possible, and contact the people that will be affected by this legislation. I am afraid that this sort of shifting would require that the Legislature take on that kind of responsibility.

ASSEMBLYMAN SHAPIRO: I think the procedure outlined in A-2323 would basically have assignment to various committees - the various reference

committees of the pertinent regulations.

MR. LAFEN: Yes.

ASSEMBLYMAN SHAPIRO: At that point staff would probably take a look at them and read them over and see if they were regulations that were fairly innocuous - which I think most of them are. The ones that would be controversial, I guess, would then be called to the attention of the members of the committee to see if they wanted to consider them. It would seem like it wouldn't be that big a burden.

Just to read the Register alone is not all that big a burden. People make a big fuss about it but I get it every month in the mail and I go through it.

MR. LAFEN: If that were--

ASSEMBLYMAN HERMAN: I haven't read this month's yet. We have last month's with us.

MR. LAFEN: We would still be faced with the problem of delay that would result in a longer extended period of uncertainty for the people to be affected. So, there would still be problems even if the problem of staffing were not to develop, which many people in our Organization think would develop.

ASSEMBLYMAN KARCHER: Are there any other questions?

ASSEMBLYMAN MAGUIRE: One question, Peter. Prior speakers have indicated to us that in many instances those charged with the enforcement of the rules and regulations are not knowledgeable themselves; they are not really sure of what law they should enforce or how far they can go. Perhaps it is because of that that this particular Committee was established.

You indicate - if I heard and understood everything that you said - that each department prior to, or shortly thereafter establishing these regulations, should hold hearings with those political units that are going to be affected by this new law - is that what you are saying?

MR. LAFEN: Not necessarily with political units and I don't believe they hold public hearings in every case but I do think-- I must confess that I am rather new at the job here so I am not totally familiar with the rule-making procedure. A lot of my testimony was based on the input that I have had from different constituent members. But, I have seen the hearing procedures the DEP has used on occasion and I think that a conscientious agency should - I am not positive now whether it is required to hold a public hearing or not - be very available for comment. Maybe in some cases of routine rules it is not necessary but when there is a question there should be a public hearing so that people can bring their expertise to the department. It is simply, I think, a saving of money so that the department doesn't have to go to the expense of correcting very obvious mistakes that can be very innocently made.

ASSEMBLYMAN MAGUIRE: You made reference to the oil spill legislation that we passed earlier this year and the resulting set of rules and regulations that came out of DEP. I have no knowledge, personally, that the refineries were ever consulted when these rules and regulations were drawn up to find out what the cost factor was - the economic factor as well as the political factor. It created holy blazes. How would you have addressed that differently if you were in our position?

MR. LAFEN: Well, if the department didn't consult with them, I would certainly feel that it is a lesson they should have learned and I think

it is a lesson they have learned as far as consulting with the different groups.

As far as the role of this Committee, I am not really sure of what sort of contacts you could make, or you should make, to make sure that they follow the proper procedures. I think with the Water Quality perhaps they have learned a lesson and they have bent over backwards to contact all the different groups down in South Jersey to insure that they have input so at least if they are going to take an unpopular stand, they will know it before they do it.

ASSEMBLYMAN MAGUIRE: Thank you.

ASSEMBLYMAN HERMAN: First, I want to thank you for putting in what was, obviously - from the looks of your presentation - a great deal of time and preparation before coming here today. It is very, very much appreciated. I was wondering whether you might not be able to photo a couple of copies of your handwritten notes to turn over to our Committee staff because it will take some time before the transcript is fully prepared.

There are some areas of concern that you raised. Let me start with legislative oversight, if I may. Maybe I have a preconceived prejudice, or bias at least. A law is signed, okay? We have adopted the old Billy Musto critique of 41 in the Assembly, 21 in the Senate and the Governor's signature. We pass a law that gives regulatory agencies the right to implement by rule and regulation the intention of the act, whether it is broad or not broad. Now, under today's procedure, would you agree that if we do not agree with the rule or regulation fostered by a particular agency, the only way for the Legislature to change them would be by amending the existing law?

MR. LAFEN: Either by amending the existing law or if there is sufficient public outrage or public comment.

ASSEMBLYMAN HERMAN: Let me make a good example. Let's go to the T & E law as a good example.

MR. LAFEN: I am not familiar with that.

ASSEMBLYMAN HERMAN: Thorough and Efficient. I will give you this by way of background and I hope I am not mis-stating the case. When the Legislature passed the T & E law and when it was signed into law by the Governor, the Commissioner went about fostering a set of rules and regulations which many legislators thought went far beyond the pale of what was intended in the Act. Many legislators then tried to stay the implementation by securing the passage of another law. What do the legislators do in that respect if they have a strong Executive who refuses to agree with them and will not sign the bill that they pass, aside from the very difficult procedure of override?

Without oversight, under normal situations in New Jersey where there is an extremely strong Executive, where is the legislative redress when there are rules and regulations that the Legislature feels go beyond the pale of the intent of the original legislation? What do they do?

MR. LAFEN: Well, in the long run, of course, you have the appropriations possibility. That area can be cut out of an appropriation. But, I think that raises a problem that I specifically chose not to address today because I am not completely sure of its implications. This gets you into the area of legislating and eliminating the Administration from the legislative procedure. When you pass a law, under the Constitution you have to go through both Houses and the Governor. In some ways - I have been told this and I didn't do my homework on this so I didn't want to get into it - you are short-circuiting the Governor's

office in this legislative process because you have, in effect, a law that consists of laws and regulations. Now, the law is supposed to be under legislative and administrative approval before it gets into actual rule-making. As it stands today, the courts are the way of interpreting whether this rule-making has lived up to administrative and legislative approval.

Now, if you don't include the Administration in this, you have the Legislature playing a greater part in this total rule-making and law-making procedure that may imply some problems. But, as I said I am not that familiar with it.

ASSEMBLYMAN HERMAN: I would like to pursue it, with due respect.

I hope that you would agree with the premise that the enactment of a law is a statement of legislative policy. Do you agree with that?

MR. LAFEN: Yes.

ASSEMBLYMAN HERMAN: And the rules and regulations which emanate from that law are really an implementation of the legislative will.

MR. LAFEN: Right.

ASSEMBLYMAN HERMAN: Now, don't you think that the Legislature ought to have a hand in overseeing when the implementation goes beyond the scope of what was initially intended?

MR. LAFEN: Well, I think that they do but--

ASSEMBLYMAN HERMAN: Well, how? Let's get to that. When you say-- Aside from the budgetary process that you suggest, where else do we? We have created the child, so to speak. The legislation is the parent and the regulation is the child.

MR. LAFEN: But, you also have the Governor acting as midwife in this case.

ASSEMBLYMAN HERMAN: Some people might agree with that.

MR. LAFEN: Now you want to go back and see your child growing up, you want to go back and work on him without the midwife or the doctor being present.

ASSEMBLYMAN SHAPIRO: Mr. Chairman, may I say something briefly because I think there is an important assumption that is being made here that is wrong. When we pass a bill, it has to go through all stages. It has to go through the Legislature. It has to be approved by them and it has to be approved by the Governor. If either one withholds that approval it makes it very difficult to get an enactment of the law.

What we are trying to say, really, here is that we want to do the same thing with regard to regulations. The Governor still has a role in it because he is proposing. He is the Executive. He is head of the Executive Branch. The Executive Branch here is making a proposal in the form of a regulation. The Legislature is saying, "Okay, we want to have just a little input. We don't want to have control. We want to be able to veto it. We want a part in this. We want to be the judge of our own intent." Because no matter what kind of statements you draft for intent, no matter how great a master you are of talking to all the legislators involved, there may have been 41 different intents in the Assembly and 21 different intents in the Senate - and there frequently are.

So, I think what we are saying is we want shared responsibility, not exclusive responsibility. We don't want to take the midwife out. We want to just simply say once the midwife starts rearing the child, we want the father to get involved a little bit too, to stretch that metaphor to a ridiculous extent.

ASSEMBLYMAN HERMAN: Well, that might sum up the legislative process.

I have two points that I would like to raise that are perhaps rhetorical in nature. In the end, based on your testimony, if there is to be a judge of what the legislative intent was, should be, or is, shouldn't it be the Legislature? In other words, should we say after we pass it and send this law on its journey that we should take a hands off position and say that the courts should be the end judge of what the legislative intent should be? Or, shouldn't the Legislature have a hand - a very strong hand - in saying what the legislative intent is before as well as after the law is passed? Shouldn't we be the masters of our own house?

MR. LAFEN: I don't think I could agree completely with you on that. I think the courts have a very important role to play. Certainly, the more you can do to make your actions clear to the parties involved, the more influence you will have. I cannot completely agree with you.

ASSEMBLYMAN HERMAN: Forgetting the question of constitutionality - whether we overstep our legal boundaries - I am talking about the question of what our intent was. I would hope you are not saying that when it comes to the question of legislative intent that the court is a better judge of what our intent was than we are.

MR. LAFEN: No, I am not going to say that.

ASSEMBLYMAN HERMAN: Okay. One last question in reference to -- I am sorry to delay this, Mr. Chairman, but I believe this gentlemen's testimony has been excellent and I think it raises a lot of interesting questions which certainly should be on the record.

You have mentioned the fact that we, as legislators, are part timers. We certainly do not have adequate staff and facilities. Do you think, taking all these things into consideration, that there would be a recommendation to the people you represent that the legislative process would be best served if facilities and staff were increased for the New Jersey Legislature?

MR. LAFEN: I would not be at liberty to make that recommendation but it would be something that I am sure our organizations would consider and, off the record, they may be very much in favor of it.

ASSEMBLYMAN HERMAN: One last question. In the end, assuming that the implementation of the rules and regulations would not be unduly delayed by legislative oversight - in other words, they have a parallel review, so to speak, during the time frame in which they were to be implemented - would your objections to legislative oversight be as strongly put if the delay factor was not involved?

MR. LAFEN: They probably would not be as strong because that is an objection that would be eliminated. There may still be some objections on other grounds but, certainly, if delay could be eliminated in the process, it would eliminate one of our strongest objections.

ASSEMBLYMAN HERMAN: Thank you for your very fine testimony.

MR. LAFEN: Thank you.

ASSEMBLYMAN KARCHER: Thank you. I am not sure I agree with your perspective but I want to express our appreciation.

Mayor, are you in a hurry?

MAYOR OTLOWSKI: I would like to get back to the people in Perth

Amboy.

ASSEMBLYMAN KARCHER: Assemblyman Otlowski will be our next witness.

GEORGE J. OTLOWSKI: I just want to make sure that everybody knows that I am not a candidate for Freeholder; I am a candidate for the Assembly.

My name is George Otlowski. I am the Assemblyman from the 19th District and also the Mayor of the City of Perth Amboy.

There are two things that I would like to particularly talk to the Committee about today that result from my triple exposure over the years as a Freeholder, Freeholder-Director, as a Mayor, and as an Assemblyman. I would like to direct that experience, as I said, into two particular areas. One is in the new legislation that resulted in regulating - Purchasing Practices for Cities and Counties and the regulations that resulted from that act. That brings us, as a matter of fact, to the purpose of this Committee.

In any event, I want to be specific and I want to be particular about that particular legislation and the regulations that resulted from it.

I have no argument about legislative policy that would eliminate any semblance of discrimination in purchasing practices. I think that that kind of policy, of course, is acceptable to anyone and to any administration. But, we are talking about something more than that when we are talking about the regulations that implement that policy.

Now the question is whether we are made familiar with the regulations when they are made known to our people, or to our purchasing people, to our boards of education. A lot of the complaints that I get are not only limited to the purchasing agents of the county or the purchasing agents of the city but they also apply to the school purchasing agents, the business administrators of the school districts, or of the school boards. All of them point out the fact that they are just caught in a maze and the maze gets more and more complicated, not only more and more complicated but they have to put on more people, more money has to be appropriated just for the purpose of supervising what is known as "affirmative action." Then they have to be careful, of course, that the vendors that they are dealing with not only have that policy but that policy is practiced and that policy is open. To do that, of course, they have to have the long administrative costly arm that it takes to do that.

There is a certain amount of fear and anxiety that takes place with that kind of administrative umbrella. So, what I would hope that the Committee would do would be to take a whole new look at that legislation and the regulations and determine if we created a monster here that is going to give the cities and the boards of education bigger problems than they already have - more costly problems - and what it is going to do their administration; what it is going to do to their administrative costs. What kind of suites are they going to open themselves to? All of the legal departments for these different units have their own problems now, to make sure that they guard and protect these governmental units from suits. This is the box that you get into. As a matter of fact, I don't think that it was ever the intention of the Legislature to create that kind of box. The Legislature probably was in love with the concept of being against discrimination. And, as I said from the outset, who isn't? It is a wonderful policy and a wonderful concept but to administer it is another question.

I think that the one thing that I have learned in my experience in government is that next to the devil there is no one as frightening as the

administrative officer in government, the administrative bureaucracy. I think they create their own hell. As a matter of fact, the fires that they keep going are constantly red hot. When they are applied to the posterior of any constituent, there is usually a pretty good burn and a costly burn that takes place.

So, I just hope that this Committee will take a whole look at that to see if this is precisely what is happening and if this is precisely where we are going.

Another thing that I would like to call to your attention - and this comes from my immediate experience as the Mayor of the City of Perth Amboy - is, like all of you, you know, we have been concerned about the great exodus of industry that has been taking place in New Jersey. As a matter of fact, I think if my figures are correct, from what I have learned from Commissioner Horn, 160 thousand industries have left New Jersey. There are many reasons for that but one of the reasons that I think this Committee should concern itself with is the fact that we are so over regulated and we have created such hordes of regulators and of inspectors that we make it next to impossible for industry to function, or we make it very costly for them to function, so they have to look for better climates. And I don't mean the sun belt, I mean better economic climates. They have to look for better economic climates. If we are not careful about that I think we have a chance of becoming one of the first ranking welfare states in the nation because we will just drive industry out.

Again, I say I am speaking from fresh experience. Since July 1st when I became the Mayor of the City of Perth Amboy, most of the industries have moved out of Perth Amboy. I only have one function as I see it as the Mayor of Perth Amboy and that is to bring back industry into the city so that we can get jobs going. If I can do that then I will consider myself a successful mayor.

For example, with the big industry that we have coming in - the coast steel - it was amazing the amount of time and the amount of staff that they had to put on in this State to decode, if you please, all of the State regulations, meeting with all of the State agencies to make sure that when they spent \$200 million in this State - and that is not WPA money, that is hard banker's money, money that they are going to borrow from bankers in this country and Canada - they had to make sure that they wouldn't be killed by these regulators and these inspectors that are a part of our whole administrative system in this State.

As a matter of fact, remember too that we had to change many of the laws to make it possible for them to come in, and to induce them to come in. Fortunately, the Legislature had the good sense to change those laws and to meet some of the demands that this big industry was making. As a matter of fact, some of my friends that I was just sitting with from the labor union are talking, for example, about what this industry is going to mean to the electrical union -- a plant that is going to be completely electrified and a plant that is going to take more electricity than the entire city of Perth Amboy.

