

Committee Meeting

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ASSEMBLY HOUSING COMMITTEE

"Testimony from officials of the Department of Community Affairs regarding the operational methods and fee structures involved in DCA's housing code enforcement activities and administration of the Uniform Construction Code and Uniform Fire Safety Code"

LOCATION: Committee Room 5
Legislative Office Building
Trenton, New Jersey

DATE: November 9, 1992
10:15 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John V. Kelly, Chairman
Assemblyman Jose F. Sosa, Vice Chairman
Assemblyman Steve Corodemus
Assemblyman John F. Gaffney
Assemblyman John Hartmann
Assemblyman Jerry Green



ALSO PRESENT:

New Jersey State Library

John B. Lee
Office of Legislative Services
Aide, Assembly Housing Committee

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, 162 W. State St., CN 068, Trenton, New Jersey 08625-0068



JOHN V. KELLY
Chairman
 JOSE F. SOSA
Vice Chairman
 STEVE CORODEMUS
 JOHN F. GAFFNEY
 JOHN HARTMANN
 JERRY GREEN
 JIMMY ZANGARI

New Jersey State Legislature

ASSEMBLY HOUSING COMMITTEE
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COMMITTEE NOTICE

TO: MEMBERS OF THE ASSEMBLY HOUSING COMMITTEE
FROM: ASSEMBLYMAN JOHN V. KELLY, CHAIRMAN
SUBJECT: COMMITTEE MEETING - November 9, 1992

The public may address comments and questions to John B. Lee, Committee Aide, or make bill status and scheduling inquiries to Norma Morales, secretary, at (609) 984-0231.

 The Assembly Housing Committee will meet on Monday, November 9, 1992 at 10:00 A.M. in Committee Room 5, Legislative Office Building, Trenton, N.J.

The committee will hear testimony from, and exchange views with, officials of the Department of Community Affairs regarding the operational methods and fee structures involved in DCA's housing code enforcement activities and administration of the Uniform Construction Code and Uniform Fire Safety Code. The business of the meeting will include a review of the department's response to and implementation of recommendations in the November, 1990. study by the Governor's Management Review Commission regarding improvement of economy, productivity and accountability in the performance of the department's functions.

This meeting will be a follow-up to similar discussion with DCA officials on September 21, 1992.

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ASSEMBLYMAN JOHN V. KELLY (Chairman): Let's call the meeting to order. We have a quorum, so we will get started. Please take the attendance.

MR. LEE (Committee Aide): Mr. Hartmann? (no response) He was here earlier. Mr. Corodemus?

ASSEMBLYMAN CORODEMUS: Here.

MR. LEE: Mr. Gaffney? (no response) Mr. Sosa?

ASSEMBLYMAN SOSA: Here.

MR. LEE: Mr. Kelly?

ASSEMBLYMAN KELLY: Here.

MR. LEE: Mr. Green?

ASSEMBLYMAN GREEN: Here.

MR. LEE: Mr. Zangari? (no response)

ASSEMBLYMAN KELLY: Okay. At our last Housing Committee meeting, we heard from diverse groups concerning my legislation that would reorganize the Department of Community Affairs to enhance its housing mission focus.

Today, we will take a closer look at some structural and organizational aspects of the Department, as well as the fee structure relating to fire safety, the Uniform Construction Code, and housing inspections. While these subjects fall within two separate subject categories, they share one element: the use of money that flows from New Jersey taxpayers and the private sector.

The 1990 Governor's Management Review Commission on DCA noted certain areas where duplication of services existed and identified structural and process inefficiencies. Today, we will examine what GMRC recommendations the Department of Community Affairs has implemented to ensure a higher rate of return for public dollars invested. We will also raise questions as to the efficiency, effectiveness, and productivity of implementing various inspection programs funded by New Jersey business owners and property owners across the State.

The inspections serve a legitimate purpose, i.e., public safety and maintenance goals. Fees are "revenue enhancement" tools which allow the program to be self-sufficient to prevent the need for State Treasury moneys. However, we must also recognize that the fees levied come from taxpayers -- businesses and individuals. When the fees increase to the point of taking more money from the pockets of landlords and commercial entities, we leave them with less dollars to improve multiple dwellings, as well as less money to invest and expand for the creation of more jobs for New Jersey citizens. We do not need fees that further increase the cost of doing business when the State's business climate is already suffering substantially. These inspection programs must be framed from a cost-benefit perspective. Clearly, the "cost" component of the fee structure, whether the inspection is performed by DCA, a municipality, or a private contractor, must be specifically broken out in detail.

During Fiscal Year 1992-1993, anticipated fees from Housing Code Enforcement, \$5.1 million; Uniform Construction Code, \$3.7 million; and Fire Safety, \$13.4 million; total \$22,305,000. The Department expects that an additional \$5.9 million in excess fees will be collected.

We must begin asking the question: Are we defeating ourselves and the purpose for which these programs were created, once the financial burdens on individuals and business owners exceed the program benefits? In the end the constant increase in fees will put businesses out of business, resulting in fewer jobs, and rental dwellings will become foreclosed properties, resulting in less affordable housing.

I think the first person we will have testify will be the Commissioner. Commissioner, it's your floor.

C O M M I S S I O N E R S T E P H A N I E R . B U S H :
Good morning. How are you?

ASSEMBLYMAN KELLY: Good morning.

COMMISSIONER BUSH: I have here information for you.

ASSEMBLYMAN KELLY: Who is that fellow next to you?

COMMISSIONER BUSH: Mr. Connolly.

ASSEMBLYMAN KELLY: Hi. I know Bill.

W I L L I A M M. C O N N O L L Y: We serve on a couple of committees together.

COMMISSIONER BUSH: I know, with the Fire Commissioner.

What I am passing out here are some of our written status reports to the Governor's Management Review Commission recommendations.

I would like to begin by thanking you for inviting me to this meeting, and for the tone of your letter.

ASSEMBLYMAN CORODEMUS: You did get the invitation this time?

COMMISSIONER BUSH: Yes, I did, last Wednesday morning. I am very glad to have been invited here, and glad to be able to provide information, hopefully, on the questions you have. What I did, as I have indicated, is pass out a handwritten -- not handwritten, but a written status report of the Department of Community Affairs' records as to what has been implemented regarding the GMRC, because even if I am unable to provide the full details today, it will give them to you and will answer most of your questions.

I did have an opportunity to also meet with the Acting Director of the GMRC last week just to get an idea as to what the recommendations were about, what they mean; are they things that are written in stone that you are supposed to be doing, and that type of information. I was advised that in doing the audits, this was to provide information by which the various commissioners and departments could begin to review what is in place; to begin topics of discussion, with the understanding that in some instances, due to philosophical differences, some would not be appropriate.

As we go forward you will see with the first one, which was to consider moving the Division on Aging and the Division on Women to the Department of Human Services-- That is one we basically discussed at the last meeting, since it was a part of the bill. It was found that with the Department of Human Services, that is more of a service provider entity, whereas the Department of Community Affairs is based upon empowerment. It was also determined that with the Division on Aging, that its responsibilities as an independent advocacy of aging needs and the coordination of the various programs within DCA, that it would not be functional to merge it with the Department of Human Services. The Division on Women, in performing its statutory mandate as an advocate for women's needs, does not lend itself to the Department of Human Services.

I think at the last meeting I indicated, as stated earlier, that our basic philosophy is one of empowerment in the Department of Community Affairs, whereas in the Department of Human Services, it is more one of service provider.

The second recommendation has to do with transferring the Youth Corps out of our Department into the Department of Education. That was accomplished by July 1, 1991.

Recommendation number three, which was to consider transferring the A-95 Review Process, also known as the Intergovernmental Review and Assistance Unit, out of the Department of Community Affairs-- In reviewing it, we did transfer it from the Division of Local Government Services, but found it more appropriate to move it to the Division of Community Resources in DCA, since it has significant concern with Federal funding for a variety of needs for community agencies. So that was the change that was implemented.

Recommendation number four-- What I did try to do, just so you'll know, was to verbatim print on this sheet--

ASSEMBLYMAN KELLY: Right.

COMMISSIONER BUSH: --the recommendations, so that you wouldn't have to go back and forth to your book.

ASSEMBLYMAN KELLY: It makes it easy.

ASSEMBLYMAN GAFFNEY: Yes, it makes it easier for Assemblypeople.

COMMISSIONER BUSH: And for me, too; and for me, too, because we are in this together.

Recommendation number four, which is to consider consolidating the Office of the Public Guardian and the Ombudsman of the Institutionalized Elderly with reporting authority to the Director of the Division on Aging--

We found that due to the statutory responsibilities of those two entities, that that would not work out. I have had the opportunity to meet with the two in, but not of those that are within DCA. The Public Guardian is generally appointed by the courts to be the guardian of the person and the property of a senior, or the conservator of the senior's property. The Ombudsman is generally-- Probably as legislators you receive letters where people are saying that they have a relative who is in an institution who they feel is being mistreated. So they do more of an investigatory situation towards the institutions and such.

Number five, consolidate fiscal offices and related support -- nonprogram -- personnel within each division under the Department's Office of Assistant Commissioners.

What we did was, we tried that within one of our divisions to see how it would work. We found there were some efficiencies of scale, and some standardization did result, but essentially the same amount of work had to be done. We also ran into a problem because many of our programs involve the processing of Federal funds, and we needed the permission then of the Federal government, or the entities from the Federal government that were dealing with these funds. In more than one instance, we were told, "No, you can't do it," because they

wanted it to be done by staff that is dealing with it 100 percent. That is further explained right within this section.

Then we have recommendation number six: Consider standardizing and consolidating operations of multiple groups of inspectors. Implement training programs to ensure that inspectors are cross-trained and capable of providing multiple types of inspections.

What we have here shows that we established the Division of Codes and Standards, which made it clearly focused on the responsibilities of inspections. We found that cross-training of inspectors for general function areas was something we could do, but it became cost-prohibitive to cross-train inspectors to any great degree, because that would mean you were putting a lot into just a few people to train them to do the entire spectrum of what inspections are done. So we found that that would not be cost-effective. But this has a longer explanation.

Then we have recommendation number seven, which deals with deputy directors. It said to strengthen the positions with defined responsibilities, or to eliminate them. We have terminated the Deputy Director in the Division on Aging. We have found, though, that in most of the other divisions it is important to have a deputy director because advocacy is such a major role of the director, and he or she has to be in the field so much, that for the regular staff management it is important to have someone in-house, or more so in-house.

Recommendation number eight: Computerize the reporting process for local municipality, county, and authority budgets, financings and other documentation. This would require money. It would be about \$250,000 to \$500,000. We were able to improve some of our internal automation, but we did not have the available resources to take it further than that. Also, if you were going to deal down to the local level,

the local level would also need financial backing in order to become more automated.

Recommendation number nine: Accelerate current programs to establish off-site computer archives and facilitate networking of computer systems. Provide a limited number of personal computers and additional training on how computer systems can be used to reduce labor requirements and enhance service delivery.

The off-site storage of computer archives has been established as recommended. Networking of computer systems has been developed. Even since I have begun, we have begun to use our systems that are there for electronic mail, cut down on the paper, and get things done faster, much to some people's chagrin, but they are adjusting.

Recommendation number 10: Dedicate appropriate resources to conduct audits of Federal grants where DCA is the cognizant agency. Requires allocation of staff resources. At a minimum, it is estimated that \$200,000 in personnel expenditures will be required. However, this is to help to protect over \$100 million in annual grant funds. The bottom line is, the funding was not available -- the \$200,000 -- to do that.

Recommendation number 11: Consider developing a centralized scheduling system for all housing and other facility inspections, as well as a mechanism to eliminate or significantly reduce downtime resulting from landlord cancellations or limitations on access.

Centralized inspections are used where they result in efficiency and increased productivity, such as the Elevator Safety Inspection Program. Construction inspections are also scheduled centrally in each regional office at a very specific time.

For the Bureau of Housing Inspections, this is not scheduled centrally, primarily because of cost-effectiveness.

It goes into explanation as to how there are approximately 600 units inspected a day. Eighty-five percent of the units inspected require reinspection and it would require additional clerical people to be able to do this. Also, there would be a decrease in productivity if there was a central scheduling, because oftentimes you need to get back as quickly as possible when you have been advised, "Well, we have finished what you have indicated did not meet the code or what needs to be done." The scheduling of the actual inspection is, therefore, left to each inspector. Much more detail is provided here for your review.

Recommendation number 12: Establish performance standards and indicators for each element or bureau of the Department.

The Department has established specific productivity and performance standards for inspectors. The person is required to do an average of two inspections per day. From our productivity records we see they are doing about 2.8.

Number 13 has to do with the Hackensack Meadowlands Development Commission. It indicated that we consider methods for accelerating the Commission's expenditure of the \$109 million which was set aside for landfill closures.

The Commission has submitted its 30-year closure plan. So far, one landfill has been closed; the second is in the process of being closed; and the third landfill is tentatively scheduled to be closed by December 1993.

Number 14: Develop a strategic plan for the Hackensack Meadowlands Development Commission and consider operating the HMDC as a "business." They have submitted a five-year financial plan. A plan focusing on alternate funding sources has been prepared by the HMDC, but it would require legislative enactment and the concurrence of the Office of Management and Budget. So that is something that is within -- proposals within the Legislature.

Recommendation number 15: We recommend that a facility of 50,000 square feet be purchased or leased providing immediate savings of approximately \$9000. This has to do with the Housing and Mortgage Finance Agency. And, evaluate the cost benefits involved with the lease of a building, rather than a purchase.

It appears that within the recommendations that were in the report, they were looking at another property that was being considered by the Housing and Mortgage Finance Agency. I am addressing that even though it is independent of Community Affairs, as the Chair of the Board. However, subsequent to that time, it is in negotiations for HMFA to purchase space at the Roebling Complex, which will bring it within the appropriate space standards, and will take away the criticism, or the recommendation that had been presented in the original report. This is something that is ongoing. So, this recommendation has been completed.

Recommendation number 16: Consolidation of the permit process statewide with appropriate staff assigned to this activity on a full-time basis. Centralization of the permit function will provide for better controls, improved planning, and utilization of personnel. It could also assist with business development activity. For example, a developer could go to one central location for the necessary permits related to his/her project. Currently, the system requires acquiring permits from various State agencies prior to a project's commencement.

The Department has prepared specific proposals which would lead to this consolidation and, of course, in this realm we can only propose because it requires legislative action. Our proposals are embodied in the Uniform Subdivision and Site Improvement Standards, which is S-537, which I understand is still in the Senate at this time.

Recommendation number 17: Support of the proposed hotel occupancy tax within the HMDC region provides an alternative funding source to recover the Commission's costs without directly taxing the local communities.

The status is, the Commission has already submitted various proposals for alternative funding sources, and they have been submitted to the local legislators for review. So, once again, this is only something that we can propose, but it requires legislative action.

ASSEMBLYMAN KELLY: Do you support the proposal?

COMMISSIONER BUSH: Pardon?

ASSEMBLYMAN KELLY: Do you support the proposal?

COMMISSIONER BUSH: I have to see it first.

Then we have recommendation number 18: Establish an independent nonprofit fund-raising organization for the HMDC Environmental Center. The organization could then contract with HMDC for operation, maintenance, and enhancement of the Center.

The status is, we received an Attorney General's Office opinion regarding the legality of a nonprofit fund-raising organization, and such fund raising is severely limited. That did not seem to be a plausible one.

Then, my reason for having Mr. Connolly here: The issue, recommendation number 19, modify existing rates and charges for all services provided by DCA to reflect the true total cost of providing each service.

Part of the status is -- which then brings me to Mr. Connolly, who can provide the rest of the status -- it has been recommended that the Hotel and Multiple Dwelling Inspection Program become self-sustaining by raising fees. This is what was accomplished by legislation. It became law in 1991.

Mr. Connolly can now provide you with the information more completely.

MR. CONNOLLY: Do you want to finish?

COMMISSIONER BUSH: I'm finished; that's it. That was recommendation number 19.

ASSEMBLYMAN KELLY: Do you want to relax, or do you want to get into this inquisition here?

MR. CONNOLLY: I'm ready. That's what I'm here for.

ASSEMBLYMAN KELLY: Okay.

COMMISSIONER BUSH: He has more of the information that I didn't provide regarding the fees, if he may present the information.

ASSEMBLYMAN KELLY: This is an inquisition, yes, it is.

ASSEMBLYMAN SOSA: Is that what it is?

ASSEMBLYMAN KELLY: Not really; it is not really.

COMMISSIONER BUSH: I'm listening carefully.

ASSEMBLYMAN KELLY: I wouldn't do that to you, Commissioner.

COMMISSIONER BUSH: But he does have the information, if he may provide it.

ASSEMBLYMAN KELLY: Sometimes we just like to scare you in the beginning and say it is an inquisition. It isn't. It's information. We just want information, okay?

COMMISSIONER BUSH: Okay. Mr. Connolly has information regarding the fees.

ASSEMBLYMAN KELLY: You've got the floor, Mr. Connolly.

MR. CONNOLLY: Okay.

ASSEMBLYMAN KELLY: Commissioner, if you want to leave, if you want to stay, it's up to you. It's entirely up to you if you want to leave.

COMMISSIONER BUSH: Okay. Well, if there is--

ASSEMBLYMAN KELLY: We can always get you back here if we need you, right, if we have any questions?

COMMISSIONER BUSH: If you could give me a little more notice-- I had to cancel a meeting with nonprofit housing things today just because of this. But I wanted to come

because it is important. I hope this provides information. If you need more, we will provide more.

ASSEMBLYMAN KELLY: I guarantee we will give you at least two weeks' notice. All right?

COMMISSIONER BUSH: That would be good. Thank you.

ASSEMBLYMAN KELLY: We are going to schedule one sometime in December, probably Christmas Eve. Is that all right with you?

COMMISSIONER BUSH: I won't be here.

ASSEMBLYMAN KELLY: Nobody will be here. All right.

COMMISSIONER BUSH: Thank you very much.

MR. CONNOLLY: The Department's Code Enforcement Programs are now almost 100 percent revenue funded. I imagine that is why we're here. That recommendation was, in fact, carried out. All of our fees have increased very significantly over the last three or four years. The purpose of all of those increases was, in essence, to carry out that recommendation to make all of the programs 100 percent revenue supported.

We have three major Code Enforcement Programs. They are not alike. They are quite different from one another. We tend to think of them all as inspection programs, but they're not. They are not alike in what they do, and they are not alike in how they are funded. So I will talk a little bit about each one, but it is a complex subject.

What I would like to do is explain the nature of the three programs. Only one of them is actually an inspection program where we are responsible for inspections. That is our Housing Inspection Program. Fire Inspection and Construction Code Enforcement: We have an overall responsibility for setting standards, adopting codes, oversight of local enforcement, training, support of municipalities, and filling gaps with our own people, but we are not, in the first instance, responsible for inspections in either the Fire Inspection Program or the Construction Code Enforcement

Program. Those are primarily local responsibilities, but are definitely under our oversight.

I would like to talk a little bit about how each one of these is funded, because each one is funded differently. On the recent fee increases: how much and why it had to be that much. I will talk a little bit on the basic issue of diversion of fees. Are any of these fees being diverted to something else? Cost components and amounts: why it has to cost this much. Productivity in our inspection programs, the place of privatization, and finally, just to mention the penalties and how they figure in our revenue picture.

All of our inspection programs have been organized so that there is no duplication, either between and among our own programs, or between and among anything we inspect and anything that is inspected by any local government, or anything that is inspected by any other State agency. That has been the policy and the goal of the Department for 20 years, and we have very largely achieved it within the last decade. There just is no duplication in inspections related to buildings in this State.

ASSEMBLYMAN GREEN: Excuse me, Mr. Chairman. As he is speaking, would you want him to finish his presentation before we ask questions, because--

ASSEMBLYMAN KELLY: Why, do you want to question him as he is going?

ASSEMBLYMAN GREEN: Well, on certain issues because of the fact that--

ASSEMBLYMAN KELLY: Well, if you have an important question, I will--

ASSEMBLYMAN GREEN: I appreciate that. I am concerned about-- You mentioned duplication of services. Local municipalities have their own inspection programs; the State has its own inspection program. Who supersedes whom in terms of-- Locally they might have their guidelines. They might

come into a building and this is what they're looking for. Then the State will come in, and this is what they're looking for.

MR. CONNOLLY: We have to stop right at the premise. Nobody has their own.

ASSEMBLYMAN GREEN: Right.

MR. CONNOLLY: For housing inspections, where I think is where your question is going to, for multiple dwellings -- three units and above -- there is a State code.

ASSEMBLYMAN GREEN: Right.

MR. CONNOLLY: It is enforced either by State inspectors or local inspectors, but we work in cooperation. All the inspection reports fall into the same place, to us. For one- and two-family dwellings, there are no State codes. Any inspections which occur in them are a result of local codes and local efforts.

ASSEMBLYMAN GREEN: The reason why I asked that question-- I am talking about three and over, where a local inspector will come out and inspect the premises for a lot of different reasons. The landlord, or the owner, or whoever it might be, might have to bring those standards up to the standards of that particular municipality. Maybe a year later, you happen to fall into the timetable of the State, which will come in. They will come in and they will tell you to do something different.

MR. CONNOLLY: Well, there are two responses to that: One, it is a maintenance code, so sometimes a building does deteriorate between one year and another. But other than that-- If that occurs, then one or the other of the inspectors made a mistake, because there is one code for a multifamily dwelling. If the first inspector or the second inspector said something different, then one of them is in error, unless it is a maintenance problem which has occurred over the time since the last inspection.

ASSEMBLYMAN GREEN: The reason I bring this to your attention is that, last year, as a Freeholder-- A person brought it to my attention in my district. I said, "Well, is it a State concern, or is it a local concern?" He said, "Well, the local concern brought this to my attention, and then the State brought this to my attention."

I am wondering now, you know, are they ever going to get together? Is there a possibility--

MR. CONNOLLY: They are together. We use the same code. Our responsibility is to inspect once every five years. Every municipality that I am aware of will inspect on a complaint basis. But the only systematic inspections that are done at the municipal level are those that are done by municipal inspectors working with and for us.

ASSEMBLYMAN GREEN: Okay. Thank you.

ASSEMBLYMAN KELLY: Go ahead, Mr. Connolly.

MR. CONNOLLY: Our construction code activity-- First of all, I mentioned before that we adopt and interpret the only building code in the State. We are responsible to train and supervise all local inspectors. We are accountable for everything they do, and we fill gaps. We do certain plan reviews when the municipal inspectors are qualified to do those plan reviews. We do local inspections in 40 municipalities which have chosen not to have local building departments, and have asked us to do it instead. We do elevator inspections and asbestos inspections, again when a municipality chooses not to. Finally, we are responsible for the code on State-owned property.

The construction code activity also includes a couple of consumer protection programs: our Full Disclosure Program for Planned Real Estate, Condominiums, and Cooperatives, and things like that, and the new Home Warranty Program, where every home buyer in the State gets up to a 10-year warranty on the quality of their new home.

Fire Safety: Again, we adopt and interpret the code, but this is one we write -- the Uniform Construction Code. We use national model codes. The State's fire codes-- By the terms of the legislation, we are required to write it ourselves, and we do write it ourselves. Again, we train and supervise the local inspectors who carry out the inspections. We are accountable for what they do and, again, we fill gaps. Municipalities are not required to have a local fire inspector, and in this case, 110 towns do not have local fire inspectors, so we carry out the inspections in those towns. Again, we also do State-owned property.

We also -- and this is important in terms of fees -- carry out a number of general fire programs: fire fighter training, a fire incident reporting system, public fire safety education, and general services in support of fire departments. All of these are funded by fire code fees, even though they are not fire code activities.

Finally, the Housing Inspection Program: We are responsible to inspect every hotel and every multiple dwelling in the State once every five years. That is a million dwelling units, 200,000 a year, 20,000 buildings a year. We use local inspection effort wherever it is available through a contract arrangement with municipalities, and approximately 50 percent of the actual inspections are done by municipal employees working with us. In the remainder of the State, we do the inspections with our own staff.

The biggest part of this job, however, is not inspections; it is ensuring compliance. The easy part of the Housing Inspection Program is to note violations. We have an administrative civil enforcement process, which means we are just like the courts. We issue notices and orders; we do reinspections; we assess penalties; we assess larger penalties. We get judgments; we get court orders; we do a

whole lot of things in order to actually enforce the code when we find a violation, to get people to remove that code.

Let's talk now about how they are funded. The Construction Code Program-- Up until three years ago, it was 25 percent taxpayer supported. It is not anymore. A variety of user fees charged at the time of application are where our money comes from, and there are many, many different fees that we charge for different kinds and types of applications, like plan reviews, building permits, licenses, what have you. We also have a broad-based fee which we call the State Training Fee, which is assessed-- It is a very small amount of money assessed on a rebuilding permit that is issued in the State. This program supports what I'll call a "diversion," and I will get to what that means in just a little bit, but not all of the money collected through construction code fees goes to support the Construction Code Program.

We pay our own rent, but we don't cover our own fringe benefit costs in this program. We pay about \$800,000 rent on a building out in Lawrenceville. That's new this year. The receipts in this program are very cyclical. They go up and down a lot, because they go up and down with the state of the construction industry. Housing starts last year were 25 percent what they were four years ago, so you can imagine what that does to revenue that is based on permits that is coming into that program. All of these fees are set by rule. None of them are set by statute.

Our Fire Safety Program three years ago was 20 percent taxpayer supported; today it isn't taxpayer supported at all. The revenue here is a lot simpler. There is an annual registration fee that is paid by the owners of buildings who are subject to regular inspections under the fire code. Sixty percent of the fees received in those registrations are returned to local fire departments to support the cost of enforcing the code at the local level. This program also

supports a diversion, a much smaller one, and as I said, I will get to what a diversion is in a moment.

The revenue here is very steady, very predictable, because there is a fixed universe that is paying a fixed fee every year, so we know how much money we are going to get in this program with no difficulty each year. These fees, again, are all by rule; none of them are by statute. Finally, in this program we are required to cover both the rent and the fringe benefit costs for all of our employees.

Housing inspections, the third major one, was grossly underfunded up until a year ago. It was 33 percent taxpayer supported, and the amount of money that was being appropriated was barely enough to do half the inspections that are required under the law. That changed with a statutory change in the fees last July. The fee there is an inspection fee that is collected at the time of the inspection, so those fees we have to earn. If we don't inspect, we don't get any money; unlike the fire registration fees, all we have to do is send out the bill. In the case of housing inspection, we actually have to perform the work or we don't get any money, so how much money we get is very much dependent on how many inspections we have and how hard those inspectors work. In this program, we also cover fringe benefit costs, and we provide financial support for something called the Housing Demonstration Program. Again, that is by statutory provision.

Let me talk just a little bit now about them as you see them in the budget. That is sort of how they work and what they do. Each of these three programs receives an appropriation in the budget. However, there is also in the budget what is called a "revenue anticipation." The language in the budget provides that the appropriation is reduced to the degree that the anticipation is not met. So, if we don't bring in the money, we don't have it to spend, notwithstanding the fact that there is an appropriation for a fixed amount.

Now, here is where I get to diversions. If the amount anticipated exceeds the amount appropriated -- and it does in Construction Code by \$2.2 million, and in Fire Safety by \$200,000 -- what that means is that that amount goes to the State's General Fund, because the amount we receive as an appropriation is less than the amount that we have to cover in an anticipation. The budget also provides for language that says that revenues in excess of the anticipation are also appropriated to the program.

So, to give you an example: If construction code costs \$7.5 million, and that is what it costs, then we have to collect \$7.5 million in order to have the appropriation. Then we have to collect another \$2.2 million in order to begin to get any of the excess revenue. That \$2.2 million gap goes into the State's General Fund. These gaps, if you will, have all principally occurred-- I mean, we are all involved in this. They have occurred in the Appropriations Committees, obviously not without the connivance of the executive branch, except for this past year. The Appropriations Act is a joint venture between the executive branch and the legislative branch, but the primary mechanism by which we have been made to cover all of our costs, has been the Appropriations Act opening up a gap, and a big one was opened in the FY '90 Appropriations Act, between the amount appropriated and the amount anticipated, and then telling us, "Make it up with revenue." And of course, the only way we can make it up is by raising fees, and that is what we do.

In addition to that routine, which is the basic one, there are a couple of other things that I should mention about appropriations: One is, we have two revolving funds. That is where the fees that are collected are placed in a fund that carries forward from year to year and we can use that money to offset the costs of the program, not just the year in which it is collected, but maybe in a future year. Theoretically, those

kinds of funds would allow us to save up a little money when construction is booming, and spend it down when construction is slow, thereby limiting the impact of the construction swing and our fee rates. But those revolving funds have always been capped in terms of the amount of money we could carry forward from one year to another. All through the '80s it was a million dollars. Anything over that cap lapsed, which means we didn't have much in the bank to draw on when the construction cycle went down. When I say "lapsed," I mean it went into the General Fund again. It is another way of diverting.

We also have a Trust Fund, the new Home Warranty Trust Fund, which covers the Warranty Program, and as a Trust Fund nobody ever messes with that. It is carefully audited every year. All of the money stays in the Trust Fund. Only proper expenditures can be made out of the Trust Fund, because it is a Trust Fund and that is the nature of trust funds.

We also have one simple appropriation. Our Boarding Home Licensing Program is not a revenue-supported program. It collects a little bit in fees which goes into the General Fund, but it was never intended to be self-supporting. It was felt that the boarding home operators simply couldn't afford the level of fees that would be necessary to have done the amount of regulation that was necessary, particularly in the 1980s. So that program isn't, and was not intended to be self-supporting.

Finally, this year's Appropriations Act has a new trick which you should be aware of -- it was inserted at the last minute -- and that is, in the Fire Program if we have any money at the end of the year to carry forward, it, too, up to a million dollars is lapsed into the General Fund.

Let me talk specifically now about the three recent fee increases, how much they were, and why they were that much. Construction Code: In Fiscal Year 1990, July 1, 1989, by an emergency rule, we raised fees by 30 percent. That was

done to offset \$1,700,000 worth of appropriation which was lost through the Budget Act that year. The Governor's budget had proposed the \$1,700,000 appropriation. That was the first year -- it was Governor Kean's last budget -- where things were starting to get tight. Once \$1,700,000 worth of appropriation was taken away by the mechanism I described of opening up that gap and we had to make it up in fees, that worked out to 30 percent, and there was a 30 percent fee increase that year.

In Fiscal Year 1992, April 1991 specifically, there was another 30 percent average fee increase. It was done to offset wage increases and the drawdown of our carry forward reserve. I mentioned before that we had some ability in the revolving funds to carry forward some money in the bad times. By that point in time it was gone. We had, in effect, been subsidizing our costs the year before with savings account money from the past that we didn't have anymore, and also wage increases. The wage settlement back at that time, during the last year of the Kean administration, was fairly generous, and it cost us 27 percent in labor costs in 21 months. We had to get it somewhere. Since we were receiving no appropriations, the fees had to be raised to get us back those two things.

This year again fees were raised; a much smaller amount, 8 percent in October. But also we extended the coverage I mentioned of the State Training Fund earlier that we collect on each building permit, a very small amount of money. Up until this year that was collected only on new construction. Now it is collected on alteration jobs as well.

ASSEMBLYMAN KELLY: You're talking about UCC fees, aren't you, just UCC fees?

MR. CONNOLLY: Yes, this is still UCC.

ASSEMBLYMAN KELLY: Still UCC, okay.

MR. CONNOLLY: The reason we needed that money, the 8 percent plus the money that we got from extending the State Training Fund, was, again, the extended recession. This is the

first year that we have had to pay our own rent. That used to be funded from the Central Rent Account, in other words by the taxpayers, but in this year's budget we have to pay the rent. That is \$700,000. Finally, the cost of increments that were in this budget, the increments that were provided for this year. That will cost us about 4 percent, because most of our people get increments. A person who gets an increment, it is 5 percent, but for us across our payroll, it is about 4 percent.

Bear in mind that staffing through all of these increases was reduced from 150 to 104 in our Uniform Construction Code Program. All of this money was not being raised in order even to carry a staff. That is not wrong that staffing was reduced; activity is down. But fees have had to go up quite dramatically over that period of time, primarily in order to comply with the mandate to shift our costs entirely to fees.

Fire Safety-- Let me turn to Fire Safety now which has a similar record. In FY 1990, the same first budget crisis, the last year of the Kean administration, \$2 million worth of fire appropriations were lost and had to be made up in fees. The increase that year was 15 percent. In Fiscal Year 1992, again October 1991, fire fees were raised again to fill a requirement that was placed on us that year that we had to meet our fringe benefit costs, which in that program were a million dollars. Our fringe benefit costs are about 30 percent of the payroll. Up until that time, again, that was something that had been covered out of the General Fund, in other words, covered by the taxpayer. It is not covered by the taxpayer anymore.

Also, that increase, which was 20 percent that year, included 10 percent for the local fire departments which enforce the code. That was the first increase in the rate of reimbursement to them in four years.

MS. SMARTH (Assembly Majority Staff): I have a question.

ASSEMBLYMAN KELLY: Go ahead, you may ask a question.

MS. SMARTH: For October of '91, you just said you increased it, and you mentioned a 10 percent figure. Was there a figure--

MR. CONNOLLY: We increased the fees 20 percent. Ten percent of that was--

MS. SMARTH: And you broke it out between a fringe benefit requirement and the--

MR. CONNOLLY: Local enforcing agencies, to give the local fire departments that enforce the code a little bit more money. It had been four years and, like everybody, their costs have gone up. We need to provide them an adequate level of funding. So, there was a 20 percent increase; 10 percent necessitated by fringes, and 10 percent necessitated by our belief that the local fire departments needed an increase.

Fiscal Year 1993: We have not had a fee increase. The only new cost that has been imposed on this program this year is the requirement to pay the rent in the DCA building downtown. We haven't been given a firm figure on that yet, so there isn't any way for us to know how much we need to cover it. I don't think it is going to be anything like the \$800,000 that we were required to come up with for the privately owned building out in Lawrenceville. Again, staff decreased from 95 to 85 across the period in which all these fee increases were taking place.

Our Housing Inspection Program: These fees were statutory, so there had been no increase in fees for a long time, and the program had been losing money since 1976. A fee bill finally passed on July 1, 1991, after having pended in the Legislature for 15 years, not always with the same sponsor, obviously. Two sponsors actually passed away during the time the increase bill was pending.

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ASSEMBLYMAN HARTMANN: That was a bad bill to sponsor, if that killed them.

MR. CONNOLLY: The average fee increase across the whole universe was 100 percent. During the period of time that the fees had been frozen, the cost of doing business -- the CPI -- had increased 400 percent. The increase fell more heavily on large owners than small owners, because the fee increase legislation in 1991 also attempted to correct what many people viewed as a longtime injustice. The fee structure that had been enacted in 1970 was bottom loaded. Small property owners paid a great deal more per dwelling unit than large property owners, basically because there was a series of caps in the fees. The little guy might be paying \$25 a unit for the inspection; the big guy might be paying 25 cents, and I am not exaggerating.

So for the small property owner the fees went up hardly at all, about 12 percent, while for people who owned very large complexes, they went up very, very dramatically, because those people, of course, had not been covering the cost of their inspections for a generation.

In this program there was a staff increase. That was the whole point of the 1991 fee increase; to allow us to actually inspect all of the hotels and multiple dwellings once every five years, instead of once every 10 years, which was the rate at which we were at. The five-year standard is not our idea. It is statutory; it is in the law that that is what we are supposed to do. Staff in that program increased from 90 to 145. Our inspection output doubled. Inspection output for State inspectors in the program quadrupled across the one-year period.

Let me just sum up a little bit on diversion of fees. Obviously I have addressed diversion of fees as I went into each of those subjects, but there is a little bit more to know about the diversion of fees: Are they being diverted either

within the Department to "social programs" or to the Treasury? With the Department, in the short term, yes; in the long term, no. The reason I say that is, over the last six years an average of \$320,000 a year has been transferred between code accounts. The Chairman mentioned at the outset that the size of the budget we are talking around here is on the order of \$20 million, so that isn't a great deal. About 1 1/2 percent of it was spent during that period. The major activity in terms of these transfers was about \$900,000 to the Fire Program from the Construction Code Program at the height of the building boom, and about \$700,000 back to the Construction Code Program from the Fire Code Program just one year ago.

The ability to balance these fees one against the other within the Division, I think is important and worthwhile, because basically it allows somewhat lower fees. If we are not able to balance, then we have to be a good deal more conservative in the fees we set, particularly in the building code, since, from what I described earlier, we've got to bring in the money. It is a little bit difficult to predict how much money a construction code fee schedule will bring in, because it depends on the state of the economy. The ability to draw from one against another is useful. If we don't want to do it, then we will just simply have to have somewhat higher fees overall.

Within the Department, again over the last six years, a net of \$21,000 has been transferred into the code programs from other programs within the Department, an absolutely inconsequential amount.

ASSEMBLYMAN CORODEMUS: Mr. Chairman?

ASSEMBLYMAN KELLY: Go ahead.

ASSEMBLYMAN CORODEMUS: If you don't mind me interrupting-- Maybe all the other Committee members got it, and I missed it -- the explanation of how your Department is

funded with the anticipated revenues opposed to the appropriated. Maybe you could go by that one more time.

MR. CONNOLLY: Yes. For the programs, each receive a specific amount of appropriation, and you can find it in the DCA budget pages in the Appropriations Handbook. But if you turn to the very front of the Appropriations Handbook, you will find a long list of amounts of revenue anticipated from fees in all the various departments. If you go to the back of the book and add up all the appropriations under, you know, Direct State Services or State Aid or Revolving Fund, whatever they are, and you add them all up, and then you go to the front and compare the amount that has been appropriated to the amount that has been anticipated, and then you bear in mind that the budget says that we have to cover that anticipation and we only get excess revenue above that anticipated, then if there is a gap -- if what has been appropriated is less than what has been anticipated -- and there is in two out of three of the accounts -- well, where does that money go? It goes to the General Fund, because all the anticipated revenues go to the General Fund. And we are getting back appropriation which offsets it almost entirely in Fire, misses it by a great deal in Construction Code; \$2.2 million out of \$7.4 million is a lot of money.

ASSEMBLYMAN CORODEMUS: Could you give us two numeric examples, perhaps, of how this could result in a shortfall to the Department; and another example of how it might result in a surplus to the General Fund?

MR. CONNOLLY: It doesn't result in a shortfall to the Department. That is why we raise fees. It forces us to raise the fees to cover those.

ASSEMBLYMAN KELLY: They raise the fees.

MR. CIFELLI (Assembly Minority Staff): Who sets the anticipated revenues?

MR. CONNOLLY: Generally, anticipated revenues come from the Governor, and they are set, if you will, in the Appropriations Act. But -- and this is important -- the changes in the anticipated revenues that have opened up these gaps have happened in the Appropriations Committee, not in the Governor's presented budget.

For example, last year in Fire, the Governor presented a budget where there was no gap. Through some very minor fiddling around, about \$200,000 worth of gap opened up. When I say "fiddling around," I mean reducing appropriations without reducing anticipation within the Fire Program accounts opened up the \$200,000 gap. Similarly, back in 1980, the Governor submitted a budget for Construction Code that had a gap of about \$700,000, and the Appropriations Committee increased that by \$1.7 million, up to \$2.4 million. So, you know, this is happening in the appropriations process much more than in the preparation of the budget by the Governor, in all honesty.

ASSEMBLYMAN CORODEMUS: Through the Chair, two different aspects of the budget within your Department could be subject to that type of discrepancy. If you had a very static type of an account, like you do in multiple dwelling, you only-- Unless things change dramatically, most likely there are going to be a static number of dwelling units, so you can pretty much anticipate how much you are going to spend, as opposed to new construction. Do you get involved with new construction?

MR. CONNOLLY: Yes.

ASSEMBLYMAN CORODEMUS: So, that could vary significantly.

MR. CONNOLLY: The way we are able to respond to increases in construction activity requiring more inspectors and whatnot, is the other piece of budget language I mentioned at the outset; that any revenue in excess of that anticipation is appropriated for the purposes of the program. So if we come

into another mini boom here and construction activity goes up by 50 percent, that means our permanent revenue will also go up by 50 percent, and we are able to spend that money to hire the extra inspectors to service the industry, because we've got that, you know, that budget language there. So that is not really relevant. What is relevant in terms of any funds being diverted, is if there is a gap in the Appropriations Act between the amount anticipated and the amount appropriated in a revenue-supported program.

MS. SMARTH: I have a question on the fee breakout for FY '92-'93: The anticipated revenues for the Housing Code Enforcement, which I guess is the housing inspection fees, is \$5.128 million. The Uniform Construction Code was \$3.689 million, and the Fire Safety, which is the biggest proportion, is \$13.388 million. Supposedly beyond these anticipated revenue levels, you are going to also have excess fees beyond that. The Housing Inspection supposedly \$500,000; for UCC, \$400,000; and for Fire Safety, \$5 million.

Under the scenario you just described, those excess fees-- Are you saying those excess fees are going to come back into the General Treasury, or part of these based on--

MR. CONNOLLY: No, it is not the excess fees. The excess fees we get to spend. It is the gap between the appropriation and the anticipation. You're reading appropriation numbers there; you don't have the anticipation numbers.

MS. SMARTH: So the figures that I just mentioned, the \$500,000, \$400,000, and \$5 million for the three respective categories, you're saying will be reappropriated--

MR. CONNOLLY: At that time that was -- at that time for us was 18 months ago -- our best estimate of what that amount of revenue might be. But you just read, like, \$3.6 for Construction Code. You flip to the front of the Appropriations

Act where they give you anticipated revenue for Construction Code, and it will be a number in the five millions, and that is your gap.

ASSEMBLYMAN KELLY: There's your gap.

Well, we say "taxpayer" whether it's General Fund or fees. The taxpayer is paying them, no matter which way it comes, whether we say-- There is always the taxpayer.

MR. CONNOLLY: Right, but what you're hearing -- and quite legitimately so -- is a lot of squealing from the fee payers, who are a narrow group of people, who were, up until three years ago, getting some support for the cost of those programs from the general taxpayer, and they are not anymore, so their fees have gone up significantly.

ASSEMBLYMAN GREEN: Mr. Connolly, you answered the question I wanted to ask you. Let's not say "fee." Let's talk about a tax, because that is what it really is. We are taxing people who don't have any control over this particular tax. It is a pass-on tax. Like you said before, if you don't get it from the budget, then you have to increase the fees.

MR. CONNOLLY: Technically, there is a difference between a fee and a tax, in that the cost of the fee has to somehow be tied to the cost of a particular service to that particular individual, where obviously taxes don't.

ASSEMBLYMAN GREEN: What I am trying to say to you is, when you increase a fee, anybody in business has a debt that is passed on. Am I correct?

MR. CONNOLLY: Oh, absolutely. There is no question about that.

ASSEMBLYMAN GREEN: So that means that it is passed on to the average renter. Am I correct? What happens in an area where you have rent control? Who picks it up? The landlords can go in and they can have that fee, you know, tied into their increase, and what happens? All I am saying to you is, the bottom line is that the average tenant gets hit with this fee.

MR. CONNOLLY: Well actually, at some point you have to come to the point of, "Is it worth it?" I hope to address that in a little while, but that is what is going on.

ASSEMBLYMAN KELLY: I want to ask you one question, Mr. Connolly: Do we have a cost breakdown of what it actually costs to determine these fees? Does the Department know what it actually costs?

MR. CONNOLLY: Yes, I am going to talk a little bit about that in a minute.

ASSEMBLYMAN KELLY: They can document the costs of all their fees?

MR. CONNOLLY: Absolutely. Yes, because our bookkeeping goes by account. Each one of these fee programs has its own accounts, so, you know, you can document pretty explicitly where the money is going.

ASSEMBLYMAN KELLY: The actual performance?

MR. CONNOLLY: Performance as well. I want to talk about that in a minute.

ASSEMBLYMAN KELLY: Okay, that is what I am interested in.

MR. CONNOLLY: Productivity in fees: Are fees being raised to support less work per worker? I think that is a very legitimate question.

Let me talk first about housing inspections. Unit productivity in our Housing Inspection Program, in other words how many units an inspector inspects on average, is up 92 percent since FY '86, and up 18 percent in the last year, notwithstanding the fact that we had a 250 percent increase in inspection staff. Anybody who has ever dealt with an expanding company knows it isn't all that easy to maintain productivity when you are expanding rapidly. But our unit productivity for our inspectors rose in the last year by 18 percent.

Based on a study I have that was done by the Executive Commission Expenditure Review of the State of New York, our

Housing Inspection Program does the same amount of work as that of the City of New York, with one-quarter of the staff and one-eighth the funds, and a good deal more effectively when measured in terms of what percentage of buildings inspected are actually brought into compliance.

ASSEMBLYMAN KELLY: Did you say the City of New York? Well, that is a different world over there. I don't even want to consider them part of New Jersey. They do everything whacky over there, as far as I am concerned.

MR. CONNOLLY: There is no question about that, but one-quarter is pretty good.

ASSEMBLYMAN KELLY: Okay. But if they are way out of whack--

MR. CONNOLLY: On about the same work load. They do about the same number of inspections of units in a year that we do.

ASSEMBLYMAN KELLY: Okay.

MR. CONNOLLY: We have productivity standards for each individual inspector. They are subject to being disciplined and actually dismissed if they don't meet those productivity standards. We have, in fact, dismissed inspectors for failing to meet those productivity standards, and we will continue to do so. We take giving some kind of value for the money we collect very seriously.

The Fire Safety Program likewise. Our inspector productivity is up 56 percent over the last three years. We have leaned on our fire inspectors quite hard in the last three years. I didn't think our productivity was what it should be in the beginning of the program. That is a little bit understandable in the beginning of a program. I will get to some more specific dollar costs in a moment, but in terms of productivity we have had pretty substantial increases recently.

In our Construction Code Program, our plan review work load is basically steady. The amount of work that a planner

bureau is being asked to do -- number of open cases, plans they have to handle -- is about the same now as it was in 1989. That is because our staff is down. I mentioned earlier that Construction Code staff was down a fair amount, and rightly so because the work load is down as well.

Local inspection: Our unit productivity is down since 1989. We have to cover 40 towns with just 20 inspectors. We have to spend a certain amount of time in town halls dealing with people who want to get permits and asking questions. As the construction jobs get fewer, they get further apart. It has not been possible over the last four years to maintain the same level of unit productivity with our building inspectors as we had before, and as we have been able to do with all of the other programs.

Why does it have to cost that much? Housing inspection-- It costs us \$286 a day to keep an inspector on the road. That is not what we pay an inspector. Again, anybody who is in business knows that what you pay your staff and what you have to collect to stay in business are not the same number. In the architectural engineering profession, where I come from, which is a fairly good model for what we do -- those are the people we work with -- you have to get two-and-a-half to three times direct wages to stay in business. We get between 1.8 and 2.2, depending on the program, of direct salaries. In other words, what these fees have to raise for us is about 1.8 to 2.2 direct. Indirect is your fringes, your rent, the cost of support services, the cost of cars, and all that kind of stuff. Our ratios, when compared to the private sector people who do very similar activities, are pretty decent.

For that \$286 a day what we have to get out of our inspectors, since the average fee across the whole system produces \$20, you know, we have to get 15 units a day. Our productivity standard of those inspectors is actually 18 units

a day. That is the one they have to meet, or ultimately they get fired.

Fire inspection costs us \$411 a day to keep a fire inspector on the road, and the average fee across all of the people who pay the fire fees, is about \$250. Some people pay as little as \$50. Some pay a couple of thousand, but the average fee is about \$250. The reason fire costs so much more than housing inspection is something I mentioned earlier: one-third of the costs of our Fire Program have nothing to do with inspection, yet are carried under fire fees. We used to get appropriations for those programs, like, you know, fire incident reporting and public fire education and fire fighter training. We don't. Fire fighter training was the last appropriation left. It disappeared in this year's Appropriations Act.

So it costs us \$411 a day to keep that fire inspector on the road, because he is carrying more than an ordinary share of overhead. He is carrying one-third overhead that has nothing whatsoever to do with what he does, because a decision was made, again, in the FY '90 budget to support those costs out of fire fees. That is what it meant when you took away the appropriation and raised the anticipation. That was a policy decision to support those costs on the fees that are charged to the business owners.