I just want to make you aware of the time that their staff people had to spend with State people, with State regulations, with the State administrative procedures. They don't know - and I haven't told them yet - about the kind of fees that they are going to have to pay the State for the different things that they are going to do. Their lawyer is going to discover that as he gets into the business of their operation -- or the kind of fees, for example, that

in my opinion are outrageous, that they are even going to have to pay Perth Amboy. But, this is the kind of unhealthy climate that is created in many cases by regulations.

I just point that out to you because I think you have a real function to perform. I don't know the scope of your Committee. I don't know how far you can go. I hope you can go far, as a matter of fact. I just feel that I have to say this to this Committee and I want to emphasize it. You know, I was always brought up and given the impression that we had three divisions of government, you know: The Legislative, the Judicial, and the Executive Branches of government. This is not only my opinion. Now we are finding out-- And there are some very thoughtful people in the universities and some thoughtful politicians, - practicing politicians - who are frightened about the fourth division that is not only emerging but, as a matter of fact, it is submerging the other three divisions and that is actually taking over the whole function of government, and that is the vast administrative bureaucracy that is being developed - that is not only developing in New Jersey where, of course, it has had tremendous fire and it has been feeding on itself so that it has grown now to the proportions that you are hearing about. but, as a matter of fact, it necessitates this very Committee. As a matter of fact, as I said, I hope this Committee is going to be broad in its approach to this very problem that I am talking about now - this fourth division of government that is making itself felt almost in every operation of government.

So, I just want to say this for the record to this Committee: I hope that the Committee, as its name implies - as an oversight committee - will really deal with the horrendous problem that is being created by bureaucracy and their total imposition - their total imposition - upon government, so the Legislature cannot recognize an Act that it enacts; the Executive cannot deal with them because they become almost independent agencies; and the courts will become jammed in reviewing the actions of these administrative agencies. Here, this Committee has the wonderful opportunity to put a stop to this kind of development and I hope that that is the direction this Committee is going to go in. Thank you very, very much.

ASSEMBLYMAN HERMAN: George, just one or two questions, if I may. You have had many, many years of experience as a Freeholder, as an Assemblyman, and as a legislator. Based on those years of experience - especially as an Assemblyman - would you say - would it be fair to say - that the primary complaints you get from the citizens on the street in regard to the operation of State Government is regulation and bureaucracy versus the laws we pass?

ASSEMBLYMAN OTLOWSKI: Primarily regulations and the bureaucracy. That is the complaint, generally - that it is so difficult to function; that it is so difficult to get someone to understand your problem. The regulator or the inspector comes in with his book and this is the way it has to be. Whether the plant can operate or not is another question.

ASSEMBLYMAN HERMAN: What do you think we, as legislators, ought to do? What role do you think we ought to play?

ASSEMBLYMAN OTLOWSKI: Well, I think this Committee is probably going to get some picture of what is taking place in this State. From that, you are going to be able to not only devise some legislation that will put monitors on the regulators and on the administrators - that is, legislative

monitors - but, as a matter of fact, I hope too that you are even going to go deeper than that. I hope too that you can use - and I don't know if your Committee has that power - some of the investigative powers to determine the kind of damage that is being done, what kind of damage is being done, and how to correct it after you have made those observations and after you have made that investigation.

I know, for example, the gentleman who testified here who was representing Chesebrough-Pond's - one of the industries that I take great pride in in Perth Amboy. It is clean, well regulated, well managed, and it has a feeling for the city. They had an opportunity to expand in Perth Amboy. Unfortunately, it was before my time. But, again, by the local administration, by the State, they were given such a problem about what they were going to emit into the river-- They had the clearance, for example, from the Federal Government about what they were to emit into the river. The State, of course, gave them a hard time. The city gave them a hard time. Needless to say, they moved the operation to Mississippi and Perth Amboy and the State of New Jersey lost that operation.

This is what I am talking about. This was not done, I am sure, by legislation; this was done, again, by the regulators who made it impossible. They were just given such a hard time by the administrative forces that - and it became so costly - they had to abandon their plans and they had to look elsewhere.

Now, how are you going to devise legislation to give it that kind of sense or that kind of balance? Maybe you are only going to learn that by the long process of these hearings. I don't know. I don't have any immediate answer. The only thing is - as I told you and I don't mean to be melodramatic about it - I am frightened about what bureaucracy can do to the economics of the city or the State and this is what has to be controlled. How you are going to do that, of course, will depend upon what you learn here.

ASSEMBLYMAN HERMAN: Thank you very much.

ASSEMBLYMAN KARCHER: You have had twelve industries come in since July?

ASSEMBLYMAN OTLOWSKI: Twelve, yes.

ASSEMBLYMAN KARCHER: And they all have one complaint?

ASSEMBLYMAN OTLOWSKI: Well, as a matter of fact, you know, again, getting into this, the fact is you baby them; you become a wet nurse. As a mayor you are really a wet nurse and you baby these things because you have to watch them every step of the way to make sure that they are able to overcome all of the hurdles of the administrative codes and laws. Again, it could be made a whole lot easier.

For example, one of the things - from a practical point - is, I have made it known to all of our inspectors and all of our local regulators that I don't want any of them to talk to any industry that is coming into the city. I don't want any of them to meet with them. I don't want any of them to frighten them away. I only want one person to deal with industry that is coming to Perth Amboy and that is the person who we call the industrial commissioner. I want all of the papers, all of the regulations to go through him, so that he can watch it and make it easier for those companies, that he can be helpful to them. We are supposed to be there to help these people to come in. The best example of that is - for example, on the State level - when we were

dealing with the solid waste and dealing with the regulations of the Environmental Commission. They issued the regulations about solid waste so that the people had to take it to Niagra and to Chicago and pay \$55 a drum, or pile it up on their own property, creating all kinds of hazards and creating all kinds of dangers. So, as a matter of a practical approach, we went to Commissioner Horn, who we thought had a little more balance as Commissioner of industry, to try to bring some sense into the regulations and to try to give these industries some help.

Now, this is a real problem, for example, in our District - in the 19th District, where we have big industries. We are waiting for Commissioner Horn to be of some real help to us. I don't know if there can be the kind of a czar that you can create who would have tremendous freedom to push everybody and to make sure that there is speed and to make sure that costs were reduced. There are those fears too that you have of czars. So, you have your work cut out for you. If you are expecting anything from my experience, I can only tell you that I don't like what I see and I don't know what the answers are.

ASSEMBLYMAN KARCHER: Thank you, George. I was afraid you were going to tell the story about the last time I was in our office. There was a guy who wanted to change the plumbing fixture, the shower head, and he had to pay five dollars for the permit.

ASSEMBLYMAN OTLOWSKI: This goes without saying today. Not only are the costs so tremendous for so many things that you touch but you have to make things easier for people as a result of that if they are going to be able to fit into the economy. These are real problems.

ASSEMBLYMAN KARCHER: That's why my family doesn't take showers.

ASSEMBLYMAN OTLOWSKI: Thank you very, very much.

ASSEMBLYMAN KARCHER: Leon Boyce.

L E O N B O Y C E: My name is Leon Boyce. I am representing the Middlesex County Building Trades. We have a few things that we would like to bring to your attention.

First, I want to apologize for not having a prepared statement because of the time limit.

ASSEMBLYMAN KARCHER: That's all right.

MR. BOYCE: The New Jersey State prevailing wage law - the enforcement of the law - we feel is a good law but we feel it is not being policed and it is not being enforced properly. A contractor will come in too low with a price. There must be a reason for it. If the job were bid properly, he knows he has to pay the prevailing wage but in many cases they don't pay it. They know they are not going to pay it.

Now, I will call the Department of Labor, myself - or another business agent - and the Department of Labor will promptly come to the job to question the people but then it dies. No action is taken after that. We would like it followed up. We would like some answers to our questions. Is the law being followed? Is the wage being paid? We have many questions and we know in certain cases it isn't being paid. We would like this followed up.

The pre-qualification of bidders on public works jobs-- It seems that some people go out and buy a tool box, they get a broken down truck, they hire a telephone someplace and suddenly they are a qualified contractor. We think

in some cases they are not qualified contractors. They shouldn't be allowed to bid on public work unless they meet the qualifications required.

We would like you to look into the long wait that our members have - and I am representing upwards of 10,000 people that work in this county. They have to wait for the disability checks and also their unemployment checks. It was published in the newspapers not too long ago that some plants had unemployment suddenly and these people went down to the unemployment offices and they go preferred treatment. They didn't have the waiting. They didn't have to wait a long time - a month or so - to get the checks. We would like this looked into.

We request that you take a good look at some of the complaints from the environmentalists. Now, we like the birds and the bees and the ducks and we want to see things grow like everyone else does but we also have families to support and I am sure that each one of you gentlemen know the bind that we are in today with construction. We have many, many of our members out of work. They talk about 8% or 9% unemployment; we are talking about 40% and 50% unemployed with our members.

A good example with the environment is Route 18. I am sure you are all aware of what happened with Route 18. God, I am over 50 years old. In 1925, I think, there was a need cited for another river crossing. I won't go into this; you are familiar with it. But, we are looking at perhaps one-half billion dollars in construction. We are looking at jobs, not only construction jobs but we are looking at jobs that will follow up. We are looking to the rebuilding of a fine old city. We were known as the "hub city" here in New Brunswick. We want to rebuild it. We could lose J & J if Route 18 doesn't go through. Granted, some of the people against it have legitimate claims but some too are just out for kicks. We would like whatever help we can get along these lines, with the environmentalists.

If we could get some action on the complaints I have cited, we would most certainly appreciate it. Any of your fellows are most certainly welcome at any of our building trades meetings and we would be happy to send any representatives down to your offices to speak about anything that you can do for us. I want to thank you very much for giving me the opportunity to express these concerns.

ASSEMBLYMAN KARCHER: We want to thank you.

ASSEMBLYMAN HERMAN: Assemblyman Karcher is Vice Chairman of the Committee and as your representative, I would appreciate your staying in touch with him with regard to these problems. He can certainly carry the message back to us.

MR. BOYCE: Thank you very much.

ASSEMBLYMAN KARCHER: John Trafford.

ASSEMBLYMAN HERMAN: We all have a copy of your statement so what what we will do is have this incorporated in the record and perhaps you can summarize your points.

J O H N E. T R A F F O R D: For the record, my name is John E. Trafford. I am the Assistant Executive Director of the New Jersey State League of Municipalities.

As I pointed out here in the formal statement, our purview deals primarily with three Departments, not because they are the best or the worst

in terms of their track record but merely because they are the ones that we have had the greatest amount of experience with.

In terms of the administrative aspects of the Act - the period of notification and so forth - the whole mechanism has worked fairly well. It has been our experience that when rules are proposed, the affected special interest groups are notified, copies are made available. In the case of the rules which apply to municipalities, in many instances they are circulated automatically through every municipality. We think this has worked fairly well.

We would recommend however, that the twenty day time period is too short because in our case - and I think this is true in the case of other state-wide organizations - they have their own review committees and by the time the rules are announced in the Register, copies are circulated throughout the State and they are frequently very voluminous. It takes days and sometimes a week or more by the time these are actually physically in the hands of the rest of the people around the State. The organizations then call meetings of their own review committees for the purpose of responding and the twenty day period is just not sufficient.

It has been our experience that once rules are being drafted and are in the works that there is a pretty good informal dialogue. We have had very little, if any, difficulty in arranging meetings and conferences with the involved administrators who ultimately will be administering the rules that will ultimately be promulgated.

We have cited some examples here - in the case of the contracts law; in the case of the affirmative action rules and regulations applying to public contractors who are bidding on public jobs. We have had a number of on-going meetings and contacts with people in the Department of Treasury and in the Department of Community Affairs, and so forth.

I am not suggesting that our impact has been that great, but at least they have listened and there has been an open dialogue.

There is a much more far reaching concern that we have, however, and that is the matter of the extent to which the regulations either go beyond the legislative intent or if they don't go beyond it, at least build this whole super structure of new policy and new interpretation which may not be inconsistent, but it goes considerably further than the original legislation.

We cite here a number of examples. One is with regard to the recently adopted Uniform Construction Code. The Department of Community Affairs is authorized to promulgate rules and regulations and in the process of so doing, they suggested a conflict of interest prohibition under which the bottom line is all of the building and plumbing inspectors could no longer work in any municipality on a part time basis. Now, the law is completely silent on this. This appears to us to be a policy determination which came from the administrators in the Department of Community Affairs and not from the Legislature itself.

Also, within the Uniform Construction Code there is authorization within the law for a construction board of appeals. Now, the law doesn't say much more than that, other than there shall be five members, each member shall be qualified by experience, etc., etc. When you look at the rules and regulations, they go into considerable detail: No more than two members shall be selected from the same profession; at least one member should be a registered architect; another shall be a professional engineer; one member shall be a

qualified plumbing subcode official, etc. They go on to say that the commission may require training for these people. The rules go on to say that failure to attend 50% of the meetings is grounds for removal from membership on the board. Now, again, the law is silent on all of these things.

An interesting sidelight to this is that in other areas the Legislature itself does address in some detail a number of these requirements for membership on boards. An interesting example is the matter of the payment of expenses. The Uniform Construction Code, again with reference to this construction board of appeals, is silent on the subject of payment of expenses. But the regulations specifically authorize the payment of expenses and reimbursement salary at the discretion of the agency. This is not in the law. However, the Legislature is addressing itself right now, through Assembly Bill 3178, to the payment of expenses and reimbursement for planning and zoning board members. So, in one instance it is a matter of legislative policy and in another instance it is a matter of administrative policy.

Now, we are not commenting on the merits - whether there should be a fee or where this should be determined - the point is it is not consistent.

I mentioned earlier the on-going dialogue on the affirmative action regulations, which are now in the process of being promulgated. The law says that in addition to other penalties - the law, by the way, is Chapter 127 of the Laws of 1975 - the violator, in addition to other penalties, shall be subject to a fine of up to \$1,000 per day. When we look at the rules and regulations there are a number of penalties which are set forth and which range all the way from termination of the contract, stopping the job, to disbarment for five years and so forth.

That particular law - Chapter 127 - says that the State Treasurer may require State and local agencies awarding public works contracts to designate officers or employees at the local level to maintain liaison with and assist the State Treasurer in the implementation of this act. When you look again at the regulations, there is a long list of duties which are now incumbent on this local officer. He must issue written alert notices to contractors who are in violation. He must assist contractors in the use of outreach referral and training programs for minority and female workers. He shall meet with the principal officer of the contractor, or subcontractor to insure compliance with the act. He must monitor compliance based on Project Manning Reports filed by the contractor. This is a rather detailed and rather comprehensive range of duties on the official which I will point out later on. In most cases in our municipalities it will be another duty which is added on to someone who is already serving part-time.

ASSEMBLYMAN HERMAN: We have a lot of municipalities with a population of 1,500 in our area which--

MR. TRAFFORD: I know you do.

ASSEMBLYMAN HERMAN: --could supply more cows than they could people to fulfill these regulations.

MR. TRAFFORD: That's correct.

Still on this affirmative action rule, there is a concern with getting funding - with getting financing - to provide training for these minority people who will be in the employ of the contractor. The law is silent on this, other than addressing the problem in general terms. But, it is silent as to the specifics. When we look at the rules we see a very specific, and we think highly

controversial proposal, which is something like this: One, on all public contracts on construction jobs involving \$1 million, or more, when half of one percent that amount must be budgeted by the municipality to assist the contractor in meeting his obligations in terms of hiring these minority people to meet his county quota, which may be 18% or 20%, or whatever. This fund goes to the contractor, who is a private party, for the training of his private employees. Now, maybe this is the only way we can go with it. That is a matter for another forum. But, our point is, this is a policy decision and we raise the question, "Why does this appear in the regulations and not in the Legislative Chambers?"

With regard to the Department of Environmental Protection--

ASSEMBLYMAN HERMAN: You mentioned the 90 day rule. What are some of your comments on that? You seem to depart in your prepared text.

MR. TRAFFORD: Oh, yes. Our concern with the 90 day rule, this deals now with the Department of Environmental Protection. We have had two recent experiences with that Department with regard to the 90 day rule and with regard to the regional solid waste agencies. In both cases our concern was similar. For one reason or another the agency was not sufficiently funded - at least this program was not sufficiently funded - and the agency tried to get the money through the fee schedule mechanism which went way beyond-- In the case of Chapter 326 on the Regional Solid Waste Agencies this would have raised \$2 million and the agency was very frank and very candid in admitting, "Well, we need money to fund the program and we didn't get it from the Legislature, so this was the only way we could carry out our mandate." Well, we are not arguing that but, again, the fee structure was so high that it caused a considerable hardship on the affected parties, which included municipalities. In fairness to the Department, hearings were held at which criticism of this was voiced and the schedule was modified. But, again, a policy decision - as we see it - was made by the administrative agency in terms of setting very, very high revenue-raising fees.

ASSEMBLYMAN HERMAN: In reviewing your testimony which is set forth in written form - and I think you have done an absolutely marvelous job in setting forth some of the examples which I think we are all concerned with - you have some concern with legislative oversight. I would like to pose two or three questions to you, if I may. One, in regard to the legislative response, if not legislative oversight then what? And, perhaps as an adjunct to that question, what do you think the role of the Legislature ought to be?

MR. TRAFFORD: Our comment on that - which is on the last page - is admittedly rather brief. Our concern is not a philosophical one. Philosophically we agree 100%. Our concern is merely practical in terms of the delay, in terms of the burden that would be placed on the Legislature, which is already part time. We all know that there are many bills pending in the Legislature which in one way or another, are not addressed. In many cases, it is a matter of simple time. There are 5,000 bills introduced, as we all know, in an average two-year session. The Legislature can't get to the 5,000 under the present circumstances, let alone deal with this added responsibility. But our concern is only a practical one; it is not philosophical.

ASSEMBLYMAN KARCHER: That's all right, John, 4,950 aren't worth passing anyway.

MR. TRAFFORD: Okay.

ASSEMBLYMAN HERMAN: What do you think the role of the Legislature ought to be? I have heard the criticism philosophically put that legislators are too often concerned with the glory of getting a piece of policy-making legislation passed so that they can look good and too little concern with the nuts and bolts operation of government in seeing that what we pass operates correctly. I assume that there is some validity to that criticism but generally you have outlined a number of areas in which you have quite clearly and accurately stated that the administrative branches of government are engaging in legislative policy and are establishing areas of regulation which are substantive and really are extensions of the law.

Now, what do you think we, as a Legislature, ought to do about it and how should we go about doing it? What are your suggestions?

MR. TRAFFORD: Well, there is obviously a dichotomy. How do you try to merge this? I have one or two suggestions which I jotted down as other people were speaking. One would be that there might be a possibility for a somewhat enlarged, informal liaison between the very legislative committees which in an oversight role would be officially responding and officially screening these rules, through their staff aides and the people in the department - the legislative liaison people in the respective departments. If there were a greater on-going dialogue between these people on an informal basis, that might accomplish something. I am not sure it would provide the total answer but it is a possibility that maybe should not be overlooked. I understand that most of the departments do have these people and they are around. I think maybe there could be a little better on-going dialogue of that nature.

There might be some kind of a master plan which the Legislature initially would adopt which would deal with the scope of administrative decision-making in the broad spectrum on such obvious things as, when the Legislature does create boards on the county or municipal level or even on the State level, what the specifics are with regard to membership, duties, qualifications, and so forth. This would be a matter of legislative determination or it will not; it will be a matter of administrative regulations.

ASSEMBLYMAN HERMAN: Has the League of Municipalities taken a position, generally, on sunset legislation?

MR. TRAFFORD: On sunset legislation? No.

ASSEMBLYMAN HERMAN: Okay.

MR. TRAFFORD: We have had experience and the opportunity to work with a lot of these mysterious rule-makers - as you have referred to them. I think basically they are reasonably qualified people; I think they are reasonably knowledgeable in their field.

ASSEMBLYMAN MAGUIRE: However--

MR. TRAFFORD: However, my complaint, which is admittedly a parochial one, is that they tend to approach their mandate with an administrative zeal. In other words, the objective is to implement whatever their present project is and they either lose sight or they have no particular sympathy with or understanding of the impact of this on whatever areas are being regulated. In our case, of course, it is the municipalities.

ASSEMBLYMAN HERMAN: Putting it to its lowest common denominator it is defending the castle, right?

MR. TRAFFORD: I suppose it is, yes.

ASSEMBLYMAN KARCHER: With regard to that, I have always be fascinated with whoever it is - you might shed some light on it - that drafts the "regs" for the Public Contracts Law - people with whom you might be acquainted. Are these people-- You say they are reasonably well qualified. Are they people who have had any actual experience in public contracts law, from either a legal point of view or a purchasing agency point of view?

MR. TRAFFORD: Well, that is a good example.

ASSEMBLYMAN KARCHER: This is the complaint I always hear: "Whoever drew this has never bought anything except groceries." That is the kind of thing I hear.

MR. TRAFFORD: There is an interesting sidelight and I think the Local Contracts Law is the best example, maybe. It is common knowledge, I think, that several of the key administrative people within the Department of Community Affairs - more specifically the Division of Local Government Services - come out of local government. I am talking about the Director himself, John Laezza, and I am talking about other people in the Department who have had municipal government experience. They also have the benefit, as I said, of an on-going dialogue with the League of Municipalities and other organizations. So, I think they are aware of the problems. They are aware of what it does on the local level but, again, they keep coming back to their own objective.

Just last week we had a two hour session with people in the Department of Treasury who will be involved in administering the regulations on this affirmative action thing and we went at it hot and heavy with them and we pointed out the problems as we see them. How, when you are dealing-- And this is the one point that I didn't make and that I don't want to leave without making, if I may. This deals with the fact that many people on the state level think - many administrators - that every municipality - everyone of the 567 - has the same administrative capacity as the Plainfields or the Trentons -- you know, the larger and the more suburban and the more sophisticated communities. They totally lose sight of the fact-- I pointed this out to one of these individuals and said to him, "Do you realize that 50% of the municipalities in the State have a population of under 5,000? You are talking about this local compliance officer being a part time official." I said, "There isn't a full time official in these towns." The municipal clerk is the closest thing to a broad administrative person and the clerk is part time. So, when you are talking about an added burden, which this is going to be, of -- well -- four or five reports a month from this agency and four or five reports required from another agency and then build the thing up, this is the most constant complaint that we get. There should be a moratorium on everything because of just the paperwork.

The interesting thing is, they don't object philosophically to maybe the program but merely the fact that the administrative burden is such that they cannot continue to respond on a part time basis, and to go from a part time municipal clerk who is making \$1,000 per year or \$2,000 per year to a \$15,000 or a \$20,000 full time administrator is a policy matter in that municipality that they don't want to burden their taxpayers with and you can't blame them. There ought to be a sunset law on these administrative procedures

ASSEMBLYMAN HERMAN: Very fine. Thank you very much.

MR. TRAFFORD: Thank you.

ASSEMBLYMAN KARCHER: We will now take the gentleman from Five Star

Airport who has to go somewhere.

PHILIP BUSACCA: Thank you. My name is Phil Busacca. I am here as an individual who is trying--

ASSEMBLYMAN HERMAN: Where do you live, sir?

MR. BUSACCA: I live in Metuchen. I am trying to start my own business and I have run into a stone wall in dealing with the PUC. The PUC demands that I send a lawyer down. I do not have \$1,000 or \$2,000 to give for a lawyer to spend 20 or 30 hours playing games with the PUC. The PUC's regulation of the industry I wish to get into are made up so that a large company, such as Salem, such as United Limousines, can work within these regulations. But, a person, such as myself, who has one or two vehicles cannot afford to go out and buy a garage that has its own lift so that he can make the adjustments on his vehicles that the PUC requires.

Also, in this same line, the PUC and the State Licensing Commission for the licensing of vehicles are working at cross purposes among themselves. I can get a license for a limousine service without a PUC license but I can't run a limousine service without a PUC license. This is, to me, something they dumped on to the PUC that the PUC didn't want in the first place, with the enactment of the Limousine Law in 1973.

So, they have made it so difficult for somebody to get in that it is impossible for anybody who doesn't have "grandfather" rights previous to 1973 to get a license.

Now, I myself, have an older vehicle. By PUC regulations that vehicle is not acceptable, yet it is street safe. I can agree with the regulations that a vehicle in this service should be inspected every four months. I agree with this. But, why should I have to supply a lift? I do not have \$100 to hand to my garage who does my work so that he will keep his lift free on the day the inspector says he will be there. Then he may not even be there on that day to inspect my vehicle.

Also, they have transferred their regulations of what a bus must have over to what a limousine must have. In one case that I know of for certain, they required that a bus has straps holding up its drive shaft in case something goes wrong with the universal the drive shaft doesn't fall down onto the ground, catching and causing an accident. I can see this. Yet, your car doesn't have it. My private car doesn't have it. Yet, my limousine must have it. It is cross purposes again.

I can see if they want me to have my car inspected four times a year - all right. Send it to a regular inspection line. They are supposedly the same inspection. Send my car through four times a year rather than once. I can understand this.

To get into another field that has prohibitive regulations - your supposed laws on no fault in insurance - now, I drive an average of 50 to 75 thousand miles a year. The law of averages states that the average driver has one accident a year with 10 to 12 thousand miles average driving. Now, in the last four years I have had three accidents and of the three, none have been my fault, yet on my private insurance, on my private car, my insurance is \$500. So, no fault has done nothing in the State of New Jersey.

I have my papers at home from the insurance company that stated that was the reason for my insurance being \$500 - because I have had three

accidents in four years. Now, this to me seems ridiculous when we are supposed to have a no fault law. You are being faulted because somebody hit you.

ASSEMBLYMAN HERMAN: A lot of us here might agree with you.

MR. BUSACCA: What the blazes is a no fault law? It isn't a no fault law; it is a fault law. It is saying, I don't care if you were even in your car - and I wasn't in one instance. I had two cars wiped out at the same time and I wasn't even in either one of them.

ASSEMBLYMAN HERMAN: What we are going to do with your comments is, if they relate to a particular department, we are going to ask our legislative staff, at the time this transcript is made, to forward your comments on to the particular department. I think your comments are worthy and I appreciate your taking time to wait here this morning.

MR. BUSACCA: Thank you.

ASSEMBLYMAN KARCHER: Mr. Stuart.

R I C H A R D S T U A R T: I am Richard Stuart. I am from New Brunswick. I am Chairman of the Citizens for Community Corrections and I am also State Secretary of the New Jersey Coalition for Penal Reform. I am going to talk just in a tunnel in looking at corrections because this is where I have been frustrated.

May I ask which one of you is Assemblyman Herman?

(Whereupon Assemblyman Herman identifies himself)

When I read in the newspapers, "We want to determine whether rules are being promulgated in a fair and open manner, whether there is adequate public participation in the rule making process and whether rules accurately reflect legislative intent" I thought this is a hearing for me because the Department of Corrections and, before that, the Division of Corrections has been driving me up the wall for the last four or five years and much of it has been because they have gone way apart from the statutes. When they get hold of a law - a new law - it seems to be that they are intent upon perverting it if they can manage to do this.

My position in connection with penal reform, of course, is in favor of many of the things - furloughs, work release, and all this - but there is a right way to do these things and there is a wrong way. Under the power to implement the law, they have gone out of their way over the last few years to do everything as though they were trying to destroy the credibility of the programs. That is how far they have gone out of line and this has disturbed me. Also, we very often only find out - and I am a person who is particularly interested in this field and watch the papers closely and have a rather good grapevine, I feel - what they have done when we read the newest scandal in the newspapers and find out that somebody was out under some program that is unbelievable to me. Therefore, I think there is a need to impose on these people some obligation to let the public know when they are in the process of writing new regulations or when they are changing them.

I have been in private conversations with the Commissioner so I knew that they were involved just over the last few months in broadening the criteria for furloughs which had been tightened after they had gone wild on furloughs and the Governor finally had to step in and almost stop the entire program to keep it from being destroyed. Yet, I didn't hear any more about it until I saw something in the paper that the new criteria had been released.

Right away, I wrote to Jim Stabile, the Public Information Officer for Corrections, and I ran into the man who is in charge of this in Yardville the other day and I found out. You know, I got a copy of this. But, I am getting it after the fact and if I hadn't been there and in private conversation with her, I wouldn't know that they were going to go on now, further, and deal with -- well, work release is considered under furlough. But, they are going to go on and look at study release.

I would like to mention to you, gentlemen, something that you may not be aware of, which, again, is one of those prize things. At the same time the Governor stopped work release programs and furloughs and stopped them affecting people who were going to be paroled -- In other words, we had a situation here that when a person was going to get out next week or next month, he couldn't go out on a job interview. But, at the same time, people have been going out of the prison, who aren't even eligible for parole, or to see a parole board for maybe five years or ten years - that is how long it will be before they are eligible to see a parole board - four or five days a week to a college campus. Now, I find problems with that sort of thing, where you are saying that a man can't even go out for a job interview when he is going to be released next week but somebody else who is years away from even meeting a parole board can be out in the community.

They have taken - and I don't know how you can deal with this - the statute that covers work release and they have stretched it and twisted it and I have said that I don't feel the Department of Corrections should be involved in this sort of thing. Some of the things they have done, I believe should be done but I believe they should be done by amending the legislation. They shouldn't be twisting it to do some of these things.

A new bill was sponsored by Senator Merlino last year and went through. It authorized this purchase of service contracts for pre-release. In other words, they are going to start now right here in New Brunswick and down in Trenton in Clinton House to send people there who are within six months of release.

ASSEMBLYMAN HERMAN: Halfway houses?

MR. STUART: Right. They are going to send them out there because we don't, as a State, have facilities for these people, except we have one place in Newark with limited capacity. We have another in Camden. So, they are going to purchase service. Well, the fascinating thing is that maybe -- Well, it was late last summer. This bill had passed and I didn't see anything happening. All of a sudden, I got word from the grapevine that the first use that Ann Klein and Bill Fauver were going to make of this law was not to transfer some people to Clinton House or to Bates House here in New Brunswick who were going to be released, but the first use they were going to make of the law was to transfer two people who were serving life sentences who were actually moved from death row to life sentence and who are out on a very questionable premise in the community on what they call community release, for which there is no legislative authority. They are involved in a good program and these two people very possibly should be qualified for clemency, but if clemency is what they should get that is what they should get. The Department shouldn't be granting clemency, or granting parole if the Governor and the parole board haven't granted it.

ASSEMBLYMAN HERMAN: May I make a suggestion?

MR. STUART: Yes.