Building inspections cost us about \$368 a day to keep an inspector on the road. The reason there is not that sort of a problem, but the fact that building inspectors -- plumbing and electrical -- make a lot more money than housing inspectors. We pay our building inspectors around \$46,000 a year; we pay a housing inspector around \$26,000 a year. It just costs a lot more money to get a good building inspector than it does to get a good housing inspector.

It takes about three days of effort to do a typical house. Remember I said \$386 a day is what it costs us to keep

one of these people out there. Three days of multiple inspections in the building construction process; you come back a number of times. You come back with a number of different kinds of inspectors, because the law provides for plumbing, fire, building, and electrical, to all be separate.

ASSEMBLYMAN CORODEMUS: Did you say three visits to the house?

MR. CONNOLLY: No, three days of effort.

ASSEMBLYMAN KELLY: Three days of effort.

ASSEMBLYMAN CORODEMUS: To inspect the house?

MR. CONNOLLY: By four different people, multiple visits.

ASSEMBLYMAN CORODEMUS: How many people?

MR. CONNOLLY: Four different people.

ASSEMBLYMAN CORODEMUS: Right.

MR. CONNOLLY: Coming at different times: footing, foundation, framing, final; when you make the water connection to the street, when you make the sewer connection to the street. All of those are times when inspections take place. It works out to about three days of effort on a typical house. At \$368 a day, our fees-- The fee schedule is complex, but on a 1200 square foot town house, it is \$818. On an 1800 square foot detached home with a basement and a two-car garage, which is your average New Jersey house, it is \$1495. In each case, about three-quarters of 1 percent of the construction cost to the house. That has not changed much over the last 20 years. That is about where it has been for a long time.

ASSEMBLYMAN GREEN: Mr. Chairman?

ASSEMBLYMAN KELLY: Mr. Connolly, would it be easier for outside inspectors, and cheaper for outside inspectors to do this work, rather than the State?

MR. CONNOLLY: The next item on my outline: privatization.

ASSEMBLYMAN KELLY: Privatization -- interesting.

MR. CONNOLLY: It is not cheaper.

ASSEMBLYMAN KELLY: It's not?

MR. CONNOLLY: It costs, in these building code inspections right now today, about 115 percent of what it costs-- It costs about 115 percent to do it with a private inspector of what it costs to do it with a State employee.

ASSEMBLYMAN CORODEMUS: You're talking just about the dollar fees?

MR. CONNOLLY: Right.

ASSEMBLYMAN CORODEMUS: What about the pension and the benefits?

MR. CONNOLLY: No, no, total cost; total cost to the guy who wants to buy the permit.

ASSEMBLYMAN CORODEMUS: How are you breaking that down?

MS. SMARTH: How do you break it out?

MR. CONNOLLY: Pardon?

MS. SMARTH: What factors are you applying as breakout to come up with that kind of--

MR. CONNOLLY: Because by law private inspection agencies receive 115 percent of what we receive for the same work.

ASSEMBLYMAN KELLY: By law?

MR. CONNOLLY: That is a provision of the Uniform Construction Code.

ASSEMBLYMAN CORODEMUS: Just so I understand, Mr. Connolly, if you charge \$100 for an inspection, you're saying that a private concern would charge you \$115?

MR. CONNOLLY: If a given inspection is costing the fee payer \$100 and it is being done by a State employee, that same inspection would cost that fee payer \$115 if it is being done by a private inspection agency.

ASSEMBLYMAN CORODEMUS: And those fees that are currently collected by the State, that were marked with this

\$100, are sufficient to pay for the pension and benefits that the State employee enjoys?

MR. CONNOLLY: Yes. Our costs are very high. Our costs are--

ASSEMBLYMAN KELLY: There you go. I see somebody shaking his head.

MR. CONNOLLY: These fees that I have just described for us-- Let me just put them in perspective. They run maybe 25 percent, 30 percent higher than if we did the same thing in municipal government.

ASSEMBLYMAN KELLY: Before you continue, Mr. Connolly, I see somebody shaking his head back there. Who are you and what are you doing? Are you an outside inspector?

R U S S E L L B. M c L A U G H L I N, SR.: (speaking from audience) Yes, sir. My name is Russell McLaughlin, Sr. I am Assistant to the President of Building Inspection Underwriters Inc.

ASSEMBLYMAN KELLY: You were just shaking your head. What does that mean? Do you charge 115 percent above--

MR. McLAUGHLIN: Not that I know of, sir, no.

ASSEMBLYMAN KELLY: Oh, okay. Are you going to testify?

MR. McLAUGHLIN: If I may.

ASSEMBLYMAN KELLY: Is he on the list? (affirmative response) We'll see you later.

Go ahead, Mr. Connolly.

MR. CONNOLLY: As I said, that is not a point there can be much debate about. I can give you the statutory reference.

We tried a different approach, rather than using the third-party agencies for some of our own State work load at the peak of the construction boom, bringing in, like, temporary employees from an engineering job shop. That was very effective in terms of getting us people to do the work at a

time when it was very difficult to hire State employees, because the private sector was paying so much nobody wanted to work for the State. But it cost us about 170 percent of what it would cost us to do it with our own people.

ASSEMBLYMAN CORODEMUS: Mr. Chairman, I am anxious to start questioning. I don't know if we are going to wait for all of Mr. Connolly's presentation to be finished.

ASSEMBLYMAN KELLY: Go ahead.

ASSEMBLYMAN CORODEMUS: It seems like he has a lot of papers there and he is very well prepared. I might be taking this out of context, because he seems to be answering questions along the way as we go, but I have a question about multiple dwelling inspections. A person is interested in purchasing, let's say, a 10-unit residential facility. I have seen from personal experience that that prospective purchaser pretty much purchases that building at his peril, in that it is impossible to coordinate an inspection from your Department prior to the closing so when the new buyer gets in there he knows exactly what he is walking into.

Why isn't something like that subjected to privatization so that a buyer can retain a private inspector, an engineer who is licensed under your Department who can go in there and be paid for the inspection and know exactly what kind of items that do not comply with the State code, as opposed to buying the building and then two or three years after closing, one of your inspectors comes along on his five-year cycle and really whacks him with all the noncompliance items? Why can't we privatize that?

MR. CONNOLLY: In a sense, it is privatized, because there are companies that do that.

ASSEMBLYMAN CORODEMUS: But without sanction by the State.

MR. CONNOLLY: Those companies are, in no sense, accountable to us or responsible, you know, to make sure -- so

that we make sure that what they do is right. But, sir, anybody who buys a building, whether it is a multiple dwelling or a single-family house-- There are lots of companies out there to do those inspections.

We have historically opposed the idea of doing sales inspections under the Multiple Dwelling Law simply because it is very expensive, because of the responsiveness needed. I mean, if somebody can call from anywhere in the State today and they have a closing fairly soon and they want it inspected and everything done right away, then you have to have people standing by, effectively, so that the unit cost gets fairly high. Licensing people to do the private inspections I think is a good idea.

ASSEMBLYMAN CORODEMUS: Just to pursue that for a moment, everybody seems to lose on that juncture by not privatizing, because the building does not get inspected when it should be inspected, when it is falling into the hands of the new owner, so that if there are any items that are not complying, they continue to remain in noncompliance until one of your inspectors comes along. Secondly, an opportunity is lost because when the property changes hands there is an opportunity by the buyer to force the seller to either compromise the price so he can do the repairs, or the seller will have to do the repairs. Then the State loses because it just lost out-- I have never seen a buyer bemoan the fact that he paid an inspection fee. I think they would pay it gladly.

MR. CONNOLLY: We think it is the best time to inspect the building, because at the time of the sale there is money. It is time to fix the building. It is much more possible to fix it up than at other times.

ASSEMBLYMAN CORODEMUS: There is no policy determination at this juncture within the Department to go to privatization for that, or other inspections?

MR. CONNOLLY: If we were in charge of that at all, I think we would go to privatization of it. I would call it "governmentization," because there would be more of us than there are now if we do that. Even if it is only a couple of people to oversee these home inspection companies, that would be a new activity for us.

ASSEMBLYMAN CORODEMUS: Who is in charge of setting the policy, if it is not you?

MR. CONNOLLY: I'm not sure what you mean.

ASSEMBLYMAN CORODEMUS: If I were to advocate the position that your Department should look into privatization of that--

MR. CONNOLLY: Well, let me just say that there is a bill that would have us do those kinds of inspections. I think it is Senator Cowan's bill. I'm not sure just where it stands, but it is in at least one committee. We would certainly support it, if someone wanted to take that bill and say, "Well, yes, you should do those inspections, but they should be done by home inspection companies, licensed, etc." We would support that.

ASSEMBLYMAN CORODEMUS: You are awaiting a legislative initiative to formulate that policy of privatization, not from within the Department?

MR. CONNOLLY: Because you can't privatize what you don't do. I guess I am not being clear. We don't require buildings to be inspected when they are sold.

ASSEMBLYMAN CORODEMUS: How about the other privatization of other--

MR. CONNOLLY: If you get to the first step, which is to require that it be inspected when it is sold--

ASSEMBLYMAN CORODEMUS: Right.

MR. CONNOLLY: --then that would be the sensible way to do it.

ASSEMBLYMAN CORODEMUS: I'll have to look for that bill.

ASSEMBLYMAN KELLY: What is the differential in charges between private contractors, the municipalities, and the DCA inspectors? Is there a difference between all these various inspections done by the same people for the same thing? Do they charge more, less, or the same?

MR. CONNOLLY: Municipalities?

ASSEMBLYMAN KELLY: Yes.

MR. CONNOLLY: Municipalities typically charge less than we do.

ASSEMBLYMAN KELLY: Less?

MR. CONNOLLY: There are a couple of reasons for that: One is, particularly in the older towns, they still tend to subsidize it at the local government level. There is taxpayer money still going into local building departments, particularly in our older towns where they don't have a lot of new construction and the fees for renovations would be very substantial, so they just don't do it. Areas that are heavily developing I can give you, because I know their fees. Bridgewater Township, for example, up in Somerset County-- Their fees are just about the same as ours. But there is a tendency-- Of course, in the towns costs are a little lower, because they don't have to travel as much. We have 40 towns, and they are all over the place. Our inspectors spend a fair amount of time in their cars. So for that reason, on average, except where they are using third-party agencies-- In that case their costs, as I said, are 115 percent of ours. But where they are using municipal employees, typically they are a little bit lower.

But, bear in mind that, you know, certainly no more than 5 percent of the building inspections in the State are done by State people; probably a lot less than that, because we

have 40 towns out of 567, and those 40 are really little places, with the exception of Asbury Park.

ASSEMBLYMAN KELLY: Are there caps on what they can charge?

MR. CONNOLLY: Municipal fees-- We don't let towns do what we do. We have regulations that say municipal fees cannot exceed the costs of running the department. We have regulations that are very specific about what costs are allowable in the running of the department, and we even have a 12 percent limit on indirect charges; like, we have to pay the rent, but we don't let municipalities charge their building departments for the rent. We have a 12 percent sort of indirect other that they can add to their total costs for some of the municipal attorneys' time, some of the mayors' time, what have you. They don't bill that individually. But all the direct costs within the building department are allowable charges against the fees, and then we have the rule which says that the amount collected cannot exceed the amount spent.

Now, again, because these are construction fees, you could not enforce that rigidly year to year. In some cases, towns collect a little bit more one year, a little bit less another year. But we watch them over time, and go after those that are turning a profit.

ASSEMBLYMAN KELLY: But nobody watches you.

MR. CONNOLLY: That's right. You watch us.

ASSEMBLYMAN KELLY: Okay.

ASSEMBLYMAN GREEN: Mr. Chairman?

ASSEMBLYMAN KELLY: Go ahead, Jerry.

ASSEMBLYMAN GREEN: I am just refreshing my memory in terms of a couple of months ago when we had the Builders Association and other groups coming in to testify on the extension. Listening to your remarks, and listening also to the Chairman, you come very well prepared. Do you think we need to look at this whole structure in terms of how we do

fees, how we do inspections? It seems like there is a built-in cost right there that automatically is going to haunt us in the future in terms of--

MR. CONNOLLY: I think there is a way to make this whole system more accountable--

ASSEMBLYMAN GREEN: We have kind of overregulated ourselves in terms of-- We are really putting ourselves out of business.

MR. CONNOLLY: --and it's not just DCA. It is an issue that should be looked at. It is much larger than DCA. We are pikers in terms of fees compared to some other departments.

ASSEMBLYMAN GREEN: Would you feel, based upon your--

ASSEMBLYMAN KELLY: Which one? DEP, in particular?
(laughter)

ASSEMBLYMAN GREEN: It is rather hard to ask you this question, because it kind of puts you in an awkward position. But, you know, being sincere about listening to your testimony, and listening to the other testimony a few months ago, do you really think we need to start from the bottom and look at this whole structure in terms of how we do business?

MR. CONNOLLY: The number one question is--

ASSEMBLYMAN GREEN: I mean, with your expertise-- I'm pretty sure you see it from both sides. It is obvious you are not going to do anything to tear down what--

MR. CONNOLLY: There are really two things I think we need to do: One is, decide whether we like the policy of covering 100 percent of these costs from fees. Second, I think we need to look at what institutional mechanisms we have, like the rules we apply to municipalities, that will ensure that fees collected are spent the way they are supposed to be spent, and do not find their way to other places. Like I say, on the whole, those other places help us to balance the budget each

year, so we need to think about that before we get-- But certainly, as a fee collector, it is not easy.

ASSEMBLYMAN GREEN: Yeah, but we can't have people--

MR. CONNOLLY: I certainly favor spending them only on the costs of the program, because, you know, who's taken the heat for the last three years for all those fee increases, is us.

ASSEMBLYMAN GREEN: Yeah, but we can't have it both ways. We are concerned about collecting fees, balancing the budget, and then we are also talking about jump-starting, you know, the economy, in terms of the housing industry. So, you know, to try to have it both ways, we're only kidding ourselves.

My concern, listening to what we are talking about, is, we have to lay it all on the table and begin to look at it in terms of, have we overregulated ourselves to the point now that it has taken this type of manpower to get the job done? Number two, I agree with you that a fee is not like a tax, but in reality we are still passing it along to the consumer in a hidden manner.

I think at this point I have listened to testimony on a lot of different issues, but when it comes to the housing industry, at this point now, I think we have put ourselves in the position where we just keep building a monster. If we don't stop and start all over, and try to look at it in terms of what we can do to streamline government, streamline costs-- I think we could have better control. I see a system that is really out of control. That is my personal opinion.

MR. CONNOLLY: Let me just finish with two numbers on privatization, just to give you a feel for if you disagree with me about whether, you know, it would be cheaper, or what have you.

Presently, about 89 percent of the elevator inspection work that isn't done by municipal employees, is done by third-party agencies. Only about 11 percent of it is done by

State employees. Again, in the building code, the local inspections, plumbing and electric inspections, and stuff like that where we do the 40 towns-- About 84 percent of that inspection work that is not done by municipal employees is done by third-party inspectors, not by State employees. I think those percentages are fairly close to irreducible minimums. When you think about privatization, I don't think it is a wise policy to have no capability to do it yourself and to be totally dependent on private companies that you have let this work out to. Even if you were to disagree with me and say, "Oh, you should only do 5 percent of it, not 11 percent of it," clearly that is not a lot of money in the overall scheme of things, because we have a tremendous amount of this privatized already. Asbestos inspections: 100 percent is done by private companies.

ASSEMBLYMAN GAFFNEY: I have a--

ASSEMBLYMAN KELLY: Go ahead, Mr. Gaffney.

ASSEMBLYMAN GAFFNEY: --question on that same point.

We talked about the 1991 law. I assume part of that legislation was to bring the fee schedule up to snuff and make things more effective. We have been dwelling on this: that multiple family units had to be inspected every five years, as you mentioned before. I wrote a note here. I thought you said that after that change was instituted, your staff increased from 90 to 145.

Also in that legislation, DCA can contract with a municipality, right, to do the inspection, and you will reimburse them?

MR. CONNOLLY: Right.

ASSEMBLYMAN GAFFNEY: Why did your staff increase? I guess you haven't been able to get many of the municipalities to do the inspections themselves.

MR. CONNOLLY: Historically, we have had about 100 municipalities. That is about how many maintain full-time

housing inspectors in this State. Housing inspection is just not as common a thing in local government as building inspection.

ASSEMBLYMAN GAFFNEY: But can't they contract with a third-party non full-time housing inspector? Are there such companies that provide housing inspectors?

MR. CONNOLLY: No.

ASSEMBLYMAN GAFFNEY: There are none?

MR. CONNOLLY: No. There are the companies that we discussed earlier that do the sales inspections, and there are a lot of those, but there are no private housing inspections on behalf of government at the present time.

ASSEMBLYMAN KELLY: Could municipal people be trained to do the State jobs? We have a training program, don't we? Can they be trained properly to do the housing inspections, or the other inspections, or it is not the capability?

MR. CONNOLLY: In each of the three programs, the premise is that they will be done municipally, but in none of them is it mandated. In each case, the municipality gets to make its own decision whether or not it wants to carry out this inspection program locally, or whether they want to leave it to us. Almost everybody said, "We'll do it." There are only 40 towns that don't. In the fire code, there are 110 towns that don't, and in housing inspection there are 450 towns that don't.

ASSEMBLYMAN KELLY: In other words, they don't want to, you're telling me?

MR. CONNOLLY: They don't want to, right, because it is voluntary with them.

ASSEMBLYMAN KELLY: Or, do you make it so restrictive--

MR. CONNOLLY: In housing inspection, the trend has been going slightly in the other direction. Historically, about two-thirds of the inspections were done by locals in our Housing Inspection Program.

ASSEMBLYMAN CORODEMUS: You're saying local housing, right?

MR. CONNOLLY: Pardon?

ASSEMBLYMAN CORODEMUS: Do you mean local housing that we're talking about.

MR. CONNOLLY: Yes, in multiple housing. Now we are down to around 50 percent. The reason is that several of our major cities have dropped out; Newark and Atlantic City in particular, and Jersey City. Now we do those with State employees.

ASSEMBLYMAN CORODEMUS: What's the difference to the taxpayer now? Let's take Atlantic City. If it doesn't do it on its own, or Jersey City, if they choose to abandon their local efforts to do the housing inspections--

MR. CONNOLLY: It doesn't make any difference to the fee payer, because the fee is the same for everybody, because the structure in the multiple--

ASSEMBLYMAN CORODEMUS: How about the State taxpayer?

MR. CONNOLLY: Pardon?

ASSEMBLYMAN CORODEMUS: How about the State taxpayer? I don't live in Jersey City or Atlantic City or those other towns. Does it cost me more per year because of their abandonment of the program?

MR. CONNOLLY: No, no, because we would either spend the money-- We would either spend the money paying them to do the inspection or do it ourselves, and the cost is about the same.

ASSEMBLYMAN CORODEMUS: How about when it actually comes to service? Let's go back to the multiple dwelling unit owners. How do they fare? Do they fare better as far as efficiency, expediency of service, as far as inspections under a local, a State--

MR. CONNOLLY: Where there is a good local inspection program, you know, in a place like Hamilton Township, a place

like Edison Township, it is much better. In all honesty, how does the landlord fare in the City of Newark when a State inspector does it? It depends on your standard, what you are looking for. There is no doubt in my mind that our people are more thorough and tougher. So, if that is your perspective, you are not faring real well. But if you are looking in terms of wanting other people's buildings maintained so that your property doesn't lose value, then you are probably better off having a State inspector do it, in all honesty.

ASSEMBLYMAN KELLY: Is it possible for us to get a listing of all the fees that DCA collects?

MR. CONNOLLY: Yes. They are all in the Administrative Code. We can just reproduce the pages.

ASSEMBLYMAN KELLY: Can they show me how they support the justification for the cost? Have you a cost analysis of every one of those fees?

MR. CONNOLLY: Sure.

ASSEMBLYMAN KELLY: And we can see it?

MR. CONNOLLY: Yes.

ASSEMBLYMAN KELLY: It will be available for us to review?

MR. CONNOLLY: Yes. It is just a question of what form you want it in, because, as I say, we have accounting systems that keep track of all these costs by program, by type of cost. So, it can be done.

ASSEMBLYMAN KELLY: And we can determine that it cost \$135 for this inspection based on the information put into that computer, or whatever the fee?

MR. CONNOLLY: Yes.

ASSEMBLYMAN KELLY: Oh, we can. That's interesting.

MR. CONNOLLY: You know, over the whole thing, if you know the numbers of inspections and you know the total costs, you can do it. Just bear in mind that with the building code

and the fire code, it is not easy. Housing inspection is kind of direct, because that is what we do -- we inspect.

ASSEMBLYMAN KELLY: Right.

MR. CONNOLLY: With the building code and the fire code we have a lot of activities that are not, in fact, inspection activities. So you have to separate out different--

ASSEMBLYMAN KELLY: We can segregate them, okay.

MR. CONNOLLY: You have to segregate out the inspection costs, which you can do. I mean, I have done it. I do it every year to try to make sure that the fees for different parts of the program are in proportion to one another, and we don't have sort of internal subsidies between people who get plan reviews and people who get inspections, so we are not charging one an unfair burden, as compared to another. You can do it.

ASSEMBLYMAN KELLY: May we excuse you now, because I know you have an epistle there? There are some people out there who are shaking their heads. I would like to hear what they have to say, and then we will come back to you. Is that fair?

MR. CONNOLLY: That's fair enough. You gave me a lot of time.

ASSEMBLYMAN KELLY: Okay. We are going to be here all day. We are not going to finish by 12:00, despite what-- We may go downstairs, but we are going to be here all day, and everybody is going to testify.

Who would like to address me? Let me see, how about-- Mr. O'Keefe, would you like to address us now, or do you want to wait until later?

P A T R I C K J. O ' K E E F E: (speaking from audience)
I will address you now.

ASSEMBLYMAN KELLY: Okay, come on up. We will get back to you, Mr. Connolly. I saw a lot of head shaking, no, yes, so let's find out what is going on. Mr. O'Keefe, you have

the floor. You represent the New Jersey Builders Association. Okay, we know who you are.

MR. O'KEEFE: Thank you, Mr. Chairman. I'll sit in this seat. I think that one is a little warmer than I could stand.

Let me begin, Mr. Chairman, by thanking you and the members of the Committee for undertaking this oversight of the housing arena. I think, as Mr. Connolly just said, you are the only watchdog we have here. We have watchdogs at all other levels. We have plenty of watchdogs watching the private sector, but this Committee is really the only group of individuals that is concerned about housing policy generally, and whether or not we, as a system, and State government, as a participant in that system, are carrying out our mission.

Because you put forward a broad agenda, I am going to confine my comments this morning just to the fees. I will provide you some correspondence with respect to the Department's response to the GMRC report. We may want to come back to that at some time, but I had not seen that report before this morning, so we'll get back to you. I have seen both the report and the caucus response to it. I have not seen the Department's response to it, so--

ASSEMBLYMAN KELLY: You never got a copy of it?

MR. O'KEEFE: I hadn't before, and that is probably our oversight.

ASSEMBLYMAN KELLY: Do you have it now?

MR. O'KEEFE: We will get it, yes.

ASSEMBLYMAN KELLY: Okay.

MR. O'KEEFE: Mr. Chairman, I also want to put something out that I think-- I speak generally for the private sector on this. The NJBA has consistently supported the notion that -- or the principle that the private sector should pay the costs of those public services, where the need for that service is generated by our business activities. We expect, however,

that the fees that we pay to do that are going to be targeted in terms of their application; that the revenues generated are going to be restricted to the uses that they are supposedly collected for; and that the programs we finance will be efficiently administered.

I think, as Mr. Connolly has made abundantly clear so far, that our side of that equation is not being met; you know, that the moneys being diverted -- that the programs are not necessarily efficient. That is one of the reasons why we encourage you to undertake an examination of the fee structure.

I think we have to really compliment the Department for its candor in both the Commissioner's and Mr. Connolly's comments about what is going on here. What we see from the private sector side is that fees are increasingly becoming a general revenue source, which is to say that they are being treated as if they were taxes. I am sure, as Mr. Corodemus would tell you, in fact, from his law school days, and I as an economist, that fees in New Jersey are now being used in a manner that is inconsistent with both law and economics. We are paying the prices.

Mr. Green made a very good point before. We were probably regulating ourselves out of existence. If you just took the diversions that were discussed so far, they add up to \$400 per unit of housing. That is the diversions. That is not the inefficiency or anything else. That is what you have already been told.