ASSEMBLYMAN HERMAN: Your testimony, I think, is very valuable and very helpful. Our Committee aide, Mr. Frakt, has pointed out - and I wish to share this with the rest of the Committee - that the reason many of us have no knowledge of these rules and regulations is because the Correction Division Agency, in most part, is exempt from the requirements of the Administrative Procedure Act. They almost do it in-house. The question as to whether they should or whether some of their functions should be brought under the umbrella of the Administrative Procedure Act and, thus, open to more scrutiny--

MR. STUART: Which is a very important point.

ASSEMBLYMAN HERMAN: It is a very important point. What I would like you to do, if I may indulge on your good graces, Mr. Stuart, is - you raise many things that cannot be covered here - one, perhaps we would like to have you return at another time when there is a hearing in Trenton, or elsewhere. In the meanwhile you could perhaps develop some sort of a compendium on those areas of abuse that you think we as legislators ought to know about, I think we would all be highly indebted to you for that service.

At the lunch break you could perhaps give Mr. Frakt your name, address and telephone number. I know I would appreciate it and I am sure everyone else would.

MR. STUART: Let me just mention one thing. It is in connection with this bill of Senator Merlino. When I wrote to the Bar Association - of which I am a member and I was on the Board of Directors for four years - and asked whether this was being contemplated - because I felt that it was wrong for the Association to be involved in something like this - I didn't get any answer. So, I turned around and wrote to Senator Merlino because it was happening right in his area and it was his bill. I was told by a Committee Aide, "Well, there is no time limit. It turned out that when you read what went into the law, there was no time limit." And, I said, "You are right but" I said, "go back to the statement that went with the bill when it was passed. The statement said 'reentry'. It was going to be for reentry which didn't mean people who aren't even going to meet the parole board for five years." His looking at it stopped that little game but how do you deal with - and I think this is where the Legislature needs to face the fact that this exists - bureaucrats who aren't just trying to do a job within what they see as the legitimate intent but who are prepared to take rules and run with them - "do their thing" with these rules.

Let me just add one more thing. I am editor of the Newsletter of the Coalition - that is why I was up in East Orange today because I went to press this morning with it. But, one of the things that I am suggesting in there is that we have the problem now of the purchase of service and I said that I feel the appropriate legislative committees had better start right now and look at the criteria so that two years from now we don't have a scandal in connection with this. Because if you people don't look at the criteria that the Department of Corrections is coming up with, the same people who are doing this today are the same people who were there last year and the year before and the year before and who created the furlough scandal.

ASSEMBLYMAN KARCHER: Thank you.

We will now recess for lunch and reconvene at 2:10.

AFTERNOON SESSION

ASSEMBLYMAN KARCHER: The afternoon session of this hearing will now come to order. Our first witness will be Francis Kenny.

F R A N C I S K E N N Y: I am Francis Kenny, Executive Secretary of the Municipal Tax Collectors and Treasurers of the State of New Jersey. I have two of our newsletters on farmland which I would like to bring up first.

ASSEMBLYMAN KARCHER: You waited until our resident farmland assessment expert, Mr. Herman, left?

MR. KENNY: No. I would love to have him here. I didn't know he wouldn't be here this afternoon or I would have insisted on talking this morning. He is not going to be here?

ASSEMBLYMAN KARCHER: No, he had to get back.

ASSEMBLYMAN MAGUIRE: But we know what his position is.

MR. KENNEY: I might say that where legislation is needed is in the area of farmland assessment - Chapter 341 of the Laws of 1976, 40:56-41.1, the first payment of assessments for local improvements as to undeveloped farmland until it is improved by subdivision for residential, commercial or industrial structure. This change may take place 20 years later and the improvement assessment could be lost over a long period. To make matters more of a problem, the Agricultural Department of New Jersey is buying land rights to conserve farmland. These rights are being purchased in Burlington County as a pilot project. The State of New Jersey is paying the difference between farm value and market value for the uses. After the contract has been finalized with the State, the farm owner cannot sell his land for any other use, other than farming. That is what we thought when we wrote this.

The farmer receives his money but the municipality cannot force him to pay for the improvement assessment, whether old or planned for the future. The question of rollback also enters the picture. Some type of legislation is needed allowing the tax collector to record these assessments at the county recording office. This legislation should also include the necessity to pay these assessments and rollback taxes.

That was written first in September of '76. On November 29, 1976, a letter was addressed to John VanZandt, program Director and Coordinator: "We have read in the newspapers a reference to final date of December 1, 1976 on the pros and cons of the Farmland Preservation Demonstration Project rules and regulations. A letter does not permit us to properly explain the pitfalls of this program from a tax administrators point of view.

"The following statements point out glaring inequities in the rules: First, improvements such as streets, curbs, sidewalks, water mains, sewers, and so forth are not chargeable to the owner of qualified farmland - Chapter 341 of the Laws of 1975. The same improved property will be appraised at a higher figure because of the improvements. The local taxpayer will be forced to pay for the farm improvements. The farmer will receive an increased amount from the State because of the improvements.

"Two, the farmer receives payment of value on the basis of other uses. Under this program, he does not pay any rollback taxes. If sold to any buyer for other uses, the buyer would be forced to pay back rollback taxes.

"Three, the idea of allowing a farmer to buy his land rights back

at a later date defeats the original purpose for the purchase by the State.

"The Municipal Tax Collectors and Treasurers Association of New Jersey hereby offer their services for discussion on the rules guiding this program." The above letter was signed by then president Carl Hagey and myself. Of course, we have never heard from Mr. VanZandt.

ASSEMBLYMAN KARCHER: Let me ask you something. Farmland assessment is not your only problem with rules and regulations, is it?

MR. KENNY: No, I can go into more here but that is something that we have in print that I can leave with you and that I think needs legislation. I can't see where municipal taxpayers will pay for improvements - and they must pay for them if they are done - for the farmer, then they come along and appraise the land on the basis of the improvements. He gets the higher value. He doesn't have to pay for the improvements and he doesn't pay rollback taxes, even though he gets the price of the value for other uses.

This, it seems to me, is a little bit ridiculous and I think legislation is needed. I don't think there were any tax administrators on this committee. I am not sure of that.

ASSEMBLYMAN KARCHER: No input?

MR. KENNY: There is no input there. That's right. We are not against this program. But, we surely feel that the people in those towns are not getting a square deal.

If you have any more questions, I would be pleased to answer them. If not, we will go into other things.

This Committee, I feel, is definitely needed - the Oversight Committee. To give you a little idea, May 1st is one of the largest collection periods in the tax business. There are four days that are very heavy, or weeks we might say - the first of May, the first of August, the first of November and the first of February. Those are the heavy tax payment times.

Now, the May 1st collection was set. This is in the law book. This happens every year. Yet, they came up with a rule that the educational rebate money was to be paid back on May 1st - one day. Now, of course, when those checks went out, even if they went out a few days ahead of time, I don't mind telling you about the telephone calls coming in. They were trying to get this money together to get to the bank; collect the money; and answer all the problems that occur when everyone comes in to pay and your mail comes in in bags. It is imperative that you get that mail processed and the money in the bank so that your town will receive interest on the investment. But, I can assure you no tax collector in the State of New Jersey was able to get that money in the bank those first few days, or even the first week.

On top of that, the homestead delinquent checks were sent to the collector within that week - May 1st, or the day before or after - and a letter was sent to everyone in the State of New Jersey that was delinquent stating that his tax collector now has his money because he was delinquent and he would credit it to his account. They all came in for the credit or the check because they paid it. You can't believe the problems in these tax offices. Now, somebody should have known better than to have all of those things happen on the same day.

To give you an idea of what is happening in the tax field in the State of New Jersey, just one month ago I was in Sid Glaser's office and he

quoted that there were 91 openings in the State of New Jersey for tax assessors - 91.

I spoke in Burlington County about two weeks ago to approximately 35 people who were in the room. Eleven of them were new tax collectors and two more were going to retire. This is not a coincidence. The Carteret tax office doesn't have anybody. The tax collector retired May 1st and his deputy walked out last week.

I could go on and on and tell you of the various towns where most of them are getting ready to retire if they can, or they would like a transfer to some other spot in the municipality.

I fought in committee for a dollar a line item on the homestead and the rebate so that at least they could hire some extra help or pay for overtime in the towns where they did not have money for that purpose. Of course, I was told they would receive it in the revenue sharing money. But, this was not stated for that purpose and, really, the tax collectors in most towns suffered. They took his blood. He worked seven days and seven nights a week trying to get things straightened out. This really, definitely, wasn't fair.

So, as I say, I believe things like this wouldn't happen if rules were set up with an oversight committee checking on them and I am sure you would call upon the people who were in the business to at least get their idea of what it is all about.

Going back to the fact that if this committee existed - speaking now about the educational rebate - the State would not have to now appropriate two million to cover the added and omitted assessments. We told them in the beginning that this would happen. It had to be paid legally. You were charging them on the basis of a percentage for the school, a percentage for the county and a percentage for local. You charged them for it; you surely had to give it back to them. So, it was ridiculous not to include it.

Again, if the oversight committee was there and you could talk to them, I am sure that this would not happen and the State would have that two million for another purpose.

ASSEMBLYMAN MAGUIRE: But we would find a way to spend it.

MR. KENNY: I am sure you would. I am speaking for the Association.

I have something other than that that I think is very important and I am not speaking for the Association now but from my experience in this business. This was a pet peeve of mine when I was the President of the Association a few years back. I was disliked in many quarters for it. But, the most important thing in the State of New Jersey - municipal finances - which handles 75% of all the tax money in the State of New Jersey, is a second rated group in Trenton. We are divided between the Community Services, Sid Glaser's office, and the Treasurer's office and nobody knows who should answer a particular question when it comes up.

I might even say that--

ASSEMBLYMAN KARCHER: Is it fair to say that there is a great amount of uncertainty?

MR. KENNY: In every way, shape, and form. I might say that a fellow like John Laser does know the business. I read in the paper that making up these regulations is a tremendous job. I read in the paper where he was sent to

Washington and he is making up all of these papers to get some Federal money to help municipalities. Well, this is wonderful but this is not the job for this man at the present time, when the tax collectors are sitting in their office waiting for rules and regulations on the tenants rebate. There will be 10 or 12 pages of rules and regulations. The telephones are ringing every day in the week on the tenants rebate that they cannot answer because they do not have the rules and regulations.

ASSEMBLYMAN KARCHER: And you can't answer anybody because Trenton doesn't answer anybody?

MR. KENNY: That's right. We have the bill and I get the calls continually. I am a trouble shooter. I tell them I will interpret it my way but you will only get in trouble because they may interpret it another way.

So, my feeling about municipal finance is the fact that there should be one head over municipal finance in the State and he should govern the tax assessing, the Treasurer's office, and the tax collection. The most important thing, as I said, is handling 75% of all the finances and taxes in the State of New Jersey and it is just not being handled - period - the way it should be. I am not condemning the people involved. I am just saying that it is so spread out and that nobody has that final word to say - "This is it", or, "That's that."

I would say that this department should be headed by a person and the department should not be subservient to the State. There comes a time - as we are in now with all these problems and regulations that must come through--

They call on, as the paper stated, John Laser and his assistant to work on getting funds from the Federal Government. Now, how ridiculous can this be? They should not be subservient to the State. They should be working entirely on municipal finance and not be called upon to do other State work. I don't think this is fair and I believe that municipal financing has been neglected considerably.

ASSEMBLYMAN KARCHER: Are there any questions?

ASSEMBLYMAN SHAPIRO: I should say we get all the same calls that you do on that tenants rebate and as one of the cosponsors of the bill, I just keep telling them October 1st is the date that the DCA says the "regs" are going to be ready to roll.

MR. KENNY: It doesn't tell them which year.

ASSEMBLYMAN SHAPIRO: Just October 1st. Wait until the calls come in then.

MR. KENNY: You can imagine, by what I have just stated concerning May 1st, the things they have been through. The tenants rebate is also involved with the phone calls. It is a nightmare - really a nightmare. Thank you, gentlemen.

ASSEMBLYMAN KARCHER: Cable Spence.

CABLE SPENCE: Thank you very much. I have already filed with this Committee a response to the form you sent out. My name is Cable Spence. I am the Secretary Administrator of the New Jersey Farm Bureau.

I have a couple of notes to add to my response which I thought might be of interest to the Committee. First let me say that Farm Bureau policy has called for such a committee for a long time. Our records go back to Governor Meyner, when we requested at that time that the Legislature take the formal procedure to establish an oversight provision in all legislation. I am sorry

it wasn't done then.

ASSEMBLYMAN MAGUIRE: We couldn't find the volunteers to devote the time.

MR. SPENCE: I understand. Hopefully, some of the things I have to say are humble. I shouldn't use that; that is Secretary Alampi's line. I won't use that. In our opinion we may have a couple of thoughts for you.

There was a time when I guess we thought the farmers were the most regulated of all, but I have come to the conclusion that we are not. It is not that we are not regulated, it is just that we are just one of the many groups who face this dilemma.

We are particularly proud of at least two major pieces of legislation and the language - the oversight language - included in both those bills. I refer you to A-1334, which is now the Farmland Preservation Project enabling legislation - and one which you just passed, A-1992, the Wild and Scenic Rivers Act. The oversight provisions in both those bills were hard thought but we think it is the beginning of the Legislature keeping a handle on regulatory agencies.

I understand from Assemblyman Froude that he included the language that is in Wild and Scenic Rivers in his energy bill and I am aware also that Senator Russo's energy committee also included that language in, I think, the Clean Drinking Water Act. So, I think this Committee is having its effect. The Legislature is beginning to feel that they do have a role to play - a serious role. I think the question really is how far can you go, and maybe that is what we can all contribute to at this hearing.

I think the overriding factor that we are concerned about is - as far as agriculture is concerned - if rules and regulations are supposed to ultimately benefit - and we constantly hear the terms "in the public good" and "in the public interest" - then it follows, does it not, that the public ought to be the beneficiaries of such regulations and not their victims. Too often I fear the public is really the victim because of the higher cost of administration and - as you heard from the municipal group this morning - the cost to the community - to the small community - in trying to administer these costs.

Imagine, if you will, what this translates into to the family farmer where he has his wife, his children, a father, an uncle - or whoever it is that is involved in the family operation. All of the rules and regulations which apply to farming - and this includes the water provisions, the irrigation provisions, the pesticide provisions, the labor provisions, the building provisions, all of these things - requires the farmer to do the bookkeeping himself. There is no way he can pass that cost on. If you know anything about the marketing of agricultural products, it is nearly impossible for him to do this.

Our concern is, we are asking for some reasonableness in this approach. There is no farmer who doesn't want clean water. There is no farmer who doesn't want to have a product that goes to market that is free from pesticides that are going to damage the people who are going to get the product. Nobody wants this. I assure you that the conservation techniques that have been employed by farmers for the last 30 or 40 years through the Soil Conservation Service and through the State programs, have done a tremendous amount of good in keeping down the silt in the streams, avoiding run-off, etc.

The big run-off problems do not come from farmers; they come from shopping centers. I think this is where the regulator draws up a set of regulations to solve run-off, particularly in a shopping center, and then suddenly realizes that some farmer is going to be involved in this too and there is no way a farmer can meet that kind of regulation.

I would like to touch on one other issue. We call this the confiscation through regulation issue. If one were to take a look at the map of New Jersey and take it from Trenton, south, you would find that either through the Wetlands Act, through the Flood Plains Act, through CAFRA - and regulations are still to come from that - and, more recently, in the Pine Barrens where they are trying to put through new water quality standards, almost that whole land mass is either controlled or under the thumb of State or the Federal Government. Now, these are property owners, including municipalities who are losing tax ratables because of this. It is not just property owners anymore, municipalities are beginning to feel this pinch. All we are saying is, if you are going to take property rights from someone because of a regulation, then he ought to be compensated for it. That is what the Constitution calls for.

Now, you can do this as they have done in the Southwest, for any number of years, through the easement process - mineral easements that are issued or gas or oil easements that are issued on a piece of property where just that value of that piece of property is paid to the landowner and he has the right to use the land for anything else. It is the same kind of principle that is being tried down in the Farmland Demonstration Project in Burlington. It has a long history of success. Maybe this is the approach we are going to have to turn to if we are going to insist on this mountain of regulations that, in effect, creates a land use program.

I don't think any landowner minds if it is truly - and I hate to use that expression - in the public good. I don't think he minds it then. But, at the same time, if you are depriving him of a right to use that property, or if you are taking some value from that property, then he ought to be compensated for it. The Constitution calls for this. Maybe the easement process is one way we can solve that problem, I don't know.

To show you how ridiculous this one area can be, the Federal Water Pollution Act says that by 1983 all the waters of the United States must be fishable and swimmable. Now, that is all the Act says. EPA has gone and issued regulations upon this. Now, this is the Federal EPA. They say that through the 208 planning process, as far as agriculture is concerned, they will have to adopt what they call the "best management practices" to live up to these regulations - the best management practices to be developed as a result of the 208 studies that are going on now. Carry that to the next step - what is a best management practice?

Soil conservation - any farmer can tell you if you get two farms side by side - and Mr. Karcher go right outside your District into Plainsboro and Cranbury and you have some of the best potato land in the United States sitting there - you will find different cultural practices necessary to achieve a production equal to the other. Now, which is the best management practice? That is the kind of thing that we are running into now and this is going to mean further regulation of some fashion.

We are trying--

ASSEMBLYMAN KARCHER: What I want to know is, when they say "fishable" does that mean you have to catch anything or does it mean you just go drop your line?

MR. SPENCE: I was hoping you wouldn't ask that.

ASSEMBLYMAN KARCHER: As long as you can poke through the water with a line it is fishable.

MR. SPENCE: I was hoping you wouldn't ask that because I don't know and I don't think they know. This is just one of the problems we have.

You mentioned the building code a little while ago. That thing is plagued with disaster. I heard some of the municipal side but for farmers that thing can cause all kinds of problems for us. For example, all of the building permits are based on volume.

ASSEMBLYMAN KARCHER: Cubic feet rather than square feet.

MR. SPENCE: All right. A farmer putting up a structure would pay the same permit fee as the Statler Hotel down in Burlington County. It is the same amount of volume.

Now, we have been able to get a clarification, we think, from Community Affairs. They said the local municipality does have the right to adjust those fees - on such buildings. But, the point is, the code itself does not make any provision for it. So, hopefully-- I am jumping around. I'm sorry, I didn't mean to do that.

I have a couple of other suggestions that I thought might help. We are talking about public participation in some of these procedures. I would suggest that the public participation now is a joke, particularly in the 208 planning process and, I would say, in the Pine Barrens Water Quality study. The Commissioner - the former Commissioner, who is now down in Washington - has set up four task forces to deal with this water quality situation in the Pine Barrens. We are assigned to the Agriculture Committee. After two meetings it is quite clear that these regulations are going to be issued. We have been asked as a group to come up with changes in technical data that might help our situation. I am, first of all, not a water quality scientist nor is anyone sitting on that Board, with perhaps the exception of the Chairman who is staffing the thing for DEP. I am not qualified to make those recommendations. No funds were given to us to go out and do our own studies to find out whether or not these standards are valid. This is the kind of problem that we are running into.

The 208 study programs that we are involved in are dominated by the so-called "consultants". It is very difficult for the average citizen to get more than one good question in because he is bombarded with technical data. How do you answer that? You can't, anymore than I could stand up to a good trial lawyer. I am not a lawyer. I don't know the first thing about it.

So, what I am saying is, there has to be a significant change. Instead of making the public just a backdrop to justify regulations, get the public and get qualified public. Get people in there who know what they are doing and who can effectively deal with these people.

ASSEMBLYMAN KARCHER: They may have a conflict of interest. Anybody who is qualified has an automatic conflict of interest.

MR. SPENCE: I agree with you.

ASSEMBLYMAN KARCHER: That is obviously the problem. Anybody who knows anything about what they are doing then has the press and everybody

screaming.

MR. SPENCE: I might add there is a particular rise in interest right now of special interest groups. We hear all about the number of new special interest groups that are plaguing the legislators - bombarding and so forth. I suggest to this Committee that the reason so many of these special interest groups are around is because of the mountain of regulations that are coming down and the average citizen doesn't know how to deal with this so he hires somebody who does know or who can spend the time to do it. It is his only protection. Perhaps we are just feeding the dragon. Maybe what we ought to do is to have fewer regulations and let's understand what we do have. That is one suggestion.

I might add one thought. If we were to adopt, on all regulations, two sets of standards -- one, that they do not exceed the Federal standards. For example, the pesticide regulations which have been issued. The Federal Government issued good pesticide regulations - competent and ones that all the farmers could live with. The State - the Department of Environmental Protection - has gone far afield in issuing their regulations. It puts us in an uncompetitive position, number one. This is true of most of EPA's regulations. If we are to stay competitive in the State of New Jersey as far as farmers are concerned, we have got to be able to deal with regulations at the same level as Delaware, Pennsylvania, New York, and the New England States deal with them. It is the only way we can stay competitive.

We are already paying a higher land tax than any State in the Union, even with farmland assessment. We don't object to that because, number one, we think we are the best damn farmers around but if we cannot stay competitive because of factors which we can't control - and I am talking now about regulations -- then we have a problem. That is all we are asking for; allow us to stay competitive. I think that would help.

Rules and regulations, particularly those emanating out of the Department of Environmental Protection and Community Affairs should put no more on us than the Federal requires.

I have just one other thing and then I will shut up. All standards and regulations should meet the benefit versus risk criteria. That is a fancy term and what it simply means is, you weigh very carefully the benefit that you have now versus the risk and then determine whether or not this regulation is justified. I think if those two things were done, I honestly believe we would have less trouble with our regulatory agencies and the Legislature would be able to keep a better handle on it. I am open to questions.

ASSEMBLYMAN KARCHER: I would just like to comment on what you said about the competitive status of New Jersey. I think this applies to every enterprise.

MR. SPENCE: I agree with you.

ASSEMBLYMAN KARCHER: Obviously, the industries have screamed bloody murder about the fact that they cannot remain competitive because air and water quality standards here are tighter than they are in surrounding states.

MR. SPENCE: Well, I can only speak for agriculture.

ASSEMBLYMAN KARCHER: Every enterprise has that same complaint.

ASSEMBLYMAN MAGUIRE: I don't have a question. I just have a comment. I am not sure that it is necessary for us to be number one in either water

quality control, air quality, or noise control. In light of what has happened to our State, I would just as soon be number two, as long as we are going to meet and exceed, in most cases, Federal rules and regulations. I believe that many of the people that are writing the rules and regulations feel that we have to be number one and it is hurting us. It is really hurting us.

I had a call about three weeks ago from a man that had built a tennis court and he wanted to put it under a bubble. Because of the new fee requirements in the Uniform Standard Building Code, it cost him more in fees than it did to put the bubble over the tennis court. This is sheer stupidity.

MR. SPENCE: Well, I can cite a case of a greenhouse that was put in in Burlington County where the building fee was three thousand some odd dollars and the building itself, all parts included, was less than that. It is the volume again.

We have another situation up in Morris County now where a similar greenhouse fellow wants to put in another greenhouse. We have to remember something and maybe this is just a point of interest for you. New Jersey's agriculture is shifting drastically. Where we used to be largely a vegetable producing state, we are shifting rapidly into greenhouse, nursery production, and grain. There are a number of reasons for this but I cite them very simply as the labor situation and the harassment from public interest groups and the sheer cost of doing business.

ASSEMBLYMAN KARCHER: There is a move away from anything that is labor intensive.

MR. SPENCE: Exactly and I am sure that is true in other industries. I just point this out. This is why you are going to get more and more of the kinds of calls you are talking about because more farmers are going into the greenhouse operation, where it requires a smaller amount of land and they can do a better job in this greenhouse operation.

ASSEMBLYMAN KARCHER: The product sells?

MR. SPENCE: Sure.

ASSEMBLYMAN KARCHER: It is obviously easier to raise a geranium that sells for \$1.95 than it is to raise a bushel of tomatoes.

MR. SPENCE: Exactly. And in many areas of the State we can't raise them anymore simply because of pollution. And, the problem is, the pollution is coming from Pennsylvania or some other state and we can't do anything about it. According to the Department of Environmental Protection, we can't do anything about what Pennsylvania does.

ASSEMBLYMAN KARCHER: Thank you very much.

MR. SPENCE: Thank you, sir.

ASSEMBLYMAN KARCHER: Joseph Hartnett, Business Administrator of Rahway.

J O S E P H H A R T N E T T: I am Joseph Hartnett, Business Administrator of Rahway. I have brief somewhat prepared remarks first. First, I would like to thank you for having me here today and say that I am here because I believe the work you are doing is of the utmost importance to the taxpayers and citizens of this State. Need for legislative oversight of our growing governmental bureaucracy, I think it is more acute today than ever before. However, it is not necessarily something new. From the days of Max Weber - who is considered the founding father of bureaucratic theory - through the Hoover Commission and the

little Hoover Commissions to the varied interpretations of modern administrative law, men have been struggling to bring bureaucracies under control. I believe that the concept of legislative oversight is a positive step in this direction. The need for this oversight can be readily seen by examining one of our largest, most formal and rigid bureaucracies, that being the Department of Civil Service.

Civil Service today has evolved to the point where it is functioning every day in ways far beyond the intent of the legislature. From legislation which calls for simply minimum and desirable job qualifications, we have gone to the reality of millions of man-hours being spent in futile attempts to achieve exactitude in describing precisely what the thousands of employees in this state do.

From legislation which calls simply for several classes of positions, we have gone to the reality of scores of classes and thousands of job titles and positions.

From legislation which calls simply for promotions by merit and fitness, we have gone to the reality of a decimal point on a test score determining who gets a job.

And, all of this is happening at great expense to the taxpayer, with many management conflicts at different levels of government, and with an incalculable loss of valuable time on paperwork.

I, for one, in my experience as a business administrator, do not believe that it was the intent of the Legislature in adopting Title II to give us a burgeoning bureaucracy whose procedures are ends in themselves. I do not think that the Legislature intended for a decimal point on a test score to determine who gets a job. I do not think that the Legislature intended a classification system that dictates, for example, the existence of Clerks, Senior Clerks, Head Clerks, Principal Clerks, and Senior Head Principle Clerks. And, to introduce a new problem, I do not think that the Legislature today intends that Civil Service procedures, rules and regulations be used to circumvent the provisions of the labor laws adopted by the Legislature. That is happening every day in New Jersey.

Simply put, the intent of the Legislature was and is to provide a modern system of personnel administration based on merit and fairness. The basic question then becomes, is it possible to achieve this as the Legislature intended without all the rules, regulations, and procedures of Civil Service? Dare we even ask this question? If we do, then the answer is a resounding, yes. Should we try to accomplish this? Keeping in mind that the sins of these overwhelming bureaucracies are visited not only upon the workers and the managers in this State but upon the taxpayers and the citizens, I say we should try. Of course, you are the gentlemen who are elected to represent the taxpayers and the citizens. Thus, it is incumbent on you to provide oversight of this bureaucratic giant.

But, you must keep in mind that the work you are doing - legislative oversight itself - challenges the very foundations of bureaucratic strength as set forth by Mr. Weber and Luther Bulick years ago - those foundations being, of course, that the strength of bureaucracy lies in expertise and secrecy. However, the classic branch of government conflict that is involved here is best dealt with by precisely the concept that your Committee is investigating - that being, of course, oversight.

There are many forms of oversight and, hopefully, you will be investigating all of them. I have one general recommendation that I consider of great importance and that is, do not settle for oversight of only new programs, rules, or procedures. Be bold enough to demand and get retroactivity. Give yourself and, though you, the public the power of and right to full review of existing programs, rules and procedures. Don't restrict yourselves to one concept of oversight. Use sunset legislation, where applicable; use committee channelization, where applicable; and use a legislative appeals process, where applicable. All of these forms of oversight can have different applications for different departments, different bureaucracies, and different programs, rules, regulations, and procedures.

And, finally, as a general statement, I would say to you, gentlemen, do not look upon your task as one of tying the hands of administrators but rather as a task of freeing the hands of the people from the burdensome and unnecessary binds that I believe run counter to the intentions of the Legislature.

Thank you for the brief opportunity to be heard. I would be most happy to answer any questions. I have here a prepared statement, which I will give to the Committee also and which has some statutory citations illustrating some of the points I just made in my remarks and also some examples of how the procedures of this particular department are used to circumvent the intentions of the Legislature and also what I thought might be some interesting reading.

ASSEMBLYMAN KARCHER: Mr. Hartnett, I am going to ask you the big question: What do you do? You are a business administrator of a very well developed city of some 30 some odd thousand people. You are subject to the rules both of the Department of Civil Service and of the PERC legislation. What do you do as a business administrator when Civil Service conflicts with PERC or PERC conflicts with Civil Service. What do you do? That is number one. Number two, who do you call? Number three, what kind of an answer do they give you?

MR. HARTNETT: Let me give you a prime example of the type of problem we are talking about and this has actually occurred. You negotiate a labor contract, which you are required to do under the PERC law, through fair collective bargaining. The labor contract calls for a list of salaries and titles and a list of the employees covered by the contract. In the contract you have phraseology which indicates that all of the employees are satisfied that they are properly classified, that they have the proper titles, that they are performing the job duties required by those titles and that they are receiving the proper salaries for those titles. These employees, through their bargaining agent, sign, seal, and deliver that contract. Now, you are a business administrator, or manager, with a signed contract. After a short period of time - three months or six months - several of these employees request Civil Service to perform a job audit. Naturally, the first thing you do as a business administrator is you protest that to Civil Service - which I have gone through myself - indicating to Civil Service that these employees have indicated to me in a statement - in a signed, sealed, and delivered contract - that they are satisfied with their titles and with the work they are doing and that they are properly classified. Therefore, their request to you should be null and void because it is subsequently dated to the statement that I have.

Civil Service, of course, will deny that because their procedures require them - and think about this for a minute, think about the man hours and think about the cost - anytime any employee in this State requests a job audit, to give it to them -- just on the employee's request. So, without saying anything about the qualifications of the people they send out to perform these job audits, somebody comes out, sits down for three hours, watches what this person does. Naturally, this person is going to put on a good show for them. He then goes back and recommends that their title be upgraded.

ASSEMBLYMAN KARCHER: You don't have any job classification of "coffee drinker", do you?