ASSEMBLYMAN KELLY: Four hundred dollars?

MR. O'KEEFE: Well, we built 15,000 units last year. If you add up the diversions that took place, and you take into account what has also gone on in DEP, it is about \$6 million of acknowledged diversions. And that is being passed through to the home buyers.

ASSEMBLYMAN KELLY: You are including DEP, not just DCA?

MR. O'KEEFE: Yes, the diversions.

ASSEMBLYMAN KELLY: Okay. We don't want to pick on you, Mr. Connolly. I want to get it straight.

MR. O'KEEFE: In fact, I will come to the pikers versus the nonpikers in just a second.

In discussing fees, I think-- Well, I will encourage you to examine other agencies. We have already mentioned DEP, but I think the role of the Department of the Treasury deserves particular attention. Its role here is about as obscure as it is significant. The Treasury-- We refer to the Governor as budget, but Treasury is very clever through the OMB in deciding how much money is going to be diverted out of these fee programs. Then, the other thing that Treasury does is, it takes money out of these fee programs and expends it within its own loop, so that even the agencies can't tell you where some of this money is going.

Let me keep my remarks focused on three things. There has been a lot said today, and I will try to discipline myself, if I can. The three focuses are going to be: the general structure of fees; the second will be DCA's oversight role; and then thirdly, this whole issue of third-party administrators, or inspection agencies.

A little bit of history. Mr. Connolly walked you through how we got a 100 percent fee increase in the construction codes and the housing arena over the past three years. Let me take you back to mid-1989 and describe for you how, under an Executive Order, we declared an emergency in this State, and increased our building fees in the State retroactively. We found out about it probably six to eight weeks after the fees had gone up. How applicants were supposed to know to pay the higher fee was a bit of a mystery.

What we did -- and you'll understand how extraordinary an action this was-- We sued the Department, but we did so together with the League of Municipalities. The co-plaintiffs

in that case were the NJBA and the League of Municipalities. As you know, we are very often on opposite sides of the coin, but that particular action stimulated such a response on the part of both public and private sectors, that the two of us sued together.

As we tried to pursue the suit, we asked the Department for much of the information that you just asked for. And as a matter of policy -- not at the staff level, I will add-- As a matter of policy the decision was made, perhaps outside the Department, to make none of that information available. We requested it both in correspondence and in our briefs, and I will make those available to the Committee for your review.

When the Department refused to provide us with the information-- The information we were asking for was exactly what you are asking for: Where is this money going? How are the fee levels being set? And, how do we know we are not subsidizing activities outside of the housing arena? When they stonewalled on the information, we took the Department all the way up to the Supreme Court. They would not hear it on an expedited basis, so we finally had to abandon the suit because without the information we couldn't tell whether the fees were valid. You know, it was circular.

ASSEMBLYMAN KELLY: I'm not an attorney. What's this expedited -- whatever the hell you just said? What is that?

MR. O'KEEFE: Well, we wanted to leapfrog, rather than have the case drag out for three years. We wanted to leapfrog to the Supreme Court and have them direct the Department to make this information available. See, we were under the mistaken notion, at that time, that here in the United States where you can find out anything about anybody, that we had a right to know how our moneys were being spent. Unfortunately--

ASSEMBLYMAN KELLY: Only on chemicals.

MR. O'KEEFE: --we found out that that wasn't the case at that time.

Since 1989, the fees have doubled. Mr. Connolly has just confirmed that. What he has also confirmed, which we suspected at that time, and we have suspected throughout, is that a lot of the revenues are being diverted to nonhousing-related activities. They are being diverted either elsewhere in the Department or outside the Department to general revenue purposes beyond what they were originally collected for.

Let me turn to pikers and nonpikers, because DCA is not the most guilty of the most severe transgressions here. I would say that DCA has always been honest about what has been going on. We haven't been able to restrain them from doing it, but at least they have been honest about it. I think we also should point out that in some areas where the Department has had controls, such as the New Home Warranty Program, which is the warranty that we provide to new home buyers, the Department, indeed, reexamined its premium structure and lowered the premiums, and set it up in a way that the industry had recommended with risk waiting. We now have a more responsive fee structure.

Data that I have seen, looking at DEP, indicates that they have diverted \$3 million worth of money just out of the Environmental Services Fund. That is according to their own numbers.

ASSEMBLYMAN KELLY: We'll get to them later -- the DEP -- don't worry about that.

MR. O'KEEFE: Absolutely, but what I wanted to do was clarify, where are we coming up with this number, like, \$400 a unit? I mean, this is going on across-- If you go into DOT-- It doesn't matter where you go. Treasury has been very clever in siphoning off this money. On top of that, DEP just announced in mid-August about a \$1 million increase in its fees

across-the-board, and was prepared to go forward with another \$700,000 on top of that, but in order to do that, they had to get legislative authority and the Appropriations Committee deferred that action. So, these fees are going up across-the-board, and the ultimate victim of all this is either the person who tries to buy a house or the people who can't afford to buy a house because the fees have driven the prices beyond their ability to pay.

Because Mr. Connolly has done a very good job in laying this out, let me jump to a couple of recommendations that we think are necessary here. I think, number one, we need independent audits of these three programs. We cannot rely on either Treasury or the departments to audit themselves, because it is obvious that as a matter of policy the fee programs are being abused.

Going to your question, and a couple of the other members, Mr. Chairman, we need management review and restructuring of the programs. Not all of the inspections we are doing are being done in necessarily the most efficient way. We need to privatize the reviews. I would note that Mr. Connolly is quite correct when he says, as a matter of law, third-party agencies charge -- or, fees that are associated with third-party agencies are 115 percent of what the Department charges. But the key phrase there -- and he emphasized it -- is, "as a matter of law." We do not have competition for those third-party agencies' fee structure.

I think a fourth recommendation would be that we have to cap the potential of agencies to increase their fees; not to cap their fees. I think we all know that that kind of a cap wouldn't work, but we need to cap their ability to increase fees, without coming back to the Legislature and getting approval of those increases. We need to expressly limit the activities for which fees can be collected. We would all have disagreement among ourselves about where the fine line should

be drawn as to what is directly associated with an inspection, but I think we could come to a consensus about where that line should largely lie.

I think we also have to prohibit agencies from instituting new programs which are fee financed. It is not uncommon for agencies to promulgate a regulation, and then say, "This requires a permit. In order to get the permit you will pay us a fee."

ASSEMBLYMAN KELLY: Have you any examples of DCA doing that?

MR. O'KEEFE: No, sir. As I say--

ASSEMBLYMAN KELLY: Okay, so you're in good shape, Mr. Connolly.

MR. O'KEEFE: --I compliment Mr. Connolly's presentation. I think -- and this is a point Mr. Connolly was making implicitly -- we need to establish a policy with respect to reserves, so that in good years, in banner years, where we are generating more money than is necessary, we can set that aside and not have Treasury or somebody else pirating it; and have it available so that during times such as this we have some money to float the system out of the recession.

Mr. Chairman, I would now like to move to local oversight, and a point that Mr. Connolly made about the fact that the Department is responsible for overseeing the fiscal performance of the building departments at the local level with respect to the fees they charge and the distribution of those resources.

The Department does, as a matter of law, have a responsibility there. Until just recently, however, the Department did not have any regulations implementing that responsibility. So, while they had the authority, they were not acting on it; they were not enforcing it. We know, in some instances -- and I emphasize the word "some"; this is not a general indictment of all municipalities -- that building fees

are being used to subsidize other forms of local government, other activities of local government. Historically, DCA has not been willing, except where a complaint is filed, to go in and look over the shoulders of municipalities and see whether or not the building code fees are financing the department, or whether the money is being diverted.

They have, as I said, in response to complaints that we brought, adopted regulations. We have asked, however, when they are going to begin to enforce the regulations. The former Commissioner of DCA -- not Commissioner Bush -- wrote to us and, in effect, said, "We are not going to be able to do that, because we don't have the money to do it," and they acknowledge that they are not doing it now.

So, while we have the authority on the books for oversight of those building code departments, I think it is pretty clear at this point that it is not being done. There I would put forward two recommendations: One is that we should require the Department, as a matter of its annual planning, to have an oversight plan of how it will make sure that building code departments are being regularly reviewed; not necessarily full-blown audits, but at least a first order review, to make sure that they pass the smell test. If they don't, then subject them to an audit.

The second thing is, I think we need early action on your bill, Mr. Chairman, A-1475, which would create a Department of Housing. Now, I say that for two reasons: One is because if we had a Department of Housing, they would be sensitive. The other is, it is a gratuitous plug to let me keep speaking a little bit longer. (laughter)

ASSEMBLYMAN KELLY: Continue.

MR. O'KEEFE: Thank you, sir. My last point goes to local fees, and here I would like to discuss two things. As I said before, Mr. Connolly's point about the 115 percent is correct. I think in fairness to the third-party agencies and

the Department of Community Affairs, it must be emphasized that these fees are set by law. Whatever the Department charges to carry out its oversight, its building official responsibilities in those 40 municipalities, it publishes that schedule in the "Register." By law, the third-party agencies then charge that same fee.

By regulation, the municipalities mark up that fee by 15 percent; hence, the 115 percent. You can't begrudge the municipalities some administrative oversight or an amount of money for oversight, so that 115 percent is questionable on the basis by which we are setting the underlying fee, which is by law or fiat, rather than by bidding. By letting those third-party administrative agencies go to each municipality and say, "We have a Uniform Construction Code. We are willing to enforce it for you under a contract for this price," we would get the benefits of privatization. I think then we could have a legitimate comparison between what the costs of doing these inspections in the private sector are versus what they are in the public sector. Right now, that would be difficult. There is a bill that would do that. A-1838 has been introduced, sponsored by Assemblyman Catania, which would decouple the private fees from the agencies' fees, and then open up that whole area to competition.

The last point I would like to talk about is escrow accounts at the local level. By law -- as I think most of the members of the Committee know -- builders have to post cash escrows to cover the costs of inspections and reviews and things such as that. These escrows are managed by municipalities, but they are not the municipalities' moneys. Instead, they are paid to consultants like planners and engineers, who conduct the reviews and the inspections. Because the moneys are not the municipalities' moneys, there is less of an incentive than we would like for them to oversee the efficient utilization of those moneys. They are really sitting

on an administrative account for somebody else. The invoices come in and they disperse against them.

I don't know the extent to which this occurs, but this certainly is a situation which is ripe for abuse. Under the current circumstances there are no -- and I emphasize the word "no" -- standards for the accounting of the escrows, for documentation of services rendered, for the invoicing, for settling disputes where the builder or the applicant thinks they have been overcharged. None of those things are covered. We recommend that legislation requiring the Department of Housing -- now called DCA, erroneously -- to promulgate-- That Department would have to promulgate standards of accountability for the administration of these escrow accounts.

As I said at the outset, Mr. Chairman, the private sector, certainly the NJBA, does not object to paying fees that are fair; that reflect the costs of what we are imposing on the public sector as a matter of doing business. That is not what we are objecting to. What we are objecting to is the current circumstance which, as has already been outlined, is imposing on our customers a tax to finance general services. Our customers are very often the least able to afford that. This is a very regressive tax when you are applying it to first-time home buyers or others who are trying to get into the housing market.

We really do commend you and the Committee members for looking into this and hopefully for advancing some legislation that will deal with it. Thank you, Mr. Chairman.

ASSEMBLYMAN KELLY: Thank you. See, he didn't rip you up, Mr. Connolly, too bad. It wasn't bad.

ASSEMBLYMAN CORODEMUS: May I ask Mr. O'Keefe one question?

ASSEMBLYMAN KELLY: Sure.

ASSEMBLYMAN CORODEMUS: There was a statement made earlier by Mr. Connolly about the amount of time required on

new home construction inspections; I think a total of four days--

ASSEMBLYMAN KELLY: Three-and-a-half.

ASSEMBLYMAN CORODEMUS: Three-and-a-half days, with a total of eight.

ASSEMBLYMAN KELLY: Three.

ASSEMBLYMAN CORODEMUS: Three days and four inspectors, was it?

MR. CONNOLLY: (speaking from audience) Four different times.

ASSEMBLYMAN CORODEMUS: Being in the business, how does that jibe with your experience?

MR. O'KEEFE: I think in normal times that is about right, and we don't object to it. As long as the inspectors are coming in and are examining the progress of the construction against the Uniform Construction Code Act, we think that is the right thing to do. It has policed our industry. It has made sure that New Jersey's housing is of a quality unrivaled around the country.

I think where we have to be careful is when things slow down whether, in fact, the number of inspections that are being done are responsive to the Code, rather than responsive to the need to charge fees to keep staffing at certain levels. My impression is that the Department adheres vigorously to its management of its inspectors. I think most municipalities do. But, you know, we are always dealing with the exceptions, rather than the generalities.

ASSEMBLYMAN CORODEMUS: Thank you.

ASSEMBLYMAN GREEN: Mr. Chairman?

ASSEMBLYMAN KELLY: Go ahead.

ASSEMBLYMAN GREEN: It is obvious that some of your comments were about something I had mentioned earlier when I questioned Mr. Connolly. Do you feel that if we streamline regulations and streamline fees that we can help the industry,

rather than hurt the industry? What I am talking about is, we need to look at regulations and begin to streamline them, so we are not taking away from the quality of the home you might be building, etc. Do you think that could be done and we could save money if you looked at it in that particular way?

MR. O'KEEFE: Mr. Green, I not only think that we would save money, but I think we would address what, in my view, is the State's number one problem, which is in excess of 600,000 households who are inadequately sheltered; who are paying too much for shelter.

As we have discussed before, New Jersey does not have a housing policy. What we are talking about here reflects the residue of decisions made for other reasons. We have not looked at these various permitting programs and asked the question: "What is that going to do to the home ownership or the shelter prospects of our citizens?" As I said, we have counted just on diversion money; \$400 per unit here. I take it back -- and here I am not being gratuitous-- I think in the absence of a Department of Housing, in the absence of an agency that is constantly surfacing that question of, "Have you thought through the implications on your fellow citizens?" we are simply not going to make progress, and we need that as a first step toward the kind of review you are talking about.

ASSEMBLYMAN GREEN: Mr. Chairman, would that coincide with what you are trying to accomplish in terms of the total structure of housing?

ASSEMBLYMAN KELLY: Yes, pretty much.

ASSEMBLYMAN GREEN: I appreciate it. Thank you.

ASSEMBLYMAN CORODEMUS: You have a co-sponsor over here.

ASSEMBLYMAN GREEN: Oh, yeah. Well, on day one--

ASSEMBLYMAN KELLY: I'll make you-- You're going to be a co-sponsor.

ASSEMBLYMAN GREEN: I would have no problem whatsoever, because I think this is something that we all--

ASSEMBLYMAN KELLY: Are you going to submit a copy of your testimony, Mr. O'Keefe?

MR. O'KEEFE: Yes, Mr. Chairman. I so marked it up during the earlier stuff, I have to give you a clean one.

ASSEMBLYMAN KELLY: Okay. Thank you. Are there any other questions of Mr. O'Keefe? (no response)

How about Mr. Dressel? He looks like he's ready for action. Now, these are the names I have. If anyone else wants to-- I have Newt Miller, Schultz, Alex Ellwood, Jacque Eaker, Russ McLaughlin. Is there anybody here who wants to testify that I don't have on this list? (no response) No?

UNIDENTIFIED SPEAKER FROM AUDIENCE: That's here who wants to testify?

ASSEMBLYMAN KELLY: I have Mayor Newt Miller, Bill Schultz, Alex Ellwood, Jacque Eaker, and Russ McLaughlin. Anyone else not on this list?

W I L L I A M G. D R E S S E L, Jr.: Mayor Miller was here, but he had to leave.

ASSEMBLYMAN KELLY: Oh. What did he come down for, just to have a look?

MR. DRESSEL: He thought it was another hearing, to be quite honest with you. He was here on something else.

ASSEMBLYMAN KELLY: He's not here to testify, though?

MR. DRESSEL: I don't know.

MS. SMARTH He wasn't supposed to be.

ASSEMBLYMAN KELLY: Okay, that's all right.

MR. DRESSEL: He came in, and he said--

ASSEMBLYMAN KELLY: I don't question why people leave. Go ahead, you have the floor.

MR. DRESSEL: Thank you, Mr. Chairman and members of the Committee. It is a pleasure to be here, and I compliment

you for having this hearing on this very important subject; on the operational methods and the fee structures of our State Department of Community Affairs.

We, too, compliment Bill Connolly on his candor before this Committee. He was honest and, quite frankly, he confirmed many of the problems that we have been echoing and bringing to your attention and to our constituents' attention over the years on the unequal playing field at the State level of government, that the local government is playing on generally as it relates to the administration of assessment fees.

My specific message today -- and I plan to be brief for a number of reasons, one that I have to get back and start planning for the League Conference-- But my specific message to you today is a message I have often repeated. It centers on two basic issues of fiscal fairness. The first is State pay for State mandates, and the second is property tax relief. If an action taken by a State agency forces a local unit to increase its expenditures, it is an unfunded mandate. Further, it diminishes the effectiveness of the property tax relief initiatives enacted by this Legislature.

It is not, and it should not be, the responsibility of the local property taxpayers to support any State level agency, least of all those of the Department of Community Affairs. I heard the debate with Assemblyman Green and Mr. Connolly as it related to a fee. Is a fee a tax? Or, what is a fee if a fee is not a tax? In this dialogue the debate goes back and forth. I would submit to the school, and agree with the school of thought, that a fee is a tax, particularly as you relate it to governmental agencies, because it is the local government that has to raise its revenues from the taxpaying public. That, to me, is a tax.

There are, and there always will be, a limited number of public dollars. Those dollars need to be put to productive

use. Let's keep the property tax dollars in the towns and communities and school districts where they are collected and where they belong.

I am briefly going to go over a number of points, quite frankly, that Mr. O'Keefe -- Pat O'Keefe -- from the New Jersey Builders Association raised. Yes, maybe it is probably one of the most -- one of the first times that I can recall where the Builders and the League have agreed, but we have agreed with regard to this whole issue of Uniform Construction Code fees. We did join with the New Jersey Builders Association in contesting the fee structure over the years. We, too, on many, many occasions, have asked for support and justification, documentation, for the increased fees. We were informed that they had not conducted a feasibility study nor a justification schedule demonstrating that fees established have any relationship to the cost of providing this service. That is the unlevel, unequal playing field that I mentioned previously, and as it also relates to another issue that Mr. O'Keefe raised; that is, the dedication by rider of Construction Code fees.

There is, in fact, a dedication by rider of Construction Code fees on the books that municipalities do comply with. Last week, or the week before-- I lose track this time of year on what is happening in the various agencies, but I can assure you that forms in the Division of Local Government Services went out requesting documentation in considerably more detail, exact documentation on what comprises, what entails, what makes up the various fees and what costs go into the fee structure at the local level. That has been the subject of many discussions; much debate between the Department and the League and the Builders Association.

What causes us concern is that we have been doing a fair and equitable job. The testimony from Mr. Connolly attests to that where you asked the question, Mr. Chairman, you

know, how do your fees-- How do they fare with the local fees? I recall that he said that they were substantially less; the local fees were substantially less than the State fees, for a number of reasons. So I think we are, in fact, doing a very efficient job.

A number of issues have been raised -- and I am going to provide you with additional backup documentation on this-- The State requires a surcharge, the training fee, on every permit issued by the municipalities. That surcharge was to fund educational courses to improve and develop quality inspectors. Initially, those local fees were used to reimburse the inspectors for the courses they intended. We believe that those funds have, in fact -- and I think testimony today confirmed -- that when those funds have reached a certain point, the gap funding discussion, as Mr. Connolly referred to it, in the appropriations from the budget and what is received in the revenues -- that some of those funds go into the General Fund. That has caused us some concern. It is basically a contradiction as to how we account and how we fund the inspection programs at the local level.

There have been some concerns with regard to the recently adopted elevator fees. They have caused some concern that why not, when we raise the issue at the local level as to why can't we use our own local inspectors, and what is the problem with keeping the local inspections, trying to bolster that effort and have that function performed at the local level-- Evidently that whole effort was nixed, in that as a result, through the administrative fiat procedure, regulations do require a certified subcode official, i.e., an elevator subcode official, and we believe-- In fact, I have heard from a number of municipalities that that has increased the cost of inspections and the cost of government and the number of employees we have hired at the local level. I would submit

that that is probably a classic example of a State mandate/State pay type initiative that you are all very much familiar with.

There has been another concern we have had, and I want to get back to a couple of points that Pat O'Keefe raised. There was a final illustration that dealt with the computer processing of permits. There are a number of municipalities that have indicated to us that they have established their own software programs; in fact had a computer type electronic permitting system in place before the State came down with theirs. They felt that their system was just as good, just as reliable, and just as efficient as the State's. I am of the understanding that they had to put that -- had to basically scrap their programs -- their permit reporting programs -- in favor of the State's. The concern I have is that that has been costing -- cost them not only a lot of administrative time in regearing, but initially more money. That is for permits over 600. Evidently--

ASSEMBLYMAN KELLY: Six hundred dollars?

MR. DRESSEL: Six hundred permits in a year. You are required to report them electronically. That relates to that particular administrative procedure.

The concern was raised by Mr. O'Keefe relative to escrows and the moneys that come into the municipalities for improvements, for permits, for large development; that those moneys are put into escrows. It is not the municipality's money; it is the builder's money. There is some conflict in the statutes. We would like to be at the same table when that is being discussed as to--

ASSEMBLYMAN KELLY: Well, whose money is it?

MR. DRESSEL: It's the builder's money.

ASSEMBLYMAN KELLY: Definitely.

MR. DRESSEL: Absolutely; there is no doubt about that. I just take exception to the characterization that

without any documentation, and without any specific proof as to which municipalities are abusing this-- I think that if there are some concerns, let's try to sit down and let's try to iron them out. I think the State statutes that were adopted in the last session-- There are two conflicting laws on the books that have to be reconciled, and we have repeatedly asked that we be brought to the table to discuss that.

I believe, Mr. Chairman, that is--

ASSEMBLYMAN KELLY: Are you going to submit a written copy of your testimony?

MR. DRESSEL: I will.

ASSEMBLYMAN KELLY: I want to get back to the elevators. Who did the elevators before the State decided to inspect elevators?

MR. DRESSEL: It was my understanding that the local inspectors were doing elevators.

ASSEMBLYMAN KELLY: Who were the local-- The local town officials?

MR. DRESSEL: The local building inspectors.

ASSEMBLYMAN KELLY: They were properly--

MR. DRESSEL: That was my understanding.

ASSEMBLYMAN KELLY: They had the ability to do that?

MR. DRESSEL: It is my understanding that they had. Maybe I am not--

ASSEMBLYMAN KELLY: He's shaking his head no, so--

MR. CONNOLLY: (speaking from audience) It is my turn to shake my head.

ASSEMBLYMAN KELLY: I'll give you the right to shake your head, because other people were shaking their heads when you were testifying. You have a right to shake your head.

I know in my town we have a code enforcement individual, I think. Is he capable of inspecting elevators, Mr. Connolly?

MR. CONNOLLY: No.

ASSEMBLYMAN KELLY: No? Why not?

MR. CONNOLLY: He has no background at all in the elevator business; he hasn't taken the course and he hasn't passed the test.

ASSEMBLYMAN KELLY: Okay, you answered the question. But there is a course; there is something you can take, and then you can do it?

MR. CONNOLLY: Yes.

MR. DRESSEL: I think the point is -- and again, I am not that familiar with it; I am trying to read from what was submitted to me today -- why not train? Why not provide the local subcode official with this information, so that the State-imposed regulations coming down from Trenton-- Why don't they establish the criteria to have someone on staff do that?

ASSEMBLYMAN KELLY: I don't think he is objecting to the setting of criteria.

MR. CONNOLLY: We think that is what we did. The first option in elevators was a municipal employee; like, 25 towns chose that option. The second option was to use third party, and the vast, vast majority of hometowns chose to do it themselves, but with third parties. The remainder left it to us.

MR. DRESSEL: That is being characterized that there was no problem before through the local inspection process, but evidently a change in the administrative procedures to require a certified subcode official has caused the problem. Again, I will get back to you.

ASSEMBLYMAN KELLY: The State never inspected them before July 1 or October 1 or something?

MR. CONNOLLY: Pretty much nobody did. This was one of two or three states in the Union that had no systematic inspection of elevators at all.