MR. HARTNETT: Then what happens is you reach the bottom line. Civil Service dictates to you that you must upgrade this person, or these people - let's say you have a couple of them. You have to upgrade these titles. You have a contract that says what that title must be paid. Therefore, what Civil Service has done is it has dictated pay raises for these employees in direct contravention of the intention of the Legislature and it is a perfect illustration of how the rulemaking procedure violates the legislative intent and I think it is a good illustration of the need for legislative oversight. Nowadays, I think - although it has never gone to court, this is my belief based on conversations with my colleagues - that most of your managers - at least on the local level - are taking the position that the labor legislation - the negotiated contract - stands paramount to the Civil Service regulation. So, consequently, I couldn't even calculate how many existing violations of Civil Service certifications of eligible titles there must be in this State now. There must be many, many of them.

ASSEMBLYMAN MAGUIRE: Joe, what did you do about that particular instance, where you had the signed contract? Did you have the Mayor and Council challenge Civil Service? Did they take it to court?

MR. HARTNETT: We put it, more or less, in a holding action. We, of course, filed a written statement with them saying that we object to any job audit request by any employee and we requested Civil Service to give us the opportunity, if a title change is necessary, to negotiate it through collective bargaining. We did, in that communication, somewhat threaten that if Civil Service pushed the issue, there was no way we were going to avoid coming to loggerheads in terms of litigation. Since then it is kind of just sitting there. They seem to be a little afraid to push the issue. It has to come to pass though, sooner or later, in the State. Somebody is going to walk into a court room and lay the legislation on the table before a judge and lay Title II on the table before a judge and say, "Where are we going?"

If you look in Title II, Chapter 8, the whole chapter is on compensation - the whole chapter is on the right of the Chief Examiner and the Department to set compensation. That Chapter has got to be out the window. There is no way they can tell us now, under PERC law, what compensation should be for a certain title. Even though under their rulemaking they do have the authority, for example-- Let's say just by some quirk we wind up paying a clerk more than a senior clerk. Civil Service won't tolerate that but if we negotiate it that way that is what we live with now. We live with our negotiations.

There is so much now that is superfluous. I am sure that you gentlemen have a far better idea than I what the budget for the Department of Civil

Service is. Really, it has evolved to the point of, who is better able to determine what a person is doing, what their job title should be, the qualifications they have, than your local managers? Obviously, the intent of the legislation was to avoid political maneuverings with jobs. Those maneuverings take place anyway and only create, as I said before, incalculable amounts of paperwork. What is so sacred about a test score? Why not challenge some of these concepts? What if you just had a pass/fail system? Basically, the legislation simply says that a job should be determined by merit and fitness. So, if you want to avoid political problems, let Civil Service test on a pass/fail basis, so we get 10 people who pass the test instead of 10 people who are graded by decimal points where, in reality, there is probably no difference in the qualifications of number 9 and number 2. But, the amount of paperwork that it creates and the amount of lost time and man hours spent and, as I said before the job audits--

I indicated in one of my footnotes here that never have I, in my personal experience - not that I have gone through that many, maybe a dozen - heard, in talking to any other business administrator - and we meet monthly and we discuss our various problems, civil service problems as well as other problems - nor in talking to anyone I have met who worked in any other municipality, never have I ever heard of Civil Service conducting a job audit and not requiring a title change. I have never once heard of a Civil Service auditor coming in, sitting down and saying, "Yes, that person has the right title." It doesn't happen. How could they justify their existence otherwise?

So, it is classic. If you gentlemen have some spare time, I mentioned some of the more academic studies of bureaucracy in organizations. I think you would find them very enlightening. You see, what you are up against is, it is not a new problem. You dealt with it with the Hoover Commission and going back to Wilson when he set up the dichotomy between politics and administration. But, nobody has come up with an answer and I think this is the right approach, legislative oversight. As I said before, whether it is in a limited form or what, just the absolute minimum is that there has to be some legislative review which involves input from those people in the field if we are talking Civil Service and your local managers, and so on. So, you legislators can then sit down and say, "Does this rule meet the intention of our legislation? Does a decimal point on a test score meet the intent of our legislation? Does our legislation that says there shall be several classes of job positions mean that there shall be 1,000? Does several mean 1,000?" That is what you should have, at least.

Of course, in my remarks I do not mean to totally disparage the Department of Civil Service. It can perform useful functions.

ASSEMBLYMAN MAGUIRE: Name one.

MR. HARTNETT: Job recruitment. Testing on a less rigid basis is certainly helpful. And training is certainly helpful.

The point is, the classic problem with a Department like this is that it is 100% formal. You men, as legislators, know that you have formal rules and procedures but if you followed them, you wouldn't get anything done. You get something done in informal ways, by your interactions with your fellow legislators; by your interactions with staff people; etc. This is how you, gentlemen, really accomplish things. So, if you think about how you get

something done - when you want something done, how do you get it done? - and then think about how an overwhelming bureaucracy like Civil Service gets something done, the procedures are all that counts; they are ends in themselves. If I want to maneuver politically, without Civil Service, it could be done very easily. The only difference is, with Civil Service if I want to see to it that a certain person doesn't get a job, as long as I do the paperwork they are not going to get a job. So, what did we accomplish? We have the same effect, but we have incalculable time and dollars being spent on these procedures and that is the be all and end all today of a bureaucracy like this. As long as the procedures are followed, the end result is not important because the procedures themselves are the end result.

What we are talking about here is legislation. The Department of Civil Service or any other Department is not sacrosanct. They are a creation of you, the legislature, and you are the gentlemen who should see to it that the legislation is carried out as intended.

ASSEMBLYMAN KARCHER: Thank you very much.

MR. HARTNETT: Thank you.

ASSEMBLYMAN KARCHER: Mr. Hutt will be our next witness.

S T E W A R T H U T T: I want to thank you for inviting me here today. My name is Stewart Hutt and I am the General Counsel for the New Jersey Builders Association. I have a private practice besides but I am speaking here today in my capacity as General Counsel for the New Jersey Builders Association.

I would like to point out to the Committee that our society has grown more and more complex with the passing of time. Along with this growing complexity has come a need for regulation in order to protect and preserve our society and its democratic principles. However, the past decade has seen a growing problem. That problem is an extension of government intrusion above and beyond that called for in the statutes as enacted.

Throughout my statement I refer to the term multi-tiered, or tiered, government. For us, the definition of multi-tiered or tiered government is the duplication of government regulation and review at all levels.

We are here today to address ourselves to this government "octopus." Its tentacles are ever-entwining and overlapping to impede the progress of its victim, the law abiding citizen, who is attempting to follow the law only to be wrapped up in the red tape that has been created by the multitude of governmental agencies, each of whom have been given the authority to promulgate and enforce rules and regulations for various laws that have been enacted.

The New Jersey Builders Association has tried, for many years, to point out to the Legislature the effect that the tiered system of government was having on the building industry in this State and consequently on our State's economy. Permit me to review briefly some of the problems we have found with regulations that exceed the spirit of the law.

The best example that can be made of the tiered government system occurred recently to one of my clients. This company was attempting to develop a tract of land in a small Middlesex County community. In order to successfully build 28 single-family dwellings, it was necessary, under our statutes, for them to receive approval for a sanitary sewer extension permit from the New Jersey Department of Environmental Protection. However, by the Department's own regulation - and I stress that, by its own regulation not by any statutory

enactment - required the "endorsement" of the "affected sewerage facility" prior to its giving approval for the extension. There was nothing in the statute that required this action. It was purely by regulation of the Department that this requirement was forced upon the developer. The interesting problem with this requirement was that the affected facility was located in a municipality that had many grievances to settle with the smaller municipality. Now, let me see if I can clarify that. The project was being built in town "a" and the affected facility is a sewer line that is going to be serviced by going into town "b"'s sewer line which in turn would be handled by regional authority "c". So, under the DEP regulations you have to get "endorsement." They don't explain what endorsement is. We will assume that it means approval but they don't tell you what the word endorsement means.

So, in order for the DEP to issue their sewer construction permit, they want you to get the approval or endorsement - if the words are synonymous - of town "b" as well as sewer facility "c", despite the fact that you are in town "a."

With that explanation in mind, this is what happened. Town "a" and town "b" had various disputes among themselves over various things, nothing affecting this project - nothing whatsoever to do with this project; nothing to do with the development. Okay? Consequently, it refused to endorse my client's application for the sewer extension. This endorsement, as the State DEP called it, amounted to a complete veto of my client's application and, of course, a hold-up of my client's construction project. The unsettled grievances between municipalities had nothing whatsoever to do with my client's application or development. In fact, one of the complaints centered around the fact that the smaller municipality had filed twenty-one subdivisions since 1960 without the approval of the larger municipality with regard to sewer hookups.

The point to be made is that because of a nonrelated problem between municipalities, my client suffered irreparable damage. His loss was a complete shut-down of his project resulting in his paying interest on the mortgage on the property, an escalation of costs, unnecessary attorney's fees, and, most important, fourteen months passed - fourteen months - from the day he filed his initial application until the day we were successful in getting the State DEP approval to grant the sewer extension permit. By the way, that occurred because we got the DEP to admit that the regulations didn't make sense and they ought to change their regulations. After allowing the other municipality six months to come up with some environmental reason - which there was none - as to why this shouldn't happen, they finally said, okay, submit your application and then everything proceeded smoothly, if you want to consider three more months of processing smooth. The permit was approved and obtained last Friday. So, this is a current illustration.

This is an excellent example of tiered government in action. Because of the refusal of one "tier" - town "b" - to endorse an application, those on the next tier - the DEP - refused to take action, even though the statute does not call for this "endorsement" and squarely placed the responsibility on one or the other. The statute simply says the DEP should approve. There is nothing in the statute that says you have to get the prior endorsement from all these municipalities, and so forth.

I might add that one of the ways I got this changed was I wrote a

personal letter to Bardin in which I pointed out what could be the situation. I made it clear that this was not the situation here. But, for instance, supposing - and the illustration in my letter to Bardin was this - town "b" did not give us their so-called endorsement because we did not make a political contribution to the right political person. There is nothing in the regulations that says why they can refuse, or whether there is an appeal if they refuse, or on what grounds they can refuse. It simply says they can refuse.

To give another illustration that I used in my letter: Supposing they refused because they said we are near a highway and there is a bus for commuters - and I have been faced with this as a sub-division attorney many times. A town says we think it would be nice if you give us five acres of land so we can have a commuter parking lot - even though the statutes and the cases say that is illegal. They say unless you give us that parking lot we are not going to endorse this sewer application. That's the kind of-- That is how blatant I had to make the illustration in order to get some action.

Another interesting example of tiered government is the rules and regulations adopted for the administration of the State Uniform Construction Code. Now, this morning I heard some other comments by other groups on this. The enabling legislation that was passed for the Uniform Construction Code gave the authority for administration and adoption to the New Jersey Department of Community Affairs. The enforcement was assigned to municipal building officials. This has caused a quagmire of confusion resulting in non-uniform building permit costs from municipality to municipality.

One of the avowed purposes of the Uniform Construction Code is it assists in reducing the cost of housing in New Jersey. The result of the rules and regulations as adopted was that the average cost of a building permit has risen almost 300 percent.

The interpretation, or lack thereof, by a local official of the State Building Code can hold up a builder for many months while he pursues the appeal process. The end result -- higher cost to the homebuyer for housing.

The duplication of government agencies each working under a different set of rules and regulations - and I think the previous speaker gave you a classic illustration of that and I am a board of education attorney and I can tell you you have the same thing there.

ASSEMBLYMAN KARCHER: You can have Civil Service tests for your board of ed too, can't you - the custodians, etc., etc.

MR. HUTT: I don't know. I don't think so.

Each agency having the absolute right of veto over each application is another example of tiered government.

The previously stated examples are but two of the many such situations that occur daily throughout the State. These occurrences have gone on for some time and I must admit that until now complaints about them seem to have fallen on deaf ears. But, today we are here to address ourselves to these problems and to look at some possible solutions.

There are several ways to attack the "octopus" of tiered government. The most obvious would be to create one super agency. This would do all of the review work and would issue all permits. While this type of solution would be the most expedient, it would, of course, create political discord and the cries

of loss of "home rule" would resound throughout the State.

Another option to be considered is that being one of legislative review of rules and regulations of state agencies prior to their adoption. This in itself is good, providing a "fail safe" mechanism is built into this concept prior to their adoption. This solution would, of course, be too time consuming and only create another government tier.

The other option is one we would like to be considered today, that being one of legislative monitoring of rules and regulations on a continuing basis. We would like to recommend to this Committee a procedure whereby the standing committees of the Legislature would serve in an oversight capacity with regard to any legislation that was recommended by that committee. By the way, I mean - as the last speaker said - this should be retroactive. By this we mean that legislation which is passed and signed into law, which calls for the promulgation of rules and regulations by a State agency, would also require review of those rules and regulations by the standing legislative committee from which that bill was released. This would provide a review of rules and regulations by elected officials who would ensure that these rules and regulations are within the intent of the law.

An added advantage to this procedure would be that the elected representatives, sitting on these committees, could be contacted by concerned groups should a problem arise with rules and regulations promulgated with regard to specific legislation. These committees would thus be authorized to hold hearings from time to time to call for an accounting by agency heads, as to the viability of the legislation or regulations, under the simple test - is it working to solve the problem it was intended to solve? That would be the bottom line test that any legislative oversight committee would use in regard to either the legislation they passed or any amendment or any regulation that is proposed or on the books. Is it working to solve the problem it was intended to solve?

Another obvious advantage to the proposal would be the decrease of the work load on the Legislature as a whole. Through this type of system an Assemblyperson could ask a standing committee for advice and recommendations prior to introducing any legislation. The Legislature would then know if any overlapping or duplicate legislation has also been proposed. This might help to alleviate the "buck shot" legislation that has resulted in over six thousand bills in our current legislative session.

Now, I might make a parenthetical remark here - I think it is absolutely impossible for any man in that Legislature to do his job when they have to review six thousand bills and make a living at the same time. Anybody who says he can do it or that he does it is not being honest with himself. One of the reasons for this is because if a legislator hears a complaint from a constituent he has no place to go except to introduce a bill to see how it applies and if it will solve the problem. If you had these standing legislative committees with staffing he could go to that standing legislative committee and he could get some feedback and he might find out that that problem was considered three years ago and wasn't adopted for various reasons or that there is another bill by another legislator in the other House, or some other reason. He might even get some suggestions from the legislative committee on how it should be worded so it wouldn't upset the apple cart of the whole system and still cure the problem he is trying to solve. Right now I think you fellows have absolutely nothing

available to you and you are relying solely on the administrative agencies and the Executive Branch of government.

In many situations rules and regulations can be fairly and justly enforced by a local agency, provided that the absolute veto power by the State agency is eliminated. The State agency could serve as the "expert" or advisory group, with the expertise to formulate the rules and regulations, but then turn the administration and regulatory control over to the local authorities. Let's not continue to proliferate the approval process by requiring, as is now the case in many situations, first municipal approval, then county approval, then regional approval, and finally State approval.

These approvals are all currently required for the same elements and under the same rules and regulations and for the same purpose - to wit: To protect the public interest. I have a case right now, for instance where a developer has a sub division approval in a municipality and is looking for this same sewer construction permit that I told you about. He has to get it endorsed by the town in which he got the subdivision approval but that town doesn't own the sewer authority. There was a regional sewer authority involved that had jurisdiction. It has to be approved by them. But, that sewer authority ceded its jurisdiction to a second sewer authority. Now that sewer authority wants to cede its authority. But, they want the permit fees and they want the review fees and they want the whole thing. These kinds of reviews and approvals are rather perfunctory in nature. They are not very discretionary. They are kind of like "if it has to be two inches thick, it is two inches thick" - that kind of thing. There are not too many judgment factors involved in this kind of approval. Then, after that, it first goes to the DEP to see whether they would approve it. So, you have four different agencies with four separate review fees, four sets of engineers getting inspection costs and four fold - or five fold - the amount of time needed to get the project off the ground. This is a 450-home development. The land cost alone is \$2 1/2 million and we have been frozen for three months just trying to get through these agencies what is really a perfunctory type of approval. That is what we mean by tier government.

The cost to draw the application and the technical and legal representation that is necessary to present an application for each approval is unbelievable. These costs can run to tens of thousands of dollars. The waiting periods involved for each step of the approval process are also lengthy. It is not unusual under present procedures to have to wait from two to three years for all approvals, prior to the commencement of a construction project. We have cases, and we can document them, in which approvals have taken 8 to 10 years.

The selling price of a house established at the beginning of the approval process will, of course, be "shot to hell" by the time the approval process is completed and work can commence. The sad ending is, of course, that the consumer pays for the delays and due to inflation he pays the inflated price for the same product. The regulation that was designed to help the citizen has now turned against him and hurts him where it hurts the most, in the pocketbook.

ASSEMBLYMAN KARCHER: Let me ask you something. Maybe this is a good time to interject this thought. Let me ask you, in your experience, is that generally something you find, or have an insight into that the regulatory function, in its initial conception, was to - just as the previous speaker mentioned

concerning Civil Service, where its initial purpose was to qualify the people who were working and that was a wonderful intention - protect the consumer. Do these protect the consumer?

MR. HUTT: I think most of these things are anti-consumer. It ends up costing the consumer dollars. But, I think part of the blame - frankly, gentlemen - is with the Legislature. Take, for instance, the situation that the last speaker mentioned. It was the Legislature that enacted PERC without taking into consideration what effect, if any, it would have on Civil Service or Title 18A, or anything else.

I have spoken to many administrators who are sincere, honest, hard working people and they say, "What do you want from me. This is what I am handed."

The other thing I fault the Legislature for is the only time you did it to a great degree - from what I read - is with the Casino Bill, where you hammered out quite a bit of what is going to happen before you passed the casino legislation. But, with the typical legislation you say, "We are going to have clean air and the Department will tell you within three months how we are going to do this" - and that is the bill. The Department doesn't have the staff to tell you; they don't have the knowledge to tell you; they don't have the manpower to tell you and three months go by and they haven't told you. In the meantime, you have to operate - as the tax collector has to operate; the business administrator has to operate; the entrepreneur has to operate. Nobody knows what the regulations are going to be nor when they are going to be, yet you have a time lag for the administrators to come up with any kind of regulation. Then they scurry around and get something together because they have a three month cut off time and something gets in there that never gets changed, it only gets larger.

ASSEMBLYMAN KARCHER: Sometimes they get repealed.

MR. HUTT: Only on a temporary basis.

ASSEMBLYMAN KARCHER: No, no, no. We repealed a couple.

MR. HUTT: That is the key problem. Now, I will give you an illustration with the building code. I met, as a representative of the Builder's Association, with representatives of the Department of Community Affairs on these fee things many times and I told them that this volume thing is going to kill people because the guy in the field doesn't understand it. We told them we had a builder in East Brunswick who was building a tennis court. I don't have to tell you what the volume situation is with an indoor tennis court.

Actually, if you ask a building inspector he tells you that in order for him to inspect the construction of an indoor tennis court, it takes less time than to inspect a complicated single family house because it is all open - everything is open, nothing is hidden, nothing is concealed. It is nothing. Yet, because somebody came up with a formula, without taking anything into account they did it, everybody blindly follows it. It is like a death wish. We told the DCA that they should go out and tell these people something. They are so scared, not only the DCA but the DEP problem that I told you about was the same thing - they are so scared of stepping on local officials toes and home rule, and all this, that they say - as in this case - "Well, the reason we ask for the endorsement is we want to see if maybe the town has something

to say." You could accomplish both. If they take my suggestion, the regulation would be sent to the town for 30 days for it to give its answer. If the answer is not back within 30 days, then we do whatever we want without it. I am not saying people shouldn't be told or anything but they just can't sit on it. The answer has to be environmentally related and the answer has to be in writing and a copy has to go to the applicant so he knows what was said. With all the sunshine laws, we run government by secrecy. You come to a subdivision meeting and all of a sudden they say, "We received a letter from our engineer" and they start reading something that you have never heard of before.

ASSEMBLYMAN KARCHER: That is just another one of these things.

MR. HUTT: One of the draftsmen on the Land Use Bill - and you will notice there are many provisions in the Land Use Law-- They talk about one agency referring to another agency; however, the time period does not hold for the first agency to act. The second agency must get its report into the first agency within a defined period of time. If it doesn't get it in within a defined period of time, they act without it. The fact of the matter is, that is how you would run your own business.

ASSEMBLYMAN KARCHER: Let me ask you one more question. We don't want to cut you short.

MR. HUTT: I am not going to continue with this but I would like to make some points with some other illustrations that are not in the testimony and I think they are critical. It won't take a moment.

For instance, one is the CAFRA legislation. I want to give you some illustrations of where regulations are completely contrary to the legislative intent. Okay? The CAFRA legislation is one. The Legislature, in its infinite wisdom - as the saying goes - passed this CAFRA legislation to regulate land that goes as far as 22 miles inland. They realized that, of course, this would cause some hardship, so they put a provision in the statute that said there were certain exemptions for people who were caught in the middle when this Act passed. However, the regulations promulgated by the DEP, as recently as April 1, 1977 - that is less than one month ago - ignored this legislative mandate and wiped out the exemption.

Another one is flood plains. You passed Flood Plain legislation. Fine. Again, you had some kind of provision stating that structures located in - existing structures - the floodways which were more than 15% destroyed - they now say - cannot be replaced. There is no such provision in the law, nor do I see where it can be interpreted as the intent. It is one thing to prevent new structures from being built in the floodway.

Now they tell someone who has a house - and this is a fact, it is in the regulations-- All of a sudden there is a 200 year storm - Hurricane Zelda, or something - and his house is 50% destroyed. He can collect from his insurance company to rebuild the house and DEP says, "No, you can't, it is more than 50% destroyed. That's it. You can't rebuild."

Another instance where there is nothing in the law but this is the kind of regulation they are coming up with: Open Burning Law. They have regulations prohibiting open burning. Now, the only way we cleared land was to burn trees and stuff. After all, we are not talking about burning garbage or burning tires or burning in one location all the time for 20 years, like a municipal garbage dump. Because you can no longer burn these stumps and

trees, the cost of clearing an acre has increased \$2,000 per acre, just to clear the land.

ASSEMBLYMAN KARCHER: Who pays for that?

MR. HUTT: The consumer. The December 1976 issue of the Seton Hall Legislative Law Journal contains a report stating that during the five year period from 1970 to 1975 over 200 environmentally related measures were adopted by the Legislature - 200 in a five-year period of time.

We wouldn't even mention a lot of these other ones. There is only one more I am going to mention and then I will keep quiet. I started to talk about the building permit fees. Prior to the adoption of the administrative code on how you set the fees - it wasn't the statute that you passed that screwed up this fee business and volume and everything else; this is a regulation - by the Department of Community Affairs, an average building permit fee for a single family house ran about \$125 to \$150 per unit. Because of the change in the procedure, with the volume and everything else, these building permit fees are now closer to \$500 and rising.

Now, if you take a page from the Federal Government, you will have legislative oversight. For instance, on television, just two nights ago - and I forget the name of the Senate Committee that had a hearing - they were questioning this Trist - the flammable chemical used in pajamas. They wanted to call the administrator on the carpet. I don't know whether he was right or whether he was wrong but they had a right to inquire and to ask, "How come it took a year for you to do such and such?" There is nothing done in our Legislature that way. We pass a law and then that is the end of it and we assume it is going to work. There may be something structurally wrong with the way they passed the law. I mean nobody is God. Nobody can foresee everything. It may be something you didn't foresee. Why shouldn't your committees, on a continuing basis, have a right to constantly review whether that legislation has worked, or whether the regulations promulgated under that legislation are working. Why shouldn't the Legislature themselves be able to go to a particular committee and say, this is in your purview, how do we handle it?

I will give you a simple illustration. As I told you, I was one of the draftsmen of the Municipal Land Use Law. After that was enacted, in going around the State I, myself, must have made 20 or 25 personal appearances. During that period of time I, and many of my colleagues who were on that commission, picked up a minimum of 20 to 25 items that we would recommend as changes. Some of them were just drafting oversights. Some of them needed clarification. Someone pointed out a problem to us that we hadn't thought of. There were various things. All right? Now, we had been talking about it among the professionals but we had no legislative input. As you probably know, there has been a half dozen amendments to this Land Use Law. We think it is a disaster, regardless of the merits of any amendment, to start nit-picking the thing apart before we even get a year or two experience in it.

What we would like to see, for instance, is a standing advisory committee, in this case, where all these amendments could be funneled. If you had a standing committee, all of these amendments could be funneled in to see how one ties in with the other - what was the original intent? This would make some sense. Let's say every six months or every year you could have an omnibus bill making a lot of technical - most of these are not substantial

changes but they are important in terms of time and regulations - changes. But, it could be a well thought out plan and you could do this in many other fields. That I think, if the Legislature comes up with a standing oversight committee having oversight functions, will be accomplishing a lot. I want to thank you. I am sorry I took up so much of your time.

ASSEMBLYMAN KARCHER: Stewart, we saved the best to the last. You were excellent. Thank you. The hearing is now concluded.

(Hearing Concluded)

STATEMENT BY JOHN E. TRAFFORD, ASSISTANT EXECUTIVE DIRECTOR, NEW JERSEY STATE LEAGUE OF MUNICIPALITIES, DELIVERED ON MAY 18 BEFORE THE GENERAL ASSEMBLY LEGISLATIVE OVERSIGHT COMMITTEE, NEW BRUNSWICK

My name is John E. Trafford. I am Assistant Executive Director of the New Jersey State League of Municipalities. I appreciate the opportunity to appear today to outline the League's views on the matter of administrative rule-making procedures by executive agencies of the State Government.

My comments today will deal for the most part with the League's experience with 3 Departments - the Department of Community Affairs, the Department of Environmental Protection and the Treasury Department. These departments are being used as examples, not because their performance has been unusually good or unusually bad, but rather because they are the departments with which the League has had the greatest experience.

Overall, the Administrative Procedures Act has worked reasonably well. The Act provides for publication of notice of intent to promulgate and provides a time period for review and comment prior to final adoption. It has been the League's experience that the involved agencies have duly notified the respective interest groups affected by the rules and have made copies of the proposed new or revised rules available upon request to the affected parties. In many instances involving rules impacting on municipalities, the rules have been mailed to every municipality automatically. It is our feeling, however, that the present minimum period for public reaction is too short. There are usually inevitable delays between the time that the original notice is carried and organizations are notified and the time that copies of the often voluminous draft regulations are actually physically in the hands of interested parties around the State. The present

time period of 20 days is not sufficient to permit interested organizations to obtain copies, schedule meetings of their own review committees and formulate a response. We would suggest an increase to at least 45 days.

It has been the League's experience that officials in the respective agencies have been responsive to requests for informal meetings and conferences for the purpose of discussing the League's viewpoint on pending rules, and the dialogue has generally been open.

Since January of this year, for example, the League has had two meetings and four telephone calls with staff personnel in the Department of the Treasury on proposed regulations regarding affirmative action efforts by public contractors. We have had two meetings and numerous telephone conversations with the Department of Labor on proposed legislation to extend unemployment insurance coverage to public employees. Last year, the League participated in numerous staff meetings and telephone conferences with personnel in the Division of Local Government Services with reference to the proposed promulgation of guidelines and rules implementing the Local Public Contracts Law.

So the informal dialogue has been open and the opportunity to express views has been ample.

There is a more basic and far-reaching question, however, and that is the extent to which the rules either exceed legislative intent or at least superimpose on the original legislative policy a whole superstructure of additional policy and interpretation.

It is the League's considered opinion that there have been numerous instances where the administrative rules have either exceeded

the original intent or at least expanded on the original legislation to the point that the administrative rules had a far greater specific impact on the activity being regulated than did the basic law itself.

The following examples will make the point--The recently enacted Uniform Construction Code authorized the Commissioner of the Department of Community Affairs to promulgate regulations to implement that act. Article 33C6 prohibits any local code or subcode official - the former building and plumbing inspectors - from engaging in any outside employment anywhere in the State. This requirement, in effect, prohibits the employment of any part-time inspector by any municipality. It is costly and will create a serious hardship for many of our small municipalities. There is no such equivalent prohibition, however, in the law itself. The law is silent. The prohibition has its roots in an administrative determination - not in the legislation itself.

That same Uniform Construction Code Act provides for a Construction Board of Appeal. The Act says that the Board "shall consist of five members. Each member of the board shall be qualified by experience or training to perform the duties of members of the Construction board of appeals." That is all the Act says. The regulations, however, add the following requirements - "No more than two members of the Board shall be selected from the same profession or business. At least one of the members shall be either a registered architect or licensed professional engineer. One member shall be qualified as a plumbing subcode official and one as an electrical subcode official." The regulations go on to say that the Commissioner may require that members of the board satisfactorily

undertake a program of training, etc. The regulations further require "that failure to be present at more than 50% of all meetings shall be considered good cause for removal." These same regulations authorize the payment of salaries and expenses. Again, the Law is silent on the matter of expenses and reimbursement. An interesting sidelight, however, is the fact that with regard to other local boards - the planning and zoning boards - the legislature is dealing with the matter of the very same kind of reimbursement and expenses through legislation itself - Assembly Bill 3178.

The League does not contest the logic behind the qualifications which the regulations require, but we would point out that the impact of the regulations on the board and on the appointing authority itself and on the functioning of the board is far greater than the impact of the law itself. And we would raise the further question - Why was the determination of these qualifications not made by the Legislature as a policy matter rather than being left to the administrative judgment of the administrative agency?

Specifics on terms, qualifications, and procedures for various boards and commissions are frequently spelled out in detail in the original enabling legislation. For example, the local Boards of Recreation, Shade Tree Commissions, Planning and Zoning Boards, etc.

Here is another example - the League is presently reviewing proposed regulations to implement the Law against discrimination as it applies to public works contractors. The Law - Chapter 127 of the Laws of 1975 - says that "for any violation of this law in addition to all other penalties allowable by law, the violator shall be subject to a fine up to \$1,000.00 for each day of violation." Section 10.7(a) of the rules, however, lists 5 penalties which range from termination of the contract (stopping the job) to debarment from all public works jobs for 5 years.