ASSEMBLYMAN KELLY: Are you saying that we used to let--

MR. CONNOLLY: Maybe 15 towns were doing it diligently; otherwise, it was not being done.

ASSEMBLYMAN KELLY: It seems to me that my recollection in my own town is that when I put up a three-story building elevator, the fellow who serviced it also inspected it. That is the way it was done. I don't know whether that was good or bad. I don't know that that is the best thing in the world. It doesn't sound right to me.

MR. CONNOLLY: Maybe he comes back periodically, and maybe he doesn't.

ASSEMBLYMAN KELLY: He doesn't do it anymore. No, no, I'm saying that is what was done-- I'm talking about 20 years ago. The guy who put it up was the man who inspected it. He would sign some sort of form. I don't know where he sent it. Where did it go, to you people?

MR. CONNOLLY: No. Twenty years ago, insurance companies did it a lot.

ASSEMBLYMAN KELLY: Okay.

MR. CONNOLLY: Insurance companies got out of it.

MR. DRESSEL: This is coming from one of the towns that Mr. Connolly mentioned that literally had a subcode official who was performing the function. Not a subcode official. This was before the advent of the actual subcode official for elevators. Okay?

ASSEMBLYMAN KELLY: Okay.

MR. DRESSEL: Keep in mind that this is for elevators.

ASSEMBLYMAN KELLY: Oh, just elevators.

MR. DRESSEL: Whether you have them or don't have them, you have a subcode official for elevators.

ASSEMBLYMAN KELLY: What is the fee going to be from the State for an elevator inspector?

MR. CONNOLLY: It varies on the kind of elevator from, like, around 100 up to around 600.

ASSEMBLYMAN KELLY: Okay, that's obvious. That was a stupid question. It is obvious that it would be different for different sizes.

MR. DRESSEL: But keep in mind, what you're saying is that you have to have a certified elevator inspector; certified in a whole subcode dealing with elevators, whether you have elevators or don't have elevators.

MR. CONNOLLY: Well, if you don't have elevators, presumably you'll-- (balance of Mr. Connolly's statement indiscernible; no microphone)

ASSEMBLYMAN KELLY: You don't need the inspector.

MR. DRESSEL: Well, I was getting concerns from towns that had to comply with the subcode dealing with elevator inspections, that basically had no elevators.

ASSEMBLYMAN KELLY: And they had no elevators?

MR. DRESSEL: They basically had no elevators, or they may have had one elevator. That is a concern.

MR. CONNOLLY: You look at it as an option. "Here it is. If you want to do this, do it. If you don't want to do it, we'll do it."

MR. DRESSEL: That is not how it was being interpreted.

ASSEMBLYMAN KELLY: Has anybody got any questions of the illustrious Mr. Dressel? (no response)

Well, let's see. I saw another guy shaking his head earlier. Let's get him up here. There's been a lot of shaking. Jacquie, do you want to testify? I'm sorry, I should have said, "A lady was shaking her head." Come on up and talk. This is Jacquie Eaker. She is from the New Jersey Multi-Housing Industry Council. You're Executive Director, right?

J A C Q U I E A K E R: Yes.

ASSEMBLYMAN KELLY: Okay.

MS. EAKER: And I represent the apartment owners in the State of New Jersey who are the ones being regulated and charged all of these fees.

I don't want to duplicate. I want to thank the Committee for taking the time to delve into this issue. I think some of the things that I am going to address are basically the frustration not only with the fees-- There is duplication; there is-- We have a lot of hands in the pie, and perhaps by delving into this you will see that maybe what our intent is of having safe and healthy environments for people to live or be employed in, is being done at such a cost that it is ridiculous.

One of the points I would like to make-- I know Assemblyman Green had a question before about the cost of these fees when related to a multi-dwelling building. Who actually pays for that? I can say that in a rent controlled community, the owner will pay for that. In a rent controlled community, there is no vehicle for these fees to be passed on, except in their operating budgets. Depending on what the increases look like, that may or may not be covered in the increase for that year.

When the inspection occurs, given the fact that Mr. Connolly said there was a 100 percent increase in the fee on multi-family-- In some cases, it was 2400 percent. There used to be a cap at a certain point, and the cap--

ASSEMBLYMAN KELLY: He shook his head; he agrees with you.

MR. CONNOLLY: As I said--

MS. EAKER: It was not 100 percent, because basically there was a cap on a complex of \$1250. If you had a very large complex and you were paying the full fee, you could be paying tens of thousands for that inspection. Obviously, with the new fee you have five years in which to plan for that expense, but given the economic climate the last couple of years, that is the last item that is being put into reserves. So, when these inspections occur, I would also like to point out that the fee for the inspection is only the first step in the process,

because very often we are not talking about going in, they do an inspection, you get an inspection report, and you go along and you take care of the things that need to be taken care of. I would say, at least through my experience, that at least 98 percent of the buildings have a reinspection.

MR. CONNOLLY: Eighty-five.

MS. EAKER: Okay.

ASSEMBLYMAN KELLY: They have a what?

MS. EAKER: A reinspection.

ASSEMBLYMAN KELLY: That is an inspection and then a reinspection. For what, for not complying with the original inspection?

MS. EAKER: Whatever was found on the first report, they have to come back to find out-- With the new fee schedule, that reinspection, there was no charge for. However, for the third inspection there is a charge of \$40.

ASSEMBLYMAN KELLY: You mean, you have one inspection; then you have a second one; and then a third, which means you didn't finish the work from the second?

MS. EAKER: Correct. That could be timing.

ASSEMBLYMAN KELLY: That could be what?

MS. EAKER: Timing.

ASSEMBLYMAN KELLY: You mean they couldn't finish the job because of the time?

MS. EAKER: You can't replace windows in the winter.

ASSEMBLYMAN KELLY: Oh. I would think that they would use some discretion.

MS. EAKER: Well, they do.

ASSEMBLYMAN KELLY: Oh, we have to be fair now.

MS. EAKER: They very often do. However, a lot of these things are a long process. Somebody that was in the violation stage wrote me a letter because he had to make repairs to his basement drainage, but he couldn't do that until the town did something with their sewer system, and he was

levied. There were all kinds of fines levied on him because he really couldn't do the job, etc. He has been negotiating, and this is a long-going process with the Department, to get his violations down, because basically he has not been able to.

Depending upon the type of work it is and the economic impact on the building, that may be another consideration, and a very viable consideration of whether-- We are not just talking about cracks in the sidewalk and, you know, maybe the cement is torn up a little bit. We're talking about, in many cases and in the last couple of years, about the massive fire retrofits that have been required of multifamily properties. So there have been reinspections and reinspections and reinspections. On a third reinspection, the charge to the Department is \$40 per unit.

ASSEMBLYMAN KELLY: Per unit?

MS. EAKER: Per unit that is reinspected. Then, on top of that, prior to the increase in the fees, there were quite a number of penalties that had been assessed; an unusual number of penalties, in my estimation, because of the shortfall the Department had in the fees. They made it up in assessing penalties.

ASSEMBLYMAN KELLY: Do you think that is true, Mr. Connolly, what she just said; that you are assessing penalties because of the shortfalls? (negative response from Mr. Connolly) Okay, that is your opinion. I mean, that is her opinion.

MS. EAKER: To the point of no duplication, there are many duplications in the system. First of all, many municipalities -- I would say about one-fourth of the municipalities -- have requirements on the local level to inspect upon vacancy. So, when a tenant moves out of a multifamily, the municipality has a program in place to require that those units be inspected. This is not in lieu of the

five-year cyclical inspection; this is in addition to that inspection.

When the fee bill was amended last year, we were given a one-year window of opportunity so that any of those units that had been inspected by the municipalities in the prior 12 months would not be inspected for the five-year cyclical. However, it is our belief that if a local municipality is requiring that, quite frankly the State should probably not be in it in those municipalities where they have an ongoing effective inspection program. Very often, the local inspector who has inspected for the municipality -- the municipality inspector -- is the same guy who is inspecting for the State on the five-year, so there is a duplication of that effort.

ASSEMBLYMAN KELLY: Is that true, Mr. Connolly, what she just said? Is that possible?

MR. CONNOLLY: As I mentioned earlier, they do those regulars for us and they do also perhaps the buildings and respond to complaints. And, as was just pointed out, they also do change of tenant inspections in many towns.

ASSEMBLYMAN KELLY: In our town -- and I am going to be specific -- when there is a change of ownership, it must be inspected. Now, could that inspection fill in for the State inspection if they meet the same requirements that you do?

MR. CONNOLLY: It does for a year.

ASSEMBLYMAN KELLY: It does for a year? Say the fifth one comes in the year after that, that would not count -- or came due within the next six months, that would not count as an inspection?

MR. CONNOLLY: No.

ASSEMBLYMAN KELLY: Why?

MR. CONNOLLY: That's a value judgment. The current law says that if that inspection occurs within the year, we don't do ours. If it has been more than a year, we do do ours.

MS. EAKER: Well, they won't do theirs on the units that have been--

MR. CONNOLLY: The one that is in the law now is one year.

ASSEMBLYMAN KELLY: But we could change the law, couldn't we, if there is an inspection?

MR. CONNOLLY: You certainly can.

ASSEMBLYMAN KELLY: Okay.

ASSEMBLYMAN GREEN: Mr. Chairman, that is the initial question I asked--

ASSEMBLYMAN KELLY: We'll work on that. We got one through already.

Go ahead.

ASSEMBLYMAN GREEN: --in the course of bringing this to my attention, exactly what you're saying.

MS. EAKER: Yes. This is also-- I would like to point out while we are discussing this that we are not necessarily advocating that the locals determine an inspection program, because it is one of those areas that we think should be statewide guidelines and then implemented by the municipalities. It shouldn't be where each municipality sets its own kind of a program. We would like to see the municipalities doing it within the guidelines of the State, because that is the only way that we are going to ensure uniformity and conformity of statewide programs.

So, we are not advocating that we leave this to the locals, because, from our perspective, leaving it to the locals sometimes has created a diversity in rules from one town to the other. Very often we get into things like one town only wants red doors, which really has nothing to do with the health and safety of the building, but is just kind of an improvement program for the town.

We address the inspection upon sale briefly. I would just like to point out that that bill has been released from

the Senate Committee, and it should be in a position for a Senate vote very shortly. Our problem with that bill has been exactly what Mr. Connolly has indicated; that is, we just don't believe this Department has the manpower to do these inspections on a timely basis so that the inspections would not hold up the sale.

The other problem we have with the legislation is that basically it says that the fee schedule could be set by the Commissioner. Quite frankly, we have a problem with that, because if you are going to be pulling people off of other jobs, we are going to pay a premium for that kind of an inspection. This is certainly an area where privatization should be enacted, and the legislation now pending should be amended to do so because those fees, probably in all likelihood, would be much higher than the fees we are currently paying, which are considerably high. Given the increase, I think if you are talking about an inspection that costs tens of thousands of dollars -- you know, \$10,000, and if it is going to be higher, I mean, we are talking about a significant selling point in terms of building costs.

I would like to talk a little bit about violations.

ASSEMBLYMAN KELLY: Getting back to the fees, you know, we have a bill-- Zangari has a bill that's--

MR. CIFELLI: You're a prime on it, too.

ASSEMBLYMAN KELLY: I am? Well, that's knowledge. All fees are going to have to come before the Legislature for a change by any department.

MS. EAKER: Okay. We basically have had--

ASSEMBLYMAN KELLY: I don't know where it is going to go, the Governor, or a veto, but it is floating around. If I were the executive, I would veto it.

MS. EAKER: Yes. We have had a problem with that, quite frankly, because absent these kinds of opportunities to

really delve into what is happening, we have been concerned about the Department setting its own fees.

In terms of violations -- and this is part of this whole fee, etc.-- I want to just point out some of the problems with the program which have led to such costs upon the buildings that are being inspected. I am not sure that those costs, and the energy and effort that are going into them, have really resulted in making buildings safe.

I was given an example the other day of a violation an owner received. He had flaking paint around a window on the outside of the building. Well, he had 500 windows in that building. The inspector saw one flaking window, and cited him for 500 violations for 500 windows.

ASSEMBLYMAN KELLY: Was there flaking on 500 windows?

MS. EAKER: No.

ASSEMBLYMAN KELLY: Oh. Just one?

MS. EAKER: Yes. But that happens very often, where when an inspector sees a spring maybe needs to be done on one door, he counts the number of doors, and that is the number of violations that are cited.

ASSEMBLYMAN KELLY: Before you go any further, is that true, Mr. Connolly? That is how they would cite violations, just one--

MR. CONNOLLY: (still speaking from audience) That is not what they are supposed to do. I won't swear to you that no one has ever done that, but that is not what they are supposed to do.

ASSEMBLYMAN KELLY: All right.

MS. EAKER: This is becoming an increasing problem it seems in the last year or so, that these kinds of violations are being promulgated.

The other problem we have with the whole system in terms of rental housing, is the argument between cosmetic and

health and safety issues. We are often cited for violations that are cosmetic.

ASSEMBLYMAN KELLY: By the State or by the local town?

MS. EAKER: Both.

ASSEMBLYMAN KELLY: How could the State cite you for cosmetic reasons? That is not part of their-- Is that part of their--

MS. EAKER: Well, it depends upon your definition of "cosmetic."

ASSEMBLYMAN KELLY: And he just shakes his head. Jesus, I'm learning something.

MR. CONNOLLY: If a building is in a tumbled down condition in terms of paint and exterior maintenance, that is not good for the neighborhood. It is a legitimate concern, that everybody maintain their property up to a reasonable standard. You can call that cosmetic, but it is one of the things that destroys our cities.

ASSEMBLYMAN KELLY: Do you agree with the statement Mr. Connolly just made?

MS. EAKER: Well, we have seen it taken to a further degree. I mean, I can see that if a building really looked terrible, being cited for those kinds of things, but going into a tenant's apartment where the tenant is dirty and being required to paint the apartment because it is not nice looking, is a cosmetic requirement.

Maintenance codes are just that; they are maintenance codes. With your own individual houses you have maintenance. Every year you have certain things you need to do. There is not a building in the State of New Jersey that is for rent that is not going to have violations at some point in time.

In this recent legislation -- and Mr. Connolly was very supportive of this -- language was put into it which said that if an inspector saw 20 percent compliance, he would not have to do the rest of the inspection. This was sort of like a

good building award or an incentive for people who kept up their buildings, that if the inspector went around and found 20 percent compliance, he didn't have to spend time on this building going through as tediously. This cut the cost to the owner as well, because he would only be paying for the 20 percent that was done.

Now, what we found out-- While we were successful in getting the language into the legislation, we found that it is not going to be implemented because perfection is the definition of what would comply under the 20 percent. If you go to 20 percent and you find zero wrong, you can have that. It does not make a distinction between cosmetic and serious violations or things that should have been repaired and had not been repaired. So that particular aspect of the legislation, which we fought very hard for, because we felt it would create an incentive for owners to have a management plan to keep up their maintenance so that it would ultimately reduce costs, and it would save the Department's inspectors' time-- It is not being implemented because if you say it is perfection, then you can't possibly meet that criteria. That is the interpretation we are getting out of the Department at this point; that if they go to 20 percent and they find anything wrong, it totally puts you out of being able to take that option.

ASSEMBLYMAN KELLY: Is that true, Mr. Connolly?

MR. CONNOLLY: Not exactly.

ASSEMBLYMAN KELLY: Oh, okay.

MR. CONNOLLY: The law does provide -- the new law, the fee increase bill -- that if we inspect 20 percent of a place and we don't find anything much wrong, then we won't inspect the rest of the place, and the fee will only be 20 percent, too, because they will only be doing 20 percent of the work.

The difficulty is, in maintenance type inspections-- I can find a violation anywhere in this State. I can find them

in my house. So we need to find something. What we have said to the industry is, we would be willing to consider implementing that 20 percent rule in situations where there was an ongoing maintenance program that we could see, that was documented in terms of work orders coming in, and blah, blah, blah, and threw back on them to come to us with a proposal. That is where it stands now. (remainder of comment indiscernible to transcriber)

ASSEMBLYMAN KELLY: Is that satisfactory to you, Jacqui?

MS. EAKER: I think in the long run, first of all, we are going to have to educate an entire industry now to do a maintenance plan. We are also working in a period of time where maintenance dollars have dwindled tremendously. There has been a lot of deferred maintenance given the economic times. So, the kinds of repairs that are being done are usually the potholes in the parking lot, the cracks in the sidewalk, anything that would hurt or injure or present a health problem. If an apartment has water stains on it, inside it, we will be cited as a violation for that. That may not, given the current climate, be addressed as quickly as other kinds of violations.

ASSEMBLYMAN KELLY: Right now these are suppositions on your part, or are these actual cases?

MS. EAKER: Oh, no, I have factual cases where someone was cited for a water stain.

ASSEMBLYMAN KELLY: Well, I think we can discuss that with Mr. Connolly and come up with some logical, agreeable rule -- I hope.

MS. EAKER: Well, we have had dialogue with the Department. That is not to say that Mr. Connolly is opposed to this concept, but there are minds that have been opposed. There is a distinct discussion as to whether cosmetic should be cited and should be given the priority and the importance that

it has. I think that generally the disagreement has come from the tenants' organization. I know that at several of the Multi-Dwelling Commission meetings, that has been one of their--

ASSEMBLYMAN KELLY: Who are you talking about, Mrs. Kaye?

MS. EAKER: I don't think she is on that Commission, but I think there are tenants' representatives on--

ASSEMBLYMAN KELLY: She was the tenants' representative, wasn't she?

MS. EAKER: She still is, but it is coming from the tenants' representative on the Multi-Dwelling Board. Their feeling is that maintenance in cosmetics is as important as the other violations. So I don't know if it is even within Mr. Connolly's ability at this point to make changes within the Department on those kinds of issues.

I would just like to briefly talk about elevator inspections. Up until recently in multi-dwellings, the apartments that have elevators, you had an elevator contractor who basically serviced your elevator. He performed periodic inspections throughout the year: one full-blown one on an annual basis, and some other minor ones in between.

ASSEMBLYMAN KELLY: Couldn't he overlook his own work; I mean, if he was inspecting his own work?

MS. EAKER: Well, up until now, that has basically been the way it worked.

ASSEMBLYMAN KELLY: I am just curious.

MS. EAKER: Now, he cannot.

ASSEMBLYMAN KELLY: Now he cannot? Why?

MS. EAKER: Now he cannot because it would have to be done through DCA or a third party that is doing it through the municipality. But I will also say, this elevator inspection fee that you are paying your contractor will not be evaded, because somebody else is coming in. We are still going to have to pay those fees to--

ASSEMBLYMAN KELLY: What did you say? Let me get this. You are going to pay a fee to whom?

MS. EAKER: We already, through our contractors, have to pay fees for certain inspections, which is part of the contracts with the elevator company. Okay? That is the way it is. They charge us certain fees based on those inspections, plus normal upkeep and maintenance of the elevators. Those contracts probably will not be changed, because the elevator contractor wants to know, you know, that the elevators are not being misused, are being taken care of properly, etc. What is being introduced now is another inspection to inspect--

ASSEMBLYMAN KELLY: By whom? By the State?

MS. EAKER: The State or the municipality, depending upon how that arrangement comes down ultimately.

Now, there is a piece of legislation that has been introduced to modify that somewhat. We're saying we would like to continue to use our elevator contractors, provided they are licensed through the State. What this is saying is, these people would not be acceptable in any event.

ASSEMBLYMAN KELLY: Mr. Connolly, is that true? (no response) I want to ask a question: Were you satisfied with the inspections of elevators by this program where the contractor did it?

MR. CONNOLLY: No.

ASSEMBLYMAN KELLY: No? What was wrong with it? I am just curious.

MR. CONNOLLY: A lot of people didn't get them at all.

ASSEMBLYMAN KELLY: They didn't get the inspections?

MR. CONNOLLY: It is voluntary with the property owner whether they hire these people to do this work, and a fair number of them didn't do it. And there wasn't any accountability. The guy doing the inspection was only accountable to the guy who was paying the bill.

ASSEMBLYMAN KELLY: That was what I thought earlier when I just spoke.

MR. CONNOLLY: Now, we don't have a preference between whether we do what the current law requires or whether the elevator maintenance companies are to be licensed. But the way we do it now, we have authority to do-- It would take another law. As a matter of fact, there is a bill in to do it the other way, which would have us license the elevator maintenance company; hold them accountable that way.

ASSEMBLYMAN KELLY: Are third-party investigators allowed to do this? Are there companies that do this?

MR. CONNOLLY: The main reason that bill isn't going to move real fast is because now there is a vested interest. Most of these inspections are done by these private third-party agencies. We are geared up to get into this business, and maybe right back out of the business, if that bill is passed. One can talk about privatization, but one of the negatives of privatization is that you create vested interests that you can't readily change again.

ASSEMBLYMAN KELLY: Didn't you just say that you wanted them licensed, or did I misunderstand you?

MS. EAKER: Third-party inspectors are not the elevator service companies. This is a third party--

MR. CIFELLI: In other words, if Otis comes in and puts an elevator in the building, they come and inspect it.

ASSEMBLYMAN KELLY: I know that. They would do it in my building.

MS. EAKER: Yes, this is another inspector, right.

ASSEMBLYMAN KELLY: But he said he wasn't happy with Otis doing the inspections, or am I crazy? Isn't that what you said?

MS. EAKER: Well, I think what Bill is saying--

MR. CONNOLLY: If you rode on Otis elevators for two years, you wouldn't be happy either.

ASSEMBLYMAN KELLY: Well, I'm just telling you what he said.

MS. EAKER: I think this is a case of throwing the baby out with the bath water. First of all, they were not required to report, so it wasn't done. If they weren't required, why should they? I mean, when the legislation, or the regulations went down, they could have required them to do this on an annual basis without changing who it is that has to do it. That is not the step that was taken. So what we are saying is, let those people also be part of the people who can do it. I mean, let's face it, if you are--

ASSEMBLYMAN KELLY: If they have the ability to do it, I would think it is important.

MS. EAKER: Correct. If they are licensed through the same licensing system that you provide for anybody else, they are licensed people. The liability in a building for the elevator-- It's phenomenal. An owner is not going to hire somebody who tinkers with it. I mean, if he has a problem-- First of all, his insurance company is not going to permit it, because they are probably looking at the elevator inspector reports. There wasn't no accountability, because there has been, but what we are saying is, there is the State, there is the municipality, there are the third-party elevator inspectors, and there are the traditional service companies that have always done it. What we would like to see is them continuing to be permitted to do it. The fees would be reduced from our end, because we are already paying it for that inspection.

ASSEMBLYMAN KELLY: Okay. I understand what you're saying. Does anybody have any questions of this young lady? (no response)

I can live off my fat for quite a few days, but I would recommend that we have lunch. Can we come back in an hour -- do all of you people agree -- rather than sit here for

the next two hours? I think we should go to lunch. We are going to meet downstairs. Where is the room?

MS. SMARTH: Either 1 or 2.

ASSEMBLYMAN KELLY: One or 2? It is either going to be in Room 1 or Room 2. What time do you people want to meet, about 1:00, 1:30, a quarter to two? Is that agreeable to everybody, a quarter to two?

UNIDENTIFIED SPEAKER FROM AUDIENCE: At 1:30.

ASSEMBLYMAN KELLY: Okay, 1:30.

(RECESS)

AFTER RECESS:

ASSEMBLYMAN KELLY: Russell McLaughlin, Building Inspection Underwriters Inc. This is all going to be recorded, so I am not going to wait for these other Assemblypeople to show up. When they get here, they get here. Otherwise, we'll be here until 5:00, and I don't want to do that.

MR. McLAUGHLIN: Good afternoon, Mr. Kelly.

ASSEMBLYMAN KELLY: Good afternoon. Sit down and present your case.

MR. McLAUGHLIN: Okay, thank you very much. I want to thank you, and the Committee itself, for giving me an opportunity to appear before you gentlemen, and to present some information which I think may be pertinent to the things you are attempting to evaluate.

I must also say, I have learned a few things today from Mr. Connolly which I wasn't aware of before, which I consider to be rather significant. One of the reasons I am appearing is that, on August 26 of this year, in relation to a proposal for an increase in fees identified as PRN 1992-333, Uniform Construction Code Fee Increases, on behalf of the company of which I am the retired President -- they brought me

back to work on certain issues for them -- I submitted comments to this proposed regulation change that was being made in the "Register."