The Law further empowers the State Treasurer to "require State and local agencies awarding public works contracts to designate appropriate

officers or employees to maintain liaison with and assist the State Treasurer in the implementation of this act." The Treasurer is further empowered to "provide staff and technical assistance to public bodies, contractors and subcontractors in furtherance of the objectives of the act." Let's look at the regulations - and the specific requirements that are set forth. Each municipality must designate a Public Agency Compliance Officer. That Officer, must among other duties: (1) Issue written alert notices to contractors in violations of the provisions. (2) Assist contractors in the use of outreach, referral and training programs for minority and female workers. (3) He shall meet with the principal officer of the contractors or subcontractors, when necessary, to insure compliance with the act. (4) Monitor compliance based on Project Manning Reports filed by the contractor. In short, a rather substantial range of specific responsibilities.

That same set of proposed regulations also requires the municipality on construction jobs of \$1 million or more, to budget one half of one percent of the total cost and to pay out that money, or as much as is needed, to the private contractor to enable him to carry out his outreach and training obligations. That provision is contained - again - not in the law, but in the regulations. It is a highly controversial provision which places the burden of financing outreach training programs for minority workers not on the employing contractor but on the municipality and its taxpayers. These same municipalities, in the face of the 5% budget cap, are not even able to finance training programs for their own public employees. This is a public policy decision which is being shaped, not by the Legislature, but by the administrative agency - the Treasury Department.

My final examples relate to the Department of Environmental Protection. In 1975, the Legislature enacted Chapter 232 - the so-called 90-day Construction Permit Act. The purpose of this Act was to expedite the processing of construction permits on jobs involving waterways, etc. over which the Department had jurisdiction.

Thereupon, the Department of Environmental Protection proposed fees for the issuance of the permits which would be sufficient to fund the administration of the program and not merely to cover the actual costs of inspection, although under the Act the Commissioner was authorized to merely adopt "a fee schedule charging reasonable fees for the filing and review of any application". The proposed fee schedule would have placed a heavy burden on local governments as well as others seeking such permits and was strongly criticized. The schedule was ultimately modified.

A similar incident occurred with reference to fee schedules proposed by the Department of Environmental Protection pursuant to Chapter 326 of the Laws of 1976. This law established a statewide plan for regional solid waste districts. Unfortunately, the Legislature did not appropriate sufficient funding, so in order to support the program, the agency established a fee schedule which would have raised \$2 million dollars and which was far in excess of what was involved in making inspections, issuing permits, etc. That schedule was also strongly criticized. It was also modified after testimony at the public hearings. So much for the specific examples.

The overall point that the League would like to make is that, as a result of these kinds of situations, whether by legislative intent or not, a great deal of policy making on substantive matters is being made by administrative agencies. These policy decisions are being made by administrators and not legislators elected by the people. And there often is little distinction between the degree of detail which is of legislative origin and which is placed in a particular bill and the detail of an administrative nature which has its origins in the rule making prerogative. In some

instances, the Legislature establishes a program and funds it. In others, the funding is not provided, so the administrative agency tries to produce its own revenue through the inflated fee schedules. In some instances, the Legislature spells out in some detail the qualifications, membership and duties of various boards and agencies - in other instances, the administrative agencies spell out that same degree of detail.

The result is that the impact of the rules and regulations on any particular area of regulation is often far greater than the impact of the original law itself. Whether this is good or bad is an issue that the Legislature in its own wisdom must address.

There is one final aspect of this issue which has caused local officials very great concern, and that is the tendency on the part of the administrative agencies to proceed with the implementation of whatever program may be involved and to promulgate rules and regulations which place an unrealistic burden on the local level in terms of the administrative support which must be given in order to comply. It is a rare administrative rule, indeed, which, if it applies to municipalities; does not entail a new requirement for report writing and submission to the state agency involved. Many of the objections which municipalities raise to administrative rules deal not with the substance, but with the fact that they add to the administrative duties at the local level. In many towns, as you know, there are no full time officers at all. The municipal clerk shoulders the bulk of the administrative paperwork and the clerk sometimes is still functioning on a part-time basis. The drafters of administrative rules often seem not to realize that the administrative capacities

of our larger municipalities are not shared by the small and rural communities which are in the majority.

There are a number of bills pending in the Legislature which would attempt to regain a degree of legislative oversight by requiring all proposed rules to be returned to the Legislature for the purpose of insuring compliance and consistency with original legislative intent. Such a screening procedure would be valuable in theory, but it would appear to entail a burden which could not be assumed by a Legislature functioning on a part-time basis.

FOOTNOTES

1. N.J.S.A. 11:7-1(c) et. al.
2. N.J.S.A. 11:7-1
3. N.J.S.A. 11:4-2 et. al.
4. By way of example: Employees execute a labor agreement with management agreeing that employees are properly classified, hold acceptable and proper titles, are performing the proper work, and are receiving proper pay for said work and titles. Contract lists employees by titles and salary and titles by salary. After execution of contract several employees request job audits from Civil Service. Management protests in writing that said request is null and void on grounds that employees have signed, sealed, and delivered a statement (contract) that they agree that the titles held are proper and acceptable. Civil Service denies protest on grounds that its "procedures" require a job audit whenever any employee in the state requests one. (Note - Consider the man-hours and expense!) Following the job audit, Civil Service requires, by virtue of its discretionary authority and having denied the further appeal of management, that the employees' titles be upgraded. Thus, by virtue of the contract salary scale, Civil Service dictates pay raises for employees in direct contravention of the intent of legislation pertaining to labor relations and collective bargaining.

This example raises other important questions, such as - Who is more qualified to judge the work being performed by employees? Local management and labor, who work with each other day-in, day-out, year-in, year-out? - or Civil Service, performing a one-shot job audit lasting perhaps three hours? Also - what are the qualifications of Civil Service employees performing job audits?

A final note - in my own seven years of governmental experience, and from many conversations with many colleagues, I have never heard of a job audit that did not result in Civil Service calling for a title change.

5. Max Weber: Essays in Sociology, edited and translated by H.H. Gerth and C. Wright Mills. Copyright 1946 by Oxford University Press, Inc.

Papers on the Science of Administration, edited by Luther Gulick and Lyndall Urwick. Copyright 1937 by the Institute of Public Administration, New York.

Statement of

Stewart M. Hutt, General Counsel
New Jersey Builders Association

on

Administrative Rule-Making Procedures

before

Legislative Oversight Committee

May 18, 1977
New Brunswick, N.J.

Our society has grown more and more complex with the passing of time. Along with this growing complexity has come a need for regulation in order to protect and preserve our society and its democratic principles. However, the past decade has seen a growing problem. That problem is an extension of government intrusion above and beyond that called for in the statutes as enacted.

Throughout my statement I refer to the term multi-tiered or tiered government. For us, the definition of multi-tiered or tiered government is the duplication of government regulation and review at all levels.

We are here today to address ourselves to this government "octopus." Its tentacles are ever entwining and overlapping to impede the progress of its victim, the law abiding citizen, who is attempting to follow the law, only to be wrapped up in the red tape that has been created by the multitude of governmental agencies. Each of whom have been given the authority to promulgate and enforce rules and regulations for various laws that have been enacted.

The New Jersey Builders Association has tried, for many years, to point out to the Legislature the effect that the tiered system of government was having on the building industry in this State, and consequently on our State's economy. Permit me to review briefly some of the problems we have found with regulations that exceed the spirit of the law.

The best example that can be made of the tiered government system occurred recently to one of my clients. This company was attempting to develop a tract of land in a small Middlesex County community. In order to successfully build 28 single-family dwellings it was necessary, under our statutes, for them to receive approval for a sanitary sewer extension from the N.J. Department of Environmental Protection. However, by the Department's own regulation, it required the "endorsement" of the "affected sewerage facility" prior to its giving approval for the extension. There was nothing in the statute that required this action. It was purely by regulation of the Department that this requirement was forced upon the developer. The interesting problem with this requirement, in our case, was that the affected facility was located in a municipality that had many grievances to settle with the smaller community. Consequently, it refused to endorse my client's application for the sewer extension. This endorsement, as the State DEP called it, amounted to a complete veto of my client's application and, of course, a hold-up of my client's construction project. The unsettled grievances between municipalities, had nothing whatsoever to do with my client's application or development. In fact, one of the complaints centered around the fact that the smaller municipality had filed twenty-one subdivisions since 1960 without the approval of the larger municipality with regard to sewer hookups.

The point to be made is that because of a nonrelated problem between municipalities my client suffered irreparable damage. His loss was a complete shut-down of his project resulting in his paying interest on the mortgage on the property, an escalation of costs, unnecessary attorney's fees, and most important, fourteen months passed, from the day he filed his initial application until the day we were successful in getting the State DEP

approval to grant the sewer extension permit.

This is an excellent example of tiered government in action. Because of the refusal of one "tier" to "endorse" an application, those on the next tier refuse to take action, even though the statute does not call for this "endorsement" and squarely places the responsibility on one or the other. Can the citizens of New Jersey afford the luxury of duplication of government? I think not.

Another interesting example of tiered government are the rules and regulations adopted for the administration of the State Uniform Construction Code. The enabling legislation that was passed for the Uniform Construction Code gave the authority for administration and adoption to the New Jersey Department of Community Affairs. The ~~enforcement~~ enforcement was assigned to municipal building officials. This has caused a quagmire of confusion resulting in non-uniform building permit costs from municipality to municipality.

One of the avowed purposes of the Uniform Construction Code is it assists in reducing the cost of housing in New Jersey. The result of the rules and regulations as adopted was that the average cost of a building permit has risen almost 300 percent.

The interpretation, or lack thereof, by a local official of the State Building Code can hold up a builder for many months while he pursues the appeal process. The end result -- higher cost to the homebuyer for housing.

The duplication of government agencies each working under a different set of rules and regulations, each agency having the right of absolute veto over each application is another example of tiered government.

The previously stated examples are but two of the many such situations that occur daily throughout the State. These occurrences have gone on for some time, and I must admit that until now complaints about them seem to have fallen on deaf ears. But today we are here to address ourselves to these problems and to look at some possible solutions.

There are several ways to attack the "octopus" of tiered government. The most obvious would be to create one super agency. This would do all of the review work and would issue all permits. While this type of solution would be the most expedient, it would, of course, create political discord, and the cries of loss of "home rule" would resound throughout the State.

Another option to be considered is that being one of legislative review of Rules and Regulations of State agencies prior to their adoption. This in itself is good, providing a "fail safe" mechanism is built into this concept prior to their adoption. This solution would, of course, be too time consuming, and only create another government tier.

The other option is one we would like to be considered today. That being one of legislative monitoring of rules and regulations on a continuing basis. We would like to recommend to this Committee a procedure whereby the standing committees of the Legislature would serve in an oversight capacity with regard to any legislation that was recommended by that committee. By this we mean that legislation which is passed and signed into law, which calls for the promulgation of rules and regulations by a State agency would also require review of those rules and regulations by the standing legislative

committee from which that bill was released. This would provide a review of rules and regulations by elected officials who would ensure that these rules and regulations are within the intent of the law.

An added advantage to this procedure would be that the elected representatives, sitting on these committees, could be contacted by concerned groups should a problem arise with rules and regulations promulgated with regard to specific legislation. These committees would thus be authorized to hold hearings from time to time to call for an accounting by agency heads, as to the viability of the legislation or regulations, under the simple test - is it working to solve the problem it was intended to solve?

Another obvious advantage to the proposal would be the decrease of work load on the Legislature as a whole. Through this type of system an assembly-person could ask a standing committee for advice and recommendations prior to introducing any legislation. The Legislator would then know if any overlapping or duplicate legislation has also been proposed. This might help to alleviate the "buck shot" legislation that has resulted in over six thousand bills in our current legislative session.

In many situations Rules and Regulations can be fairly and justly enforced by a local agency, provided that the absolute veto power by the State agency is eliminated. The State agency could serve as the "expert" or advisory group, with the expertise to formulate the rules and regulations, but then turn the administration and regulatory control over to the local authorities. Let's not continue to proliferate the approval process by requiring, as is now the case in many situations, first municipal approval, then county approval, then regional approval, and finally state approval.

These approvals are all currently required for the same elements and under the same rules and regulations and for the same purpose to wit; to protect the public interest. The cost to draw the application and the technical and legal representation that is necessary to present an application for each approval is unbelievable. These costs can run to tens of thousands of dollars. The waiting periods involved for each step of the approval process is also lengthy. It is not unusual under present procedures to have to wait from two to three years for all approvals, prior to the commencement of a construction project. We have cases, we can document, in which approvals have taken 8 to 10 years.

The selling price of a house established at the beginning of the approval process will, of course, be "shot to hell" by the time the approval process is completed and work can commence. The sad ending is, of course, that the consumer pays for the delays, and due to inflation he pays the inflated price for the same product. The regulation that was designed to help the citizen has now turned against him and hurts him where it hurts most - the pocketbook.

If we must have this type of approval process, I believe that a system should be devised that would permit the developer to commence work and proceed on his own schedule, with one of the following options. At the developer's option, and cognizant of the legal consequences, he may choose:

(1) to continue his project at his own risk, (2) continue the project under legal protest, or (3) stop work completely until the appeal and approval process is complete. This could be a very workable solution, with careful planning and supervision.

There is also a need in our rules process to provide an applicant with a prompt answer as to where his application is in the review procedure. The current state of affairs, with many agencies, is that no one is sure of where the application is in the procedure, and many hours are lost trying to track it down. Perhaps, a central office need be established in every agency to provide a tracing system for applicants interested in the status of their pending application.

The need to stop the endless duplication of government review is of paramount importance in our State today. You pick up the paper daily, and you see New Jersey has one of the highest rates of unemployment in our country. Another industrial facility has opted to remove itself from our State for better opportunities in another geographic region. Costs continue to rise in our State with devastating effects on the economic stability. These facts can all be directly related to government over-regulation. The cost of over-regulation bogs down industry, which causes unemployment and welfare rolls to grow, which places an unequal and unfair burden upon those who are working, through taxation.

Regulations written with a "myopic vision" hurt the economic strata of a state that throughout its history has been heavily industrialized. Regulations written with "myopic vision" have a direct relationship to a rise in the cost of goods or services to the people of New Jersey. Regulations written with a "myopic vision" provide for no emergency relief to permit progress while a satisfactory solution is worked out. Regulations written with a "myopic vision" tend to drive industry and employment opportunities from our State.

Relief is needed to prevent any further loss of employment and industry in our State. That relief should begin with this committee. The need for streamlining our administrative procedures is a good beginning. The need for reviewing rules to ensure their compliance with legislative intent is also necessary. As I pointed out in my two examples, many times the rules and regulations, as formulated, call for review and approval not mentioned in the law.

The Administrative process must provide assurances to the public that when rules and regulations are adopted they will provide for prompt review and approval or denial of applications without a myriad of paperwork. The public must be assured that there will be direct prompt approvals, that the governmental middleman, as now exists, will be eliminated, and that approval authority will be vested in the agency, at any governmental level that is best qualified to review an application and approve its function.

Gentlemen, a trip of one thousand miles begins with a single step. So, too, must legislative reform begin with a single step. Let that single step begin here in our State House with a look into the needed revision to

our administrative code, and with a provision for legislative review of all rules and regulations prior to their adoption.

Let us all realize that we must attempt to alleviate the bottleneck of governmental approvals through sound complete administrative procedures and review of rules and regulations as promulgated by the various agencies.

Gentlemen, I thank you for this opportunity to appear before you today on this timely, viable topic. The New Jersey Builders Association supports the need for reform of our Administrative Procedures and commends your efforts on that behalf.

Thank you.