My comments dealt with three specific areas: One, they dealt with what I consider to be the financial analysis, which is the economics of determining what the fees should be and the actual costs. The second element that I dealt with was the elevator fees and whether the Department of Community Affairs should take on this endeavor to be in the elevator inspection business. The third element I approached was the fact that I believed that the fees for on-site agencies should be lowered; that they are too high.

I would like to deal with the third issue first. The proposal in August dealt with a request by the Bureau to increase the fees 8 percent. Our analysis had indicated pretty much the same as Mr. Connolly had seen in the past two years; that there had been a tremendous downturn in the building -- in the issuing of building permits. However, the company -- BIU -- had made its own internal adjustments when it saw it coming approximately a year-and-a-half to two years ago, with the net result that with times being as plush and as good as they were before, it was necessary for the company to take a look at its costs and cut back the fat, or the excess people necessary, or things that were done, in order to be in a position where we could financially participate and be profitable in the market.

One of the reasons that our proposal was made was the fact that we thought fees were too high. The reason we thought the fees were too high was because they are based on State fees. I think Mr. Connolly fairly well explained the fact that they oversee 40 municipalities. They are relatively small, and they are remotely located in various areas, not necessarily put together in a way that they may choose to do it. Quite frankly, if I, as a businessman, were to look at the State municipalities which they presently have as to whether I would

take them on as a viable business, even under the fees they have here today, I would not do it because I don't believe it can be done, or run in a manner that will be efficient and in a manner which will get the fees to be in line with what I think they really should be in order to perform the function of doing the inspection and the plan review.

I think their problem has been made even greater, and I think that may be one of the things that maybe brought forth the 8 percent increase, because they cut back some people. However, I talked to one of their electrical inspectors who works in Glen Gardner, who indicated to me that he is putting on almost 1200 miles a week driving. Now, if one goes 50 miles an hour, that's 24 hours of the time schedule that are taken out. What does present a problem, as I would view it, is that these fees are the fees that should be contingent upon what prices the Bureau should charge. I just do not believe they are-- I just believe they are entirely too high.

Now, the proposal I had submitted in response to the increase in fees essentially said this, and this is evaluating this on the basis of the way a private inspection company would do it, where, in essence, they are selecting the markets that they go into, which I believe all the on-site agencies have done. I recommended that we get a 20 percent cut in our fees. The basis of my reasoning on this was as follows: The Department of Community Affairs, when they take over a municipality, is required to take over the four subcodes -- building, plumbing, electrical, and fire -- and, in addition to that, they are required to be the construction code official.

Now, a private on-site agency can never be a construction code official, so the most we can offer in services would essentially only be four-fifths of the service that could be offered by the Department of Community Affairs. So, logically it should follow that our fees could be 20 percent less. The only ones where I said that I recommended a

20 percent reduction were for building inspection fees, for plumbing inspection fees, and fire inspection fees. I made a suggestion of no reduction in the electrical fees, because I believe they are in an area that is proper at the present time that an on-site agency would need in order to function and be profitable in that area.

The other thing that goes beyond this is the fact that an on-site agency must carry, or should carry liability insurance which, in the nature of it, represents about 5 percent of the income that is taken in by an on-site agency. The next thing is, on-site agencies are required to pay 5 percent of their money to the State as a reauthorization fee. So if you look at the overall proposal, you would be looking at -- and you see the basis of the fee-- I say 20 percent, and then I explain to you where the other 5 and 5 go.

Now, what I feel strongly about that should be considered, is that the Bureau should consider the possibility of reducing their services to municipalities when they do not want to opt to oversee their own construction code enforcement department; consider the possibility of them supplying a Construction Code official and essentially allowing a private agency, under their direction, to come in and be the inspection agency until such time as they decide to take on their own people.

The reason that this could be done, and could be done economically with a specific private agency, would be based on the fact that there are certain private agencies that would work in the given areas that they work. If the Bureau were to have an agency, say, in Hackettstown, as a case in point, they may have to run all the way over to Essex County, or they may have to run to Bergen, whereas you might have a company like Garden State which would be working up in that area, and it would present no problem to them at all. That certainly is one aspect of the thing.

I also believe it should be considered to minimize that because of the fact, as Mr. Connolly pointed out, that the construction business is up and down, so you can have a significant number of people. Once you bring in this number of people, you now have salaries, overhead, fringe benefits, and so forth. State agencies, as a general rule, will never move as fast as a private company will, which would see almost immediately when their income has been impacted upon, and they would do those things that they would have to do in order to bring themselves into line with the present market. I think by the very nature of what they do, I think it is lower.

I also had a second phase that I put into this particular thing, and that was the fact that I was questioning the increases in fees in general. It has been my experience that as these fees are increased through the years, and when they come up, there is a general increase of the fees across-the-board; that is, there will be an increase of fees in inspection fees; there will be an increase of fees in insignia fees, which are used in modular or manufactured homes; there will be an increase in fees for asbestos abatement agencies; and there will be an increase in fees for individual, personal licenses for inspectors who are code enforcement in the State.

The very fact that they are increased the same percentage would lead me to believe that when I go in to look at the way they are budgeting what they are doing-- They are taking a situation where they have apples, oranges, plums, and grapes. They are selling at a dollar a pound. They then realize that a dollar a pound won't cut it, they need so much more. Instead of knowing what the individual costs are to perform each individual function, I believe they are treated as a universal, or as a whole, and therefore they would increase each individual item from \$1.00 a pound to \$1.10 a pound, without knowing what the costs are.

Now, we, as a private agency, at the present time -- in the past year -- paid to the Department of Community Affairs \$120,000 for a license to operate in the State of New Jersey. I think that is excessive, and that is only our company. If I look at the other agencies, and there are probably at least three other large ones, or ones of significant size, the sum total of the money that we pay for the privilege of being licensed in this State is about \$360,000 to \$400,000 a year. We believe that money is taken and is utilized for things other than overseeing or reviewing and approving the applications of on-site agencies.

The reason I believe that, is we have received a letter from Mr. Connolly which indicates to us that the State does not budget below the Bureau level. We have, in another situation we have going on-- We have subpoenaed the following documents: copies of all documents evidencing expenditures by the Department of Community Affairs in connection with the review of applications and the issuance of approvals authorizing private agencies to act as on-site inspection/plan review agencies and in-plant inspection agencies. The information we received back is that there are no documents.

ASSEMBLYMAN KELLY: Hold it. You said, "subpoenaed." How do you get subpoena powers?

MR. McLAUGHLIN: Well, we didn't. That is in a case we are involved in. All right?

ASSEMBLYMAN KELLY: Oh, okay. I won't pursue that then.

MR. McLAUGHLIN: The next thing that we requested was copies of all records evidencing expenditures by the Department of Community Affairs in connection with the monitoring of all private on-site and plan review agencies. There are no documents. In-plant inspection agencies, there are. There were three contracts with a company called Nick's Fix (phonetic spelling), where they pay a fee of \$63,000 to \$70,000 a year.

This is a company that is hired by the State that monitors all their in-plant agencies. Now, my only situation, as I view it here, is that there are eight in-plant agencies, and yet they can hire a private company to go out and monitor these eight companies for \$63,000 to \$70,000 a year, where we, as on-site agencies, are paying \$360,000 to \$400,000 a year.

The next item we asked for were copies of any and all studies or reports prepared or used by the Department of Community Affairs that formed the basis of any increase in the authorization or reauthorization fees of private on-site plan review and inspection agencies in section 5:21-4.21 and chapter 23 of the Uniform Construction Code Regulations for the period beginning July 1, 1984 through and including June 30, 1992. Documents supplied: None.

Now, we spent a lot of time--

ASSEMBLYMAN KELLY: Again you are referring to a case, though, when you say--

MR. McLAUGHLIN: Yes, sir.

ASSEMBLYMAN KELLY: Okay.

MR. McLAUGHLIN: We had gone through this as best we could trying to determine how the money is handled that is received, and how it is brought back and allocated -- handled through the Department. A good example is: In the Mobile Home Warranty Program -- they are in-plant modular homes and manufactured homes -- the money that comes in there is isolated. It is put into a revolving fund and you can see that in the budget every year. In other words, it is taken in from a particular group for a particular purpose. It is isolated. It is put out. You can see it, and you can see the people who are assigned to handle and deal with it.

Now, the other thing that presents a problem to us -- a problem as we see it -- is the fact that there are certain changes being made which reflect the movements of money, which do not appear to be as originally designed. I think one of

them was already mentioned this morning by one of the other people who testified. If I take the document, which is the Appropriation Handbook for Fiscal Year 1992-1993, B 23, I then turn over to B 24, and it reads as follows: "Account Number 8015-311-06000-00. The amount received by Uniform Construction Code revolving funds attributable to that portion of the surcharge fee in excess of 0006, are dedicated to the general support of the Uniform Construction Code Program, and notwithstanding the provision of section 2 of P.L. 79, C. 21, which is C. 52:27d-1241, are available for training and nontraining purposes."

I think where they find themselves is simple. I think -- it would be opinion, of course-- I don't believe there is a mechanism that is properly established and identified for the Department to raise the revenue that is necessary to run the Department, as such. I think what is happening is that in some of these cases, the fees which essentially are policing fees, and should be designed and allocated for those specific purposes, are being treated as revenue accounts. I believe they are forced to do this particular maneuver of moving some of this training money in order to meet the budget requirements that they have to have of the money they need, in order to properly run their particular Department.

The other recommendation that I made on this 26 had to do with the fact-- I did think the Department of Community Affairs-- I at least thought they should rethink the possibility of them being in the elevator inspection business. Again, the reason I felt this way was the same reason, or almost the same reason -- a little different, though -- why I think their activities in the code enforcement end of it, as far as doing building, plumbing, and electrical inspections is concerned, fall into the same category. This is due to a varying influx of the amount of activity, which means that you are going to get into a position. I certainly do not

appreciate the fact, also, that the agency which authorizes us to do business, is also in competition with us. Somehow that just has a fake ring to it that doesn't make me feel too good about it.

I really have no other comments, other than maybe one clarification I would like to make. This has to do with the licensing of elevator inspectors. We have been inspecting elevators since 1978. We opened a full-fledged operation in 1985. There is absolutely no question in my mind that someone going out to inspect elevators requires special knowledge and a special technique which is not easily picked up without getting hands-on experience in the field.

Now, one of the things that we, as officials, or inspectors in this State could do-- We were permitted prior to this to do acceptance inspecting -- testing, or inspecting of new elevators put into buildings. The area they are now concentrating on is the periodic inspections. They are the inspections that are done essentially every six months. The insurance in this field, and the liability in this field, are unreal. BIU at the present time pays \$159,000 a year in insurance premiums. So it isn't something where you can really go lightly. It is something where if there is an occurrence of a failure of an elevator, it is very easy for someone to die.

The reason I believe there was a lot of emphasis put on this was, about three years ago, or thereabouts, we did have a succession of five elevator failures during the course of the year, every one of them which resulted in the death of at least one or two people. I think the thing that probably brought it to a head was, one time -- I don't remember what the township was; I know we went up and investigated it afterwards -- it was a child who was killed. He was caught and crushed by an elevator.

That is about all I have. If you fellows have any questions, I will be glad to take them.

ASSEMBLYMAN KELLY: You said you paid \$120,000 in licensing fees. How is that determined?

MR. McLAUGHLIN: What they do is, you pay a base fee of so much per subcode. Then you pay, in addition to that, 5 percent of the gross revenues earned. So the larger the agency, the larger the fee.

ASSEMBLYMAN KELLY: Do you have any questions, Mr. Sosa?

ASSEMBLYMAN SOSA: Just a question, Mr. Kelly about why the Department is in the elevator inspection business in the first place, if this, indeed, is true where there is competition between the Department and private contractors?

MR. CONNOLLY: As I mentioned this morning, we do about 11 percent. Whether we do any is a decision that gets to be made by municipal officials, who decide whether they are comfortable with hiring their own employees, working with third-party agencies, or asking the State to do it.

As I also mentioned this morning, as a matter of policy, I don't think it is a good idea for us to have no capability in an area like that. We should do some of it so that we understand what is involved; so that we have people who are technically capable of overseeing other people's work; so we have our own sense of how long it takes to do a job when it comes to setting fee schedules and things like that.

We could disagree as to whether we should do five or 12, but I think we should do something. I think 11 is a fairly minimal amount in terms of the overall amount of the work that we do ourselves, as opposed to being out with towns or third parties. In the case of elevators, it is almost entirely-- The remaining 89 percent is almost entirely third party.

ASSEMBLYMAN SOSA: Of that 11 percent of work you do, how many employees does that constitute, do you know?

MR. CONNOLLY: It takes about eight or nine inspectors to handle what we have, for the whole State -- or our part of it, which, as I said, is a small part.

ASSEMBLYMAN KELLY: Eight or nine?

MR. CONNOLLY: Yes.

ASSEMBLYMAN KELLY: How much did you say we collected from third parties for-- Oh, that is not elevator fees, okay.

MR. McLAUGHLIN: They get 5 percent--

ASSEMBLYMAN KELLY: Okay, I was getting off on the wrong tack. I realize that.

MR. McLAUGHLIN: No, they get 5 percent of the elevator fees, too, and there is a separate reauthorization fee. See, one of the reasons why with the elevators I thought it wasn't necessary, was the fact that I believe they have licensed either eight or nine private elevator companies -- inspection companies. I think in addition to that they have probably licensed -- I am going to take an estimate; I am not sure, but I don't think this is too far off -- I would say at least 40 additional elevator inspectors. So it isn't a question that the market is in need of the Bureau being in there. I mean, if the Bureau wants to be in this business, it would seem logical that maybe to save the State money -- and they want to be in it -- maybe they ought to be in it inspecting all of the State building elevators, you know, as the case--

ASSEMBLYMAN KELLY: Who does the State elevators?

MR. McLAUGHLIN: Well, we do.

ASSEMBLYMAN KELLY: You do, okay. We've got that answer.

MR. McLAUGHLIN: Well, we have been doing quite a few under contract. I don't know how it works now because, as I've said, I have been retired, and I am not really sure.

ASSEMBLYMAN KELLY: Okay. Any other questions of this witness? (no response) Thank you, sir. Thank you for your input.

We have one other individual who would like to testify. Come on up, Alex. Alex Ellwood, New Jersey B&I, right?

ALEXANDER ELLWOOD: Yes. BIA.

ASSEMBLYMAN KELLY: BIA, I'm sorry.

MR. ELLWOOD: I want to thank you, Mr. Chairman, for--

ASSEMBLYMAN KELLY: For making you last, I apologize, but that's the way-- Someone had to be last. Except, he is going to testify again. We have him here to finish.

MR. ELLWOOD: Mr. Chairman, I have been waiting for two years for this moment, so just a couple of hours was not any problem for me.

ASSEMBLYMAN KELLY: Two years for what?

MR. ELLWOOD: I have been handling the Fire Code complaints from our members for two years now. My predecessor, Jeff Stoller, essentially handled them from the inception of the Code. So, this is something we are very familiar with. Our members are continually reminding us--

ASSEMBLYMAN KELLY: Be careful, I serve on the Fire Commission; be careful. I'm only teasing you.

MR. ELLWOOD: This is something that has really been of great concern to our members.

ASSEMBLYMAN KELLY: I'm only teasing you right now.

MR. ELLWOOD: I am very glad you have called these hearings.

The way I have taken the calls, the complaints have broken down really into-- The problem with the Fire Code really is twofold: One, there seems to be no uniformity between municipalities as to what constitutes a violation. This causes a problem for larger businesses which may have four or five facilities throughout the State. What may be a violation in one of their facilities may not necessarily constitute a violation in another. So it is very difficult for a larger business to really know where it stands with regard to a violation.

A small business is really up the creek if it is in one of these municipalities that has, let's say, a very strict

interpretation, or a very broad interpretation of the Fire Code, which could lead to additional, perhaps, unwarranted fines or fees if the municipality is enforcing it on a much more strict interpretation than may have been originally intended in the enabling legislation.

I think that brings me to another problem: The enabling legislation was worded intentionally broad. The Uniform Fire Safety Act was -- and this is quoting from the enabling legislation -- "remedial legislation necessary to protect life and property within the State from the danger and destruction by fire and explosion and shall be liberally construed to effectuate these purposes." Now, that has led, I believe, to a vague interpretation of the Code.

Coming back again to the Fire Safety Act, there are three primary objectives within the Act: 1) All areas of the State are protected by a uniform, minimum Fire Safety Code which will protect the lives and property of its citizens; 2) uniform, thorough, and adequately funded fire safety inspections protect the public whenever buildings which pose a serious life safety hazard are found; 3) penalties for violators are both swift and commensurate with the gravity of the offense. The bill delegates all responsibility for implementing these standards to the Commissioner of the Department of Community Affairs.

Now, under this broad aegis, regulations have been adopted that, although they do not conflict with the legislation, have placed a disproportionate burden on the sector business which historically has had the best record of fire safety, and I will get into that in a minute.

The way I have come to understand what businesses are required to do under the Fire Code-- Most buildings are required to register once a year. There is a fee schedule ranging from \$58 to \$2070 per year. Permit fees also range from \$29 to \$1150. Some of these are about two years old --

the fee schedules. As we discussed today, these fees have increased dramatically over the last two years as well. Seventy percent of these fees are then given back to the municipalities for enforcement of the Code.

The third one is an element that really concerns me and a number of businesses. Enforcement varies by municipality. Some pay their inspectors on a straight salary; some by the hour; and still others by each inspection they carry out.

The schedule for fines is less stringent, and allows for some reductions if Code compliance is achieved within a short period of time. However, some fines can range as high as \$5000 per violation per day.

ASSEMBLYMAN KELLY: Per day?

MR. ELLWOOD: Per day.

ASSEMBLYMAN KELLY: They collect that? I doubt it.

MR. ELLWOOD: You may be right. All right, I will cut a deal with you.

ASSEMBLYMAN KELLY: That just scares you to do that. There is no way they are going to collect that kind of--

MR. ELLWOOD: If you are in violation for two weeks, all you have to do is pay a week. I mean, that is still pretty egregious, in a sense. So obviously there are concerns there.

ASSEMBLYMAN KELLY: They must have gotten some lessons from DEP, I guess,

MR. ELLWOOD: That could be, too.

One-hundred percent of the fines assessed for noncompliance are then returned to offset the municipalities for enforcement.

Now, none of these registration fees or even the widely varied enforcement mechanisms between municipalities were created by the legislation. They are a result of a liberal interpretation of vague statutory language.

At the same time, the Fire Code has done very little to ensure fire safety in the State. The Code focuses on the sector of New Jersey which has traditionally had the best fire safety record.

ASSEMBLYMAN KELLY: I want you to repeat that last statement. It does what?

MR. ELLWOOD: It has done little to ensure fire safety in the State, and I am going to cite some fire casualty statistics--

ASSEMBLYMAN KELLY: You better be careful now. Go ahead.

MR. ELLWOOD: --with respect to the commercial sector. The statistics are from the New Jersey Bureau of Fire Safety. Very few fire deaths and injuries in this State have resulted from commercial structures fires. In 1987, 166 of 173 civilian fire deaths were due to residential or automobile fires. That is about 96 percent. This figure stays the same from the inception of the Code to the present day.

So, while the Code is focused almost exclusively in terms of the fines, the fees, the revenue, and the expenditures on the commercial sector, very little has changed within the commercial sector with respect to the rest of any other types of dwellings. In fact, the sector which has had the highest number of fire deaths -- which is the one- and two-family dwellings -- are exempt from the Code altogether.

ASSEMBLYMAN KELLY: And that is where most of the deaths are?

MR. ELLWOOD: Yes.

ASSEMBLYMAN KELLY: Well, you wouldn't want to have commercial buildings exempt as are the one- and two-family dwellings? I would think they would have to be a little stricter with what they do with commercial properties.

MR. ELLWOOD: There are a couple of suggestions that I would like to offer.

ASSEMBLYMAN KELLY: Okay, go ahead.

MR. ELLWOOD: I'll get to them in a minute. There is just one other issue which arises regularly in phone calls that we receive from our members. That is the expansion of the "life hazard use" definition, which periodically includes a new series of businesses and structures. Each year a new class-- It seems that about every year there is a new class of structure that is added under the jurisdiction of the Code as a life hazard use.

ASSEMBLYMAN KELLY: Why don't you explain that to the people here so they will know what you are talking about?

MR. ELLWOOD: Sure. Life hazard use is really the language which is used to include facilities-- If it is a facility that is deemed a life hazard use, you are then subject to increased scrutiny under the Uniform Fire Code. The most recent example was: A couple of months ago a proposal was adopted that included hardware stores to be included as life hazard use facilities. It is difficult for me to believe that a facility that in 1985 was not-- I don't understand how hardware stores have changed dramatically over the last decade.

ASSEMBLYMAN KELLY: Have you been in a Home Depot lately?

MR. ELLWOOD: I was in Store 84 about a month ago.

ASSEMBLYMAN KELLY: That's some hardware store, I'll tell you that--

MR. ELLWOOD: Oh, it's terrific.

ASSEMBLYMAN KELLY: --so they better have some strict codes, to be honest with you. Okay, I am just busting your chops.

MR. ELLWOOD: Actually, before I talk about hardware stores, they break it down into size of hardware stores. So, just a mom and pop hardware store is also now looped into the Code. It is difficult for me to believe that something that was not life hazard use definition in 1985, 1987, 1989, 1991,

all of a sudden is now life hazard use, and hence subject to increased fines and fees in the inspection requirements.

I understand there is a strong interest in life preservation and fire safety, but I have not seen where hardware stores have been that dramatically responsible for fire deaths in the State, that all of a sudden, they, too, are included. Then you start to ask yourself, what next will be included?

ASSEMBLYMAN KELLY: But they do carry flammable products, like kerosene, propane, all the weird--

MR. ELLWOOD: Certainly. But then the question is: Wasn't this a life hazard use-- They carried these products 10 years ago. What will be next? I mean, it is very difficult to account for. That is my point.

I would suggest four courses of action that the Legislature could take: 1) As I mentioned, one of the questions that arises is that the municipalities have different ways of enforcing the Code. I would suggest that you provide a model enforcement mechanism with adequate appeals notice, uniform standards, and pay structures for municipalities. I think that is very important to note for municipalities, as well as realistic fee schedules. By realistic fee schedules, we have been discussing this for a good portion of the whole morning. I think the Legislature may have an overriding interest in seeing just how the fee money is being spent. That has gone before me. This is nothing new to you. I would just like to reiterate it. I think that is really important.

ASSEMBLYMAN KELLY: Mr. Connolly has agreed to give us a listing of all the fees, the cost basis, or how they come up with their costs to determine them, which should be interesting.

MR. ELLWOOD: Yes, that is reassuring. From a number of correspondences I have had from 1987, one facility which is very strongly regulated with respect to fire safety is the lumber industry, and rightly so. I mean, there is a lot of

sawdust lying around, a lot of flammables, treatment chemicals, and all that. That's fine. They should be subject to inspections. Now, the figures I had were from an insurance underwriter which writes the policies for most of the lumberyards in the State. They estimated that this should cost-- The inspection should cost between \$50 and \$75. This was in 1987. If you were to even double that for administrative oversight and those subsequent costs, then it should be about \$100 to \$150.

ASSEMBLYMAN KELLY: What is it?

MR. ELLWOOD: In 1987, the fees ran from \$550 to \$863.

ASSEMBLYMAN KELLY: That's interesting. That's for lumberyard inspections?

MR. ELLWOOD: Yes. Individuals should also be aware of the-- That really was my second. I will move on to my third reform.

Individuals should also be aware of their right to appeal. This could be accomplished very simply by requiring inspectors to provide this information upon contact; a one-page notice that the inspector could hand out, saying: "This is a municipal matter, but you are aware of your right to appeal to the Department of Community Affairs if you feel you have not gotten a fair shake from us."

ASSEMBLYMAN KELLY: We don't have that right now?

MR. ELLWOOD: They are not required. They can do it. I mean, it is a nice thing to do, say-- They do have the right to appeal; businesses do have the right to appeal, but--

ASSEMBLYMAN KELLY: They do have the right?

MR. ELLWOOD: They do have the right to appeal, but they are not informed upon the contact.

ASSEMBLYMAN KELLY: We want to have "truth in appeals," or whatever you want to call it. We have truth in lending, truth in advertising, truth in fees.

MR. ELLWOOD: This brings me to the fourth and final recommendation: Unless an imminent hazard exists -- I don't have extensive legal training, but I think we could arrive at a fair definition of what constitutes an imminent hazard for commercial facilities -- buildings constructed before 1975 should be grandfathered.

ASSEMBLYMAN KELLY: Hold it; wait a while.

MR. ELLWOOD: I had a feeling that would--

ASSEMBLYMAN KELLY: Buildings should be grandfathered for what?

MR. ELLWOOD: Buildings built before 1975, unless there is an imminent hazard, should be grandfathered out of the Code -- or, out of the regular inspection.

ASSEMBLYMAN KELLY: Do you mean fire inspection?

MR. ELLWOOD: Yes.

ASSEMBLYMAN KELLY: Why? Isn't that where most of the trouble is, in the old buildings?

MR. ELLWOOD: These are the ones that have imminent hazards. This is where we really have to focus on how we define what an imminent hazard is. You certainly could have a broad interpretation that all buildings before 1975 are imminent hazards. I have a feeling that there are a number of buildings that have been constructed out of more durable materials.

MR. CIFELLI: That caught me off guard.

MR. ELLWOOD: I thought I'd wake you up.

MR. CIFELLI: You woke me up with that one.

MR. ELLWOOD: We're all a little slow after lunch. But I do believe that if we have a stringent definition of "imminent hazard--" The older buildings, the ones that are 100 years old, are not necessarily as much of a fire hazard as the ones that are 50 years old. That also sounds difficult to believe. The ones that are of masonry construction--

ASSEMBLYMAN KELLY: Yeah, but they have lousy electrical, plumbing, heating, and every other damned thing that is connected with them.

MR. CIFELLI: And fire escapes.

MR. ELLWOOD: That would constitute an imminent hazard. I am trying to devise a way that good actors-- We are fairly confident that all the buildings built after 1975 are much closer up to Code. The problem is, there is a strong -- a hard core of buildings that were constructed before 1975. Many of them are imminent hazards and have to be brought up to Code. But the ones that consistently had a good actor policy and are up to Code and up to speed--

ASSEMBLYMAN SOSA: Question?

MR. ELLWOOD: Sure. Is that clear? I'm sorry.

ASSEMBLYMAN SOSA: I've got a screwball over here; you've got a curve ball.

How do you determine if a building built before 1975 is an imminent hazard if it is not subject to inspection?

MR. ELLWOOD: Well, I capitulate and leave it up to the legal experts to define "imminent hazard."

ASSEMBLYMAN SOSA: You know--

MR. ELLWOOD: What I am trying to do is find a way to exempt some buildings which are durable and are responsible, really, for bearing a disproportionate burden of Code enforcement. These are buildings that have never had a record of problems with the Fire Code or with meeting inspections, and have demonstrated a capacity for fire safety.

ASSEMBLYMAN SOSA: Don't you get arbitrary? I mean, there are so many different things.

MR. ELLWOOD: It is arbitrary right now. That is the problem.

ASSEMBLYMAN SOSA: There are so many different kinds of buildings all over the place. How do you pick and choose?

MR. ELLWOOD: The biggest problem right now is that it is completely arbitrary between municipalities. This would be sort of a way to establish a statewide uniformity. This is but one avenue.

ASSEMBLYMAN SOSA: Yeah, but how do you do it?

MR. ELLWOOD: These are four suggestions.

ASSEMBLYMAN KELLY: Okay. Are you going to continue?

MR. ELLWOOD: That's fine.

ASSEMBLYMAN KELLY: Are there any questions?
Assemblyman Green?

ASSEMBLYMAN GREEN: No, thank you.

ASSEMBLYMAN KELLY: Assemblyman Sosa?

ASSEMBLYMAN SOSA: No.

MS. SMARTH: Do you want to ask--

ASSEMBLYMAN KELLY: Do I want to ask what? Don't be bashful. You're among friends here.

MS. SMARTH: I mean, are we going to--

ASSEMBLYMAN KELLY: Mr. Connolly is going to talk now. What's the matter with you?

MR. ELLWOOD: Thank you, Mr. Chairman.

ASSEMBLYMAN KELLY: Mr. Connolly, you have the floor. You can defend yourself, continue with whatever you want to discuss, or adjourn for today. What do you want to do? I know you are going to come back and give us all those fees. Did we give you that schedule? Did I give you the listing of all those fees that I had?

MR. CONNOLLY: I would like to have the one you had.

ASSEMBLYMAN KELLY: Okay. Can we get him a copy of that?

MR. CONNOLLY: The Chairman has a list of all our fees on one sheet of paper that is better than I have ever seen.

ASSEMBLYMAN SOSA: Can we get a copy from the Department of all the fees?

ASSEMBLYMAN KELLY: Yes, we are going to--

MR. CONNOLLY: I promised an analysis, but the list that you have, which kind of lists them all, and how much revenue from each one-- We'll just follow that format and it will be easier.

ASSEMBLYMAN KELLY: But I want to make sure that you have them all, because maybe we only have half of them on that list. I wouldn't want to miss any.

MR. CONNOLLY: If there were more, I would tell you.

ASSEMBLYMAN SOSA: And can we have how the fees were determined?

ASSEMBLYMAN KELLY: Yes, yes, yes.

We interrupted your testimony. Now you can continue.

MR. CONNOLLY: No, you just missed my emotional closing. So we can just dispense with that.

ASSEMBLYMAN KELLY: Oh, okay.

MR. CONNOLLY: You know, I was making notes as other people were talking. I think it would just be best to give you an opportunity -- you gave me a long time this morning -- to ask any questions you might have. If there is anything you heard from anyone else which you would really like me to address, or if you have any other questions, I would be happy to--

ASSEMBLYMAN SOSA: Mr. Chairman, are we going to provide the Department with a list of questions that we, perhaps, didn't have enough time to finish--

ASSEMBLYMAN KELLY: Yes.

ASSEMBLYMAN SOSA: --with today?

ASSEMBLYMAN KELLY: Yes.

ASSEMBLYMAN SOSA: So we can get the answers back.

ASSEMBLYMAN KELLY: We'll give you more questions, Mr. Connolly. Otherwise, we'll be here until 6:00 tonight, and we don't want to do that.

MS. SMARTH: That's fine.

ASSEMBLYMAN SOSA: In the interest of time.

ASSEMBLYMAN KELLY: So, do you want to adjourn, or do you want to give us your last minute spiel?

MR. CONNOLLY: No, I don't have a last minute spiel. I'm perfectly happy to let you leave.

MR. CIFELLI: You took away his emotion. That is what he was saying. He was trying to be polite in telling you that. He was building up to a big closing, and you took it away from him.

MR. CONNOLLY: Right. You know, I was building up to a crescendo, and--

ASSEMBLYMAN KELLY: All right. We have a lot of questions. We are going to give them to you people and you can give us the answers in written form. I will give you that schedule.

This meeting is adjourned.

(MEETING CONCLUDED)

APPENDIX



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JIM FLORIO
GOVERNOR

STEPHANIE R. BUSH
COMMISSIONER

LOCATION:

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A Status Report of the Department of
Community Affairs' Reponse to the
Recommendations of the Government Management
Review Commission Report, November 1990

Submitted to: The Assembly Housing Committee
November 9, 1992

Submitted by: Stephanie R. Bush,
Commissioner
Department of Community Affairs



RECOMMENDATION # 1: Consider moving the Division on Aging and the Division on Women to the Department of Human Services.

STATUS:

This recommendation has been the basis for considerable discussion with the Department of Human Services, the Governor's Office, and other affected agencies. It has been concluded that it would be inappropriate for either of these two divisions to be transferred to the Department of Human Services. Unlike the Department of Human Services the Department of Community Affairs is not a service provider. The Department of Community Affairs' philosophy is that of empowerment. Its current structure enables its clients to obtain the services sought within their communities.

The responsibilities of the Division on Aging with regard to independent advocacy of Aging needs, and for coordination with a variety of other DCA programs, do not lend themselves to merger into Human Services. Additional considerations of the relationship between the Division on Aging and the activities of the Department of Health have also been explored and are not conducive to merger. Similarly, the role of the Division on Women in performing its statutory mandate as an advocate for Women's needs does not lend itself to merger with Department of Human Services; rather, the Division, as is the case with Aging, finds synergistic capabilities through the existing array of DCA services and DCA's fundamental advocacy responsibilities for community needs.

RECOMMENDATION # 2: We believe that transferring this program (Youth Corps Program) entirely to the Department of Education would satisfy the program's primary goal is to provide employment opportunities to urban high school dropouts. The focus of the program is to enhance educational skills to help participants pass GE tests, seek employment opportunities and return to school. The community services component of this program, to assist with the rehabilitation of houses in urban areas, is secondary in comparison to the program's educational requirements. Because of this strong link to education we recommend transferring this program entirely to the Department of Education.

STATUS:

This program was transferred to the Department of Education as of July 1, 1991.

RECOMMENDATION # 3: Consider transferring the A-95 Review Process also known as the Intergovernmental Review and Assistance Unit out of the Department of Community Affairs.

STATUS:

Upon further review it was found that this program should indeed be transferred from the Division of Local Government Services, and it has been transferred to the Division of Community Resources in DCA. This meets the test of availability of compatible computer capabilities, as recommended in the report, and also locates the function in a division which has significant concern with federal funding for a variety of needs for community agencies.

RECOMMENDATION # 4: Consider consolidating the Office of the Public Guardian and the Ombudsman of the Institutionalized Elderly with reporting authority to the Director of the Division on Aging.

STATUS:

Due to the statutory responsibilities of each entity, it was determined that the offices could not appropriately be consolidated.

- a) Public Guardian is appointed by the Courts as guardian of the person and property, or as conservator of the senior's property.
- b) Ombudsman investigates alleged abuse and mistreatment of institutionalized elderly.

RECOMMENDATION # 5: Consolidate fiscal offices and related support (non-program) personnel within each division under the Department's Office of Assistant Commissioners.

STATUS:

In an effort to evaluate the practicality of this, the fiscal functions of three separate divisions were merged into one work group under the Assistant Commissioner in charge. It was found that some efficiencies of scale resulted, and some standardization of effort. It was also found that essentially the same amount of work had to be performed, and that additional liaison back to the program staffs of the divisions had to be provided for. Further, owing to the fact of funding coming from different Federal agencies, separate reporting formats still had to be observed.

Since so many of DCA's programs involve the processing of Federal funds, it was necessary to obtain approval of Federal funding sources for these processing functions to be performed centrally, rather than in the divisions that are the recipients of the Federal responsibilities. One of the major Federal agencies disapproved the arrangement, citing regulations that its funds could be used only for staff devoted 100% to its program, and solely under its programmatic control.

This made the experiment fiscally unfeasible, although some lessons were learned. In the interim, staff reductions had occurred because of overall fiscal constraints, such that no further savings were feasible.

RECOMMENDATION # 6: Consider standardizing and consolidating operations of multiple groups of inspectors. Implement training programs to ensure that inspectors are cross-trained and capable of providing multiple types of inspections.

STATUS:

With the establishment of a new Division of Codes and Standards, the various inspectional functions referred to are now under a division clearly focused on those responsibilities. This includes Uniform Construction Code, Fire Safety, Boarding Home Regulation, Hotel and Multiple Dwelling Inspection, and related regulatory functions. Further, discussions have been underway regarding the possibility of these functions being reconstituted into a quasi independent agency associated with DCA. This would relate to the free-supported nature of these programs.

Cross training of inspectors has been pursued to the degree possible within general functional areas, but owing to the nature of the licensing and trades specializations involved, it could be cost prohibitive to cross train inspectors to a significant degree. Further, inspectors from one program typically are not in buildings where inspections by other DCA inspectors are underway, so there is less overlap than one might assume without benefit of more specific understanding of the nature of the programs.

The duties of the various inspectors were reviewed for overlap and possible consolidation. It was concluded that the nature of the codes specialties, and the fact that inspectors now do not cross paths in the field, left little room for consolidation, and in fact this would have increased costs by requiring major staff retraining and higher salaries. Common supervision of those functions through the Division of Codes and Standards is assuring that performance standards are met.

RECOMMENDATION # 7: Strengthen (Deputy Director) positions with defined responsibilities or eliminate positions.

STATUS:

The Department has, as part of its retrenchment, terminated the Deputy Director of the Division on Aging. One other Division has been replaced (Community Resources). The Department believes that proper supervision of staff is appropriately served by the existence of these several Deputy Directors, and is focusing on assuring their having clear roles. In part, the advocacy responsibilities of our directors is best supported when deputies are available to provide daily administrative oversight of operations.

OMB, in the preparation of the FY 92 budget, implemented funding reductions to be met through this recommendation or equivalent salary reductions.

RECOMMENDATION # 8: Computerize the reporting process for local municipality, county, and authority budgets, financings and other documentation.

STATUS:

Implementation of this recommendation requires funds which are not available. The report's estimated cost to accomplish this was between \$250,000 and \$500,000. Certain efforts were undertaken in the Division of Local Government Services to improve internal automation of budget activities, but the broader automation, reaching out to the local level, is heavily dependent on currently unavailable resources. Thus, due to the lack of funds, DCA was not able to revamp the current paper reporting from municipalities. However, continued internal automation within our Division of Local Government Services has helped adjust to staff losses.

RECOMMENDATION # 9: Accelerate current programs to establish off-site computer archives and facilitate networking of computer systems. Provide a limited number of personal computers and additional training on how computer systems can be used to reduce labor requirements and enhance service delivery.

STATUS:

Off-site storage of computer archives has been established as recommended. Networking of computer systems has been developed to facilitate greater efficiency in use of equipment such as printers. Significant progress has been made in the automation of grant processing and the training of employees.

Overall, evaluation of DCA's office automation efforts has led to implementation of improved operating procedures, expanded in-house training and increased use of computer services to cope with staff reduction and growing work load.

RECOMMENDATION # 10: Dedicate appropriate resources to conduct audits of federal grants where DCA is the cognizant agency. Requires allocation of staff resources. At a minimum, it is estimated that a \$200,000 in personnel expenditures will be required. However, this is to help protect over \$100 million in annual grant funds.

STATUS:

This recommendation estimated a \$200,000 cost in personnel expenditures so as to strengthen the Department's single audit cognizant agency functions. Such funding is clearly not available, and it is only with difficulty that the Department is able to continue efforts at the current level. Until such time as the state's financial picture improves, further activity in this direction will not be possible.

RECOMMENDATION #11: Consider developing a centralized scheduling system for all housing and other facility inspections as well as mechanism to eliminate or significantly reduce downtime resulting from landlord cancellations or limitations on access.

STATUS:

Centralized inspections are an advantage and are used where it results in efficiency and increased productivity. An example of such a situation exists in the elevator safety inspection program.

Beyond the witnessing of acceptance tests on new devices, elevators require one year periodic, six month routine, and three or five year inspections. Once the device type and specifics are known, the length of time necessary, and whether or not an advance appointment must be made for each is known as well. As such, a schedule for the inspection of each elevator device may be made from now through eternity. In this instance, we do take advantage of an automated scheduling utility, scheduling inspections centrally to provide for efficiencies as it is practical to do so.

Construction inspections are also scheduled centrally in each regional office. This is due to the fact that they must take place at the very specific time in the construction process where the work is ready for inspection.

In the Bureau of Housing Inspection, however, there are a number of reasons that inspections are not scheduled centrally, the primary one being cost effectiveness. There are currently four teams of inspectors assigned to four areas of the state. Each team consists of 12 or 13 inspectors, each of whom are expected to inspect 12.6 units each day. This means that there are over 600 units inspected a day. In addition, 85% of the units inspected require reinspection. Assuming an average of 10 units in a building, there would be 60 buildings scheduled each day for inspection and 50 for reinspection. Presently, there is one clerical person assigned to the inspection unit. At least two additional people would be required to handle the paperwork.

In addition to increased staffing, there would be a decrease in productivity caused by central scheduling. There are many factors that go into the time involved in inspecting a building. Some are obvious from the file: the number of buildings and units, some are not obvious. It takes considerably longer to inspect a building that is in poor condition than it does to inspect a building in good condition. Office personnel would not know this and would have to use the "average unit" in calculating how much time to schedule. This would result in some inspections taking longer than scheduled, and some taking less. By allowing the inspectors to make their own appointments, they can take this into consideration because they are familiar with their respective areas.

Lastly, with the addition of the new inspectors, some changes have been made in how assignments are made, mostly in the urban areas. The backlog of inspections that developed during the 1980's is being assigned to inspectors by areas, districts or wards so they can know what buildings they have and thereby do them by area.

The same situation exists in the Bureau of Fire Safety which performs inspections for conformance with the Uniform Fire Safety Code. Work is assigned by region to each of the three inspection teams. Within a team, work is assigned to individual inspectors by municipality; i.e. a particular inspector is responsible for performing inspections in a particular town.

The scheduling of the actual inspection is left to each inspector. The fire inspector's daily schedule is the outcome of consideration given to two variables.

First, the matter of whether or not an appointment must be made in advance must be considered. Most businesses may be inspected by simply dropping in unannounced and without an appointment; in some instances this may be the preferred method for checking matters pertaining to occupancy, for example. Some inspections, however, do require an appointment.

Second, the length of time necessary to perform the inspection must be considered. This varies as well among life hazard use types.

Upon initial review of his/her workload in the town at hand, an inspector will arrange his/her schedule based on what needs to be done.

RECOMMENDATION # 12: Establish performance standards and indicators for each element or bureau of the Department.

STATUS:

The department has established specific productivity and performance standards for inspectors. Every individual is required to produce an average of 2 inspections each day worked. Our productivity records indicate that the average number of inspections is 2.8 per day.

The unit cost of inspection has been tracked on a long term basis. The commitment of resources is appropriate given the goals and objectives of the programs.

RECOMMENDATION #13: In conjunction with HMDC, consider methods of accelerating the Commission's expenditure of the \$109 million which have been set aside for landfill closures.

STATUS:

The Commission has submitted its 30 year closure and post closure plan for all of its facilities which also include appropriate project schedules. Closure work is currently in progress for both HMDC landfills 1-A, and 1-E. It is anticipated that the Commission will incur substantial closure expenditures as a result of this measure.

HMDC has advised the DCA that the \$109 Million set aside to close three landfills is being spent. One landfill has already closed and a second is in the process of closing. The third is still an active site and is not ready at this time. Closing of the third landfill is tentatively scheduled for December, 1993.

RECOMMENDATION #14: Develop a strategic plan for HMDC and consider operating the HMDC as a "business."

STATUS:

A five year financial plan encompassing the Commission's funding requirements during the next five years, including the identification of potential alternative revenue sources, has been submitted by HMDC. The Commission is presently providing the Department of Environmental Protection and the Board of Public Utilities with research data, on the feasibility of a regional materials recycling facility.

A plan focusing on alternative funding sources has been prepared by HMDC. Although this plan has been ready for implementation since FY 93, it requires legislative enactment and concurrence of the Office of Management and Budget.

RECOMMENDATION # 15: We recommend that a facility of 50,000 square feet be purchased or leased providing immediate savings of approximately \$9,000,00. We also encourage the HMFA to evaluate the cost benefits involved with a lease of a building rather than a purchase.

STATUS:

The Housing and Mortgage Finance Agency is independent of Community Affairs. However, it has been working with the General Services Administration to locate in the Roebing Complex in the City of Trenton. Earlier consideration of a larger facility would have involved other agencies occupying part of the space. Plans are for 68,000 square feet (gross) which will be within appropriate space standards. Inasmuch as the intent of the finding's recommendations (that only an appropriate amount of space be acquired) has been accepted, this recommendation has been completed.

Plans are underway to enable HMFA to move, on economical basis, into new quarters in Trenton. This entails a public-private partnership to convert the Roebing Wire Rope Company facilities to a new urban center.

RECOMMENDATION #16: Consolidation of the permit process State-wide with appropriate staff should be assigned to this activity on a full-time basis. Centralization of the permit function will provide for better controls, improved planning and utilization of personnel. It could also assist with business development activity. For example, a developer could go to one central location for the necessary permits related to his/her project. Currently, the system requires acquiring permits from various state agencies prior to a project's commencement.

STATUS:

The Department has prepared specific proposals which would lead to the consolidation of permit processing between state agencies and between levels of government.

They are embodied in a Uniform Subdivision and Site Improvement Standards bill S 537, which is pending action in the Legislature.

Since this problem is multi-departmental and multi-governmental in nature, DCA can do no more than propose effective solutions, which we have.

RECOMMENDATION # 17: Support of the proposed hotel occupancy tax within the HMDC region provides an alternative funding source to recover the Commission's costs without directly taxing the local communities.

STATUS:

The Commission has already submitted various proposals for alternative funding sources to the State. These proposals have been submitted to local legislators for review.

RECOMMENDATION # 18: Establish an independent non-profit fund raising organization for the HMDC Environmental Center. The organization could then contract with HMDC for operation, maintenance and enhancement of the Center.

STATUS:

The Commission has requested and received an opinion from the Attorney General's Office regarding the legality of a non-profit fund raising organization. Due to the Commission's regulatory functions in the Meadowlands District, such fund raising is severely limited.

RECOMMENDATION #19: Modify existing rates and charges for all services provided by DCA to reflect the true total cost of providing each service.

STATUS:

In order to place the Hotel and Multiple Dwelling Inspection Program on a self sustaining basis as recommended, DCA has drafted legislation.

With GMRC support, the law was changed so that fees collected equaled the costs of the programs. As of FY 92, the Hotel Multiple Dwelling Inspection Program is self-sustaining. This represented a \$1.3 Million reduction in taxpayer support. Fire fees also support the local Firefighters Training Program which was previously supported by general taxpayers funds.

Note: Bill A-4809 became law as PL-1991, Chap. 179. This revision increased the rates for the Hotel & Multiple Dwelling Inspection Program such that the program is self supporting.

TESTIMONY OF
PATRICK J. O'KEEFE
BEFORE THE
HOUSING COMMITTEE
OF THE
NEW JERSEY GENERAL ASSEMBLY

NOVEMBER 9, 1992

Mr. Chairman, members of the Committee, thank you for the opportunity to appear before you. On behalf of New Jersey's builders let me offer our appreciation for your sustained commitment to the shelter needs of the state's citizens. To my knowledge, yours is the first systematic review of the policies and programs which directly affect the adequacy and affordability of housing in New Jersey.

You have announced a broad agenda for this meeting. I will confine my remarks to the issues of fees. The NJBA is prepared to provide you with additional information on the other issues--including the recommendations of the Governor's Management Review Commission--at some subsequent date.

The NJBA has consistently supported the principle that the private sector should pay for those public services which are the direct result of business activities which will (or have the potential to) significantly affect the public health and safety. In supporting this principle, we note certain implicit-but critically important--corollaries, including: first, that the need for the regulation derive directly as a consequence of private sector initiatives; second, that the health and safety concern be inherent in the private sector's initiative, not superimposed upon it; third, that the regulations be

administered efficiently; and that the pricing of the service (i.e., the level of the fees) reflect only the true costs of the program (i.e., there should be no diversion of revenues or administrative "mark-up").

In focusing on the fee structure of the Department of Community Affairs (DCA), the Committee is touching on an issue that transcends all state agencies and has implications for the state's entire economy.

Fees are increasingly becoming a general revenue source; that is they are being utilized to finance the generalized activities of government, rather than applicant-specific services. This trend and all of its manifestations are wholly inconsistent with the principles of law and economics that justify fee financing in the first instance. Furthermore, in at least some instances, the shift from general revenue sources to fees is socially and economically perverse in that it shifts the financing of government onto the shoulders of those least able to afford it.

For the housing sector, this trend translates into diminished affordability and an increase in the number of households that are ill-housed or homeless. For the general economy, it diminishes competitiveness, impairs productivity and, perforce, reduces employment. This cannot be what policymakers intend when authorizing the imposition of fees.

I encourage the committee, therefore, to examine the broader implications of the reliance on fees to subsidize general welfare functions. You should pay especial attention to the role of the Department of Treasury and the use of appropriations bills to divert fee-generated revenues to unrelated purposes.

I will focus the remainder of my comments on three general topics:

- DCA's fee structure;
- DCA's role in supervising local fees; and
- Local administration of fee-financed activities .

1. DCA'S FEE STRUCTURE

In this age of "sunshine" and its presumption of almost unbridled access to public sector records, we would assume that it would be relatively easy to determine what fees are being charged, what revenues are being collected and the activities on which these resources are expended. Further, given the heightened sensitivity toward public accountability, we would assume that the financial reporting systems of state agencies would readily divulge this information in a readily digestible format.

Both assumptions are as fallacious as they are reasonable.

Some historical background for this statement: In mid-1989, then-Governor Kean certified the existence of an emergency and authorized the DCA to impose a retroactive fee increase--in some cases exceeding 100%-- for

the permit programs authorized by the Uniform Construction Code (UCC) Act. This action was taken in response to the emerging state's budget difficulties, not to any change in the policies, procedures or personnel associated with the UCC.

The NJBA, together with the League of Municipalities, instigated suit challenging the agency's action. Because the agency refused to release voluntarily the fiscal data relating to the affected programs, the first phase of our suit was directed at obtaining this data. As a matter of policy, the Department refused to release the information. The courts refused to grant an expedited hearing on whether the agency was required to release the information and the litigation died due to the agency's successful stonewalling.

Let me be clear: we were asking a public agency to provide us with an accounting of the revenues and expenditures of programs that we financed. We were denied that information and, to this day, have been unable to obtain a detailed accounting of the fee-financed programs.

Without such information, Mr. Chairman, neither we, nor you, nor anyone, can determine whether the current fee levels are reasonable. We simply do not know.

We can speculate, however. There is, as there has been for the past few years, language in the appropriations bill that authorizes the diversion of fee revenues away from the agency and into the Treasury's general accounts. There has been, over the past few years, a shifting of general administrative costs to the fee programs. There have been repeated increases in the fees without expansions of the program's statutory responsibilities. In light of these data, it is a reasonable inference that the fees exceed the costs of permit processing--and probably by a wide margin.

The DCA is not the Lone Ranger when it comes to fee fleecing. They are probably not responsible for the most severe transgressions. Indeed, we must commend the agency for its recent revisions to the premium structure of the New Home Warranty Program. Acting on the NJBA's recommendations concerning actuarial analyses, risk rating and reinsurance, the DCA has improved the soundness and safety of its warranty trust fund, while passing along savings to lower-risk builders.

If you look in the direction of the DEPE, you will find ready evidence of the diversion of fee-financed revenues--to the tune of millions of dollars over the past few years. You will also find recent proposals to increase significantly the fees that the DEPE charges and the way in which they intend to hike these fees in the future. On top of those actions, the DEPE recently promoted legislation granting them another \$700,000 increase in fees. These

are just a few examples of a bureaucracy that has come to use the State Register like Jesse James used a six gun--although admittedly to much greater effect.

Let me offer just a few recommendations for your consideration:

- **Require the preparation and publication of annual, independent financial audits of all fee-financed programs;**
- **Direct the conduct of an independent management review and restructuring, as appropriate, of all fee-financed programs (the GMRC was a good beginning, although little heeded by the agencies with which we are concerned);**
- **Require the privatization of reviews, with public oversight of the performance of the private contractors, except where there is compelling evidence that this would be imprudent (e.g., on the grounds of cost-effectiveness or performance adequacy);**
- **Cap the potential of agencies to increase fees without the Legislature's approval and require that approval in an instrument other than the annual appropriations bill;**

- **Expressly limit the activities for which fees can be charged to those directly associated with the discharge of the legislative purpose (e.g., application reviews, on-site inspections);**
- **Prohibit agencies from instituting new fee-financed programs without legislative authorization;**
- **Establish a reserves policy to enable fee-financed programs to "flatten" cyclical swings in their income stream.**

2. LOCAL OVERSIGHT

The DCA is charged with responsibility for superintending local administration of building activities pursuant to the UCC. It is also responsible for fiscal oversight of municipal governments. (To be clear, I am on record on the need to transfer this function.)

The UCC makes clear that the fees collected by local building departments for the review and inspections of construction activities are to be used exclusively for the administration of those departments. There is to be no subsidization—directly or indirectly—of activities outside of the building

departments by these funds. We know, however, that such subsidization occurs.

Historically, the DCA has not been attentive to its responsibilities in this sphere. Indeed, it was only when the NJBA forced the issue that the DCA adopted regulations establishing procedures for the dedication and accounting of building fee revenues.

In an exchange of correspondence between ourselves and the former Commissioner, we have been informed that the Department believes that it is still too early to enforce those regulations. Further, they apparently are taking the position that they lack the resources to do so!

Mr. Chairman, my members cannot pick and choose the laws and regulations that they will obey. They cannot take their customers money and refuse to deliver a product or service. How is it that our public sector entities are allowed to do so?

Among the recommendations that we would advance to address this malfeasance would be:

- Early passage of A-1475, the legislation which would reorganize the current DCA and reassign its non-housing

functions to other, more appropriate agencies;

- A statutory requirement for the appropriate agency to produce and implement an audit plan relating to local building code activities;
- Amendment of the UCC to provide expedited procedures for the appeal of local fees.

3. LOCAL ADMINISTRATION OF FEE-FINANCED ACTIVITIES

Some municipalities rely on third party agencies (TPAs) to conduct their building code functions. In other words, they contract out a portion, or all, of their inspection and review responsibilities to licensed agencies.

Under the UCC, when a municipality engages a TPA, it is required to pay that TPA at the same rate that the DCA charges when it acts as a local building code official (which it does in about 40 municipalities). The municipality is authorized to mark-up the rate by an additional fifteen percent (15%) to cover its administrative costs.

This means that the TPAs' rate does not reflect their costs and is not the result of competitive bidding. Instead, it reflects the DCA's costs where

the DCA is very clearly acting in abnormal circumstances (i.e., it is involved in fewer than 10% of all municipalities). Privatization without competition is like a Hershey's bar without chocolate--simply nonsensical.

Mr. Chairman, we recommend that the Committee report pending legislation amending the UCC to de-couple the TPA's rates from those of the DCA.

A second major issue to which we would call your attention relates to the management of escrow accounts at the local level. By law, builders must post cash escrows to cover the anticipated costs of plan reviews, inspections, etc. These escrows are administered by municipalities but the disbursements are typically made to professional consultants (e.g., planners, engineers) who perform the reviews or inspections.

Because these monies are not the municipalities' own, there is no strong incentive for the locality to monitor them closely. Indeed, given the multiplicity of other demands on the local entities' staffs, there are incentives for them to focus their attention elsewhere. This is a situation ripe for abuse.

There are not, currently, standards governing these escrow accounts. There is not adequate guidance concerning accounting procedures, documentation of services, invoicing, dispute settlement, etc.

Mr. Chairman, this is an area to which early attention should be given. The number of complaints that we receive concerning abuses of escrows is rising and my guess is that we are aware of only the tip of the iceberg.

Legislation addressing many of the issues relating to the administration of escrow accounts is pending introduction and should be before the committee forthwith.

Mr. Chairman, as I noted at the outset, the NJBA commends your continuing attention to the issues which inhibit our ability to provide New Jersey's citizens with adequate, affordable shelter. Thank you.

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NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION

Statement

of the

New Jersey Business and Industry Association

before the

Assembly Housing Committee

by

Alexander Ellwood

on the

Uniform Fire Code

November 9, 1992

34x

Good morning Mr. Chairman and members of the Assembly Housing Committee. I am Alex Ellwood, Coordinator, Federal and International Affairs, New Jersey Business and Industry Association. On behalf of NJBIA's 13,700 member companies, I would like to outline for you the Association's position on the State's Uniform Fire Code and suggested reforms.

Since its implementation, NJBIA has received a number of comments from our members regarding the Uniform Fire Code. The complaints have come from large and small businesses alike throughout the State but are similar in content. The complaints reflect a great deal of frustration on the part of business owners. From these accounts it is plain that there is a great deal of confusion on both sides of this issue. This uncertainty has apparently cost businesses in New Jersey a great deal in fees, fines, paperwork, and lost productivity.

The apparent problem with the Fire Code is twofold: 1) There seems to be no uniformity between municipalities as to what constitutes a violation; and 2) the Code itself is worded so vaguely as to be subject to a wide range of interpretations. The result has been that a number of New Jersey businesses have been assessed large fines that might have been avoided, or worse, unwarranted. Businesses are also inadequately informed of their right to appeal a decision.

In NJBIA's view, much of the problem stems from the fact that enforcement of the Code appears to have strayed from the original intent of the enabling legislation. The three statutes behind the Fire Code are "The Uniform Fire Safety Act" (P.L. 1983 Ch. 383), "The Bureau of Fire Safety and

Fire Safety Commission" (P.L. 1983, Ch. 382) and "The State Uniform Construction Code Act" (P.L. 1983, Ch. 496).

The Uniform Fire Safety Act was "remedial legislation necessary to protect life and property within this State from the danger and destruction by fire and explosion and shall be liberally construed to effectuate these purposes." The Bureau of Fire Safety and Fire Safety Commission legislation set up the advisory and administrative body to assist the Commissioner with implementation of the Fire Code.

The State Uniform Construction Code Act amended and supplemented the 1975 State Uniform Construction Code Act and directed the Commissioner of the Department of Community Affairs to adopt individual subcodes as part of the State Uniform Construction Code. These subcodes include the fire prevention code.

Most of today's regulations stem from the "Uniform Fire Safety Act." This law stated three primary objectives.

- 1) all areas of the State are protected by a uniform, minimum fire safety code which will protect the lives and property of its citizens;
- 2) uniform, thorough and adequately funded fire safety inspections protect the public whenever buildings which pose a serious life safety hazard are found;
- 3) penalties for violators are both swift and commensurate with the gravity of the offense. The bill delegates all responsibility for implementing these standards to the Commissioner of the Department of Community Affairs.

Under this aegis, regulations have been adopted that, although they do not conflict with the legislation, they have placed a disproportionate burden on the sector - business- which historically has had the best record of fire safety.

- Most buildings are required to register once a year. There is a fee schedule ranging from \$58 to \$2,070 per year.
- Permit fees range from \$29 to \$1,150. Seventy percent of the fees are then given back to the municipalities for enforcement of the code.
- Enforcement varies by municipality. Some pay their inspectors on a straight salary, some by the hour, and still others by each inspection.
- The schedule for fines is less stringent and allows for some reductions if code compliance is achieved within a short period of time. However some fines can range as high as \$5,000 per violation per day.
- One hundred percent of the fines assessed for non-compliance are returned to the municipalities also for enforcement.

None of the registration fees or even the municipalities' widely varied enforcement mechanisms were created by the legislation. They were a result of a liberal interpretation of vague statutory language.

At the same time the Fire Code has done little to ensure fire safety in the State. In fact the Code focuses on the sector of New Jersey which has traditionally had the best fire safety record. The New Jersey Bureau of Fire Safety's figures show that very few fire deaths and injuries in this State have resulted from commercial structures fires. In 1987, for example, 166 of 173 civilian fire deaths were due to residential or automobile fires. Most fires

occured between midnight and 4 a.m. and most victims were under 10 years old or over 70. In other words, 96 percent of fire deaths were **unrelated** to business. The most recent fire safety statistics bear this out. In statistics published by the Bureau of Fire Safety, 122 out of 128 fire deaths in New Jersey during 1989 were the result of non-business fires. However, the area where the highest number of deaths occur, one- and two-family dwellings, remain exempt from the Code.

Another issue which arises regularly, is the expansion of the "life hazard use" definition to include a new series of businesses and structures. Each year a new class of structure is added under the jurisdiction of the Code as a "life hazard use." The most recent addition was hardware stores. It is difficult to believe that structures that were not deemed life hazard uses in 1985, 1987, 1989 or 1991 should now be so. Given these problems and the effect that they certainly have on local businesses, now is a good time to correct them by wording the statutes more stringently.

I would therefore suggest that the following steps be taken through legislative action:

- 1) Provide a model enforcement mechanism with adequate appeals notice, uniform standards and pay structures for municipalities as well as realistic fee schedules.
- 2) An assessment should be made as to whether the registration fees are reasonable. Reports by agencies which underwrite facilities in the State suggest that they are not.
- 3) Individuals should also be aware of their right to appeal. This could be accomplished by requiring inspectors to provide this information upon contact. A one-page notice is adequate and cost-effective.

4) Unless an imminent hazard exists, buildings constructed before 1975 should be grandfathered.

Thank you for this opportunity to testify. NJBIA looks forward to working with the Legislature to make the Code a more reasonable and workable one.

STATEMENT BY WILLIAM G. DRESSEL, JR.,
ASSISTANT EXECUTIVE DIRECTOR,
NEW JERSEY STATE LEAGUE OF MUNICIPALITIES, BEFORE THE
ASSEMBLY HOUSING COMMITTEE CONCERNING
DEPARTMENT OF COMMUNITY AFFAIRS
OPERATIONAL METHODS AND FEE STRUCTURES

MONDAY, NOVEMBER 9, 1992
10:00 A.M.
COMMITTEE ROOM 5
LEGISLATIVE OFFICE BUILDING
TRENTON, NJ

THANK YOU, CHAIRMAN KELLY. THANK YOU, MEMBERS OF THE COMMITTEE.
MY NAME IS BILL DRESSEL AND I AM THE ASSISTANT EXECUTIVE DIRECTOR
OF THE NEW JERSEY STATE LEAGUE OF MUNICIPALITIES. THANK YOU FOR
GIVING ME THE OPPORTUNITY TO APPEAR BEFORE YOU, HERE TODAY, TO
DISCUSS THE OPERATIONAL METHODS AND THE FEE STRUCTURES OF OUR
STATE'S DEPARTMENT OF COMMUNITY AFFAIRS.

AS YOU KNOW, DCA WAS EXPRESSLY CREATED TO ASSIST LOCAL GOVERNMENTS
IN THEIR EFFORTS TO IMPROVE THE LIVES OF THEIR CITIZENS. THE
DEPARTMENT WAS CHARTERED TO BE A TOOL -- ON TAP, NOT ON TOP -- FOR
THE USE OF LOCAL OFFICIALS ALL AROUND OUR STATE. WHEN FUNCTIONING
PROPERLY, DCA DOES NOT IMPOSE UNIFORMITY. RATHER, IT ASSISTS IN
AND ENCOURAGES DIVERSE SOLUTIONS TO THE PROBLEMS CONFRONTING OUR
VARYING MUNICIPALITIES. IT RECOGNIZES AND RESPECTS THE FACT THAT,
THOUGH LOCAL OFFICIALS MUST BE PERMITTED TO CHANGE THE DIRECTION OF
THEIR FUTURES, THEY ALL SHARE A COMMITMENT TO QUALITY.

ON OCCASIONS, HOWEVER, DCA HAS FORGOTTEN WHY IT WAS CREATED AND WHAT ITS SPECIFIC MISSION ENTAILED. ON THOSE OCCASIONS, THE LEAGUE HAS COME TO YOU. AND, TO YOUR CREDIT, THE LEGISLATURE HAS RESPONDED.

MY SPECIFIC MESSAGE TO YOU TODAY IS A MESSAGE I'VE OFTEN REPEATED. IT CENTERS ON TWO BASIC ISSUES OF FISCAL FAIRNESS. THE FIRST IS STATE PAY FOR STATE MANDATES. THE SECOND IS PROPERTY TAX RELIEF.

IF AN ACTION TAKEN BY A STATE AGENCY FORCES A LOCAL UNIT TO INCREASE ITS EXPENDITURES, IT IS AN UNFUNDED STATE MANDATE. FURTHER, IT DIMINISHES THE EFFECTIVENESS OF THE PROPERTY TAX RELIEF INITIATIVES ENACTED BY THIS LEGISLATURE.

IT IS NOT, AND IT SHOULD NOT BE, THE RESPONSIBILITY OF LOCAL PROPERTY TAXPAYERS TO SUPPORT ANY STATE LEVEL BUREAUCRATS -- LEAST OF ALL THOSE AT THE DEPARTMENT OF COMMUNITY AFFAIRS.

THERE ARE, AND THERE ALWAYS MUST BE, A LIMITED NUMBER OF PUBLIC DOLLARS. THOSE DOLLARS NEED TO BE PUT TO PRODUCTIVE USE. LET'S KEEP THE PROPERTY TAX DOLLARS IN THE TOWNS AND COUNTIES AND SCHOOL DISTRICTS, WHERE THEY WERE COLLECTED AND WHERE THEY BELONG.

THANK YOU, MISTER CHAIRMAN. I'D BE HAPPY TO TRY TO ANSWER ANY QUESTIONS.

M E M O R A N D U M

November 6, 1992

TO: William Dressel, N.J. League of Municipalities

FROM: L. Mason Neely, Chief Finance Officer *JMN*

RE: Department of Community Affairs Uniform Construction Fees

Illustration No. 1: The State has raised the Uniform Construction fees consistently over the various years. We have sent letters asking for support and justification for the increased fees. We were informed they had not conducted a feasibility study nor a justification schedule demonstrating that fees established have any relationship to the cost of providing the service.

Illustration No. 2: The Division of Codes and Standards requires that every municipality justify fees based upon the level of service provided and that fees directly relate to the cost of the service.

Illustration No. 3: The State requires a surcharge on every permit issued by the Township. That surcharge was to fund educational courses to improve and develop quality inspectors. Initially, those local fees were used to reimburse the inspectors for the courses they attended. Subsequent, they have continued to increase the surcharge (more then doubled) and they now keep the money to fund programs without reimbursing local government who generate the money.

Illustration No. 4: Recently adopted elevator fees are another example of requirements for local construction. There was basically no problems with regards to elevators through the inspection and certification program. The State now has changed their administrative procedures regulation to require a certified Sub Code Official, ie. an elevator sub code official. This has increased the cost of inspections, the cost of government and the number of employees.

Illustration No. 5: Recall the whole concept of Dedication by Rider. There was a number of meetings dealing with dedication by rider. Everytime we had a meeting we thought there was some agreement and then regulations would come out contrary to what was agreed upon. The end result is that the Local Finance Officer and the Construction Official have to certify each year a report to the State on how the funds were used, how much was collected and the balance that remains. In the meantime, the State serves as inspecting agency for a number of local communities and there is no similar reporting structure on the utilization or justification of those fees by local community.

Illustration No. 6: A Final illustration deals with the computer processing of permits. You may recall initially we made suggestions on how to economize for local government through use of computers. The State rejected our approach and developed their own system contrary to what was established by local governments. Now they are mandating through administrative procedures that local governments utilize their system and those communities that issue more than 600 permits in a year report electronically. This is irrespective of what type of data processing systems were developed locally, when there was a "void" caused by the State doing nothing.

I hope some of these short thoughts are helpful.

LMN/lk
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cc: File

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NEW JERSEY FIRE PREVENTION AND PROTECTION ASSOCIATION
 POST OFFICE BOX 4216, HIGHLAND PARK, NEW JERSEY 08904 (908) 572-1996



August 27, 1991

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SAMUEL A. MAGLIONE (1982-88)
 Fire Director (Ret.)
 Orange Fire Dept.

Mr. William Dressel
 Assistant Exec. Director
 NJ State League of Municipalities
 407 West State Street
 Trenton, NJ 08618

Re: DCA Proposal No: PRN 1991-396

Dear Bill:

Following up our telephone conversation last week, I have enclosed a copy of the above-captioned DCA proposal as it appeared in the August 5th NJ Register. The proposed regulations seek to raise the annual life hazard use fees 20% and would greatly expand the scope of occupancies classified as life hazard uses to include all factories and warehouses (containing combustibles) greater than 12,000 square feet.

I have discussed the proposal at length with members of our Executive Board, and we have some serious reservations. Our immediate concern lies with the DCA circumventing the established Fire Safety Commission and its Codes Advisory Council, comprised of a significant number of local government representatives. I recently received a letter from Commissioner Prinas on another matter outlining emphatically the Department's procedure for rulemaking, which he affirmed includes review and comment by both bodies. This proposal had absolutely no input from either group; the Fire Commission Vice Chairman, incidentally, is the League's member.

Another primary concern is the ever-increasing state 'take' out of the life hazard use fees. At first, the

...cont'd...

1962 — OUR 29th YEAR — 1991

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Mr. William Dressel
August 29, 1991
---page 2---

Fire Safety Element rebated 80% of all life hazard use fees to those local enforcing agencies making life hazard use inspections. Several years ago, the Department increased the registration fees 15%, and subsequently increased their portion of the fee from 20% to 30%, a 50% increase. That proposal was not widely opposed because local agency revenue did not decrease due to the higher overall fees, and no added workload was imposed. Here, in 1991, they propose still another 20% increase in the fees, while hiking the DCA share from 30 to 35% for doing little more than collecting the money.

While crunching the numbers surrounding the increase, some very interesting facts emerge. First, the proposal summary correctly points out that local agency revenue will increase 11% as a result of the increase. What they fail to mention is that for every \$1.00 realized by a municipality as a result of the hike, the DCA will reap \$1.00 - again, for doing nothing. Department revenue goes up 40% from this increase, as compared to 11% for the LEA, who are responsible for all inspections and enforcement actions, and are even required to go out and register the businesses.

The Uniform Fire Code is a product of the Uniform Fire Safety Act, NJSA 52:27D-192 et seq, which in its purpose provides for "uniform, thorough and adequately funded fire safety inspections" to protect the public. Section 52:27D-201(f) of the enabling legislation mandates that the Commissioner appropriate "all moneys which the commissioner shall receive in the form of fees and for penalties for failure to register...to the department to pay for the cost of enforcing this act." Nowhere in the Act is there authorization to fund the firefighter instructor safety courses, the Citizen's Alliance for Fire Safety, the fire incident reporting system, the Public Education Unit and firefighter training regulations and courses - these all fall well outside the scope of the Act, yet are being piggybacked onto the life hazard use registration fees. Businesses are

...cont'd...

Mr. William Dressel
August 27, 1991
---page 3---

being taxed (as much as \$3,250.00/year as proposed) in the guise of code enforcement to fund a voracious state bureaucracy not remotely related to code enforcement.

The proposal also seeks to broaden the scope of facilities classified as life hazard uses. While our Association does not object to this in principle, we feel the proposal should be withdrawn and submitted to the Codes Council and the Fire Commission for further study. No analysis has been presented regarding the effect of this proposal on existing LEA's. Many communities may now be faced with hundreds of additional state-mandated inspections (and subsequent reinspections), and, given the current economic climate, many local agencies will not be given sorely-needed staff for the new workload.

For example, a medium-size community with 100 small factories and warehouses would immediately be confronted with 100 initial inspections annually, nearly the same number of follow-up visits, plus the administrative time involved in registering the uses, issuing notices and certificates, and initiating complaints. These tasks would require the equivalent of a half-time inspector, yet the LEA would receive only \$13,500 in rebates under the proposed formula. All expenses considered, this falls far short of what is needed, assuming the municipality would even consider adding personnel in this era of layoffs. Also, how can they charge a small funeral parlor more than a 24,000 square foot factory for registration escapes me - or is a funeral parlor a life hazard use to begin with? At the Code's inception, the Codes Council determined they were not.

Finally, the Fire Safety Act permits the DCA to allow local agencies to collect the life hazard use registration fee, and then remit the state portion to the Department. Since the LEA's are being ordered now to register the life hazard uses by the state, and since the DCA does not permit the LEA to issue a

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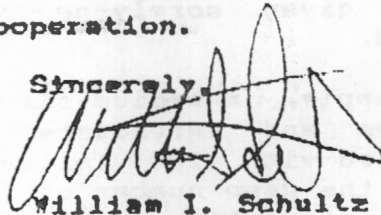
Mr. William Dressel
August 27, 1991
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civil penalty for failure to register, why doesn't the DCA permit local agencies to collect the fees and to issue penalties for registrations, and remit only a smaller, adjusted percentage - say 10%? This would enable the Department to scale down its bureaucracy and replace it with what is effectively a local function now.

I fear that the code enforcement system is going to suffer a severe blow if these annual fees and the DCA bureaucracy are not kept in check. Asking communities to do more inspections with limited staff may break the backs of many LEA's. My only suggestion is that this proposal be withheld from adoption pending further review and comment by the Fire Commission and the Codes Council, the very people that will be doing the work upon adoption.

Thank you in advance for your cooperation.

Sincerely,



William I. Schultz
President

WIS/

encl.

cc: Gov. James Florio
Sen. John A. Lynch
Sen. Carmen A. Orchio
Assemblyman Joseph.V. Doris, Jr.

