

P U B L I C H E A R I N G

before

ASSEMBLY AGRICULTURE & ENVIRONMENT COMMITTEE

on

ASSEMBLY CONCURRENT RESOLUTION, NO. 116

(Proposes an amendment to the Constitution to extend the time
limit for the assertion of certain State riparian claims)

Held:
June 18, 1982
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Raymond Lesniak (Chairman)
Assemblyman Anthony S. Marsella

ALSO:

Norman Miller, Research Associate
Office of Legislative Services
Aide, Assembly Agriculture & Environment Committee

Michael F. Catania, Supervising Research Associate
Office of Legislative Services

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[OFFICIAL COPY REPRINT]
ASSEMBLY CONCURRENT RESOLUTION No. 116

STATE OF NEW JERSEY

INTRODUCED MAY 20, 1982

By Assemblyman LESNIAK

A CONCURRENT RESOLUTION proposing to amend Article VIII,
Section V of the Constitution of the State of New Jersey.

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey (the Senate concurring):*

1 1. The following proposed amendment to the Constitution of the
2 State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

3 Amend Article VIII, Section V by adding the following para-
4 graph numbered 2:

5 2. The Legislature may enact laws to "[provide for the total or
6 partial exemption of any land whereupon a residence has been con-
7 structed from the assertion of any]" **establish the criteria by*
8 *which consideration shall be fixed for a grant or lease of any land*
9 *subject to** riparian claim **asserted** by the State **pursuant to law.*
10 *In establishing these criteria, the Legislature may differentiate*
11 *between properties which are being utilized for different purposes.*
12 *The consideration fixed pursuant to the criteria established by the*
13 *Legislature may be less than the fair market value of the State's*
14 *interest, or nominal*.*

1 2. When this proposed amendment to the Constitution is finally
2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
3 it shall be submitted to the people at the next general election
4 occurring more than 3 months after such final agreement and shall
5 be published at least once in at least one newspaper of each county
6 designated by the President of the Senate and the Speaker of the
7 General Assembly and the Secretary of State, not less than 3
8 months prior to said general election.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted June 14, 1982.

1 3. This proposed amendment to the Constitution shall be sub-
 2 mitted to the people at said election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at such
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 a legend which shall immediately precede the question, as follows:

8 If you favor the proposition printed below make a cross (X),
 9 plus (+) or check (V) in the square opposite the word "Yes."

10 If you are opposed thereto make a cross (X), plus (+) or check
 11 (V) in the square opposite the word "No."

12 b. In every municipality, the following question:

	Yes.	<p style="text-align: center;">RIPARIAN LANDS</p> <p>Do you approve the amendment to Article VIII, Section V, of the Constitution, which adds a new paragraph 2 which authorizes the Legislature to enact laws *[providing for the total or partial exemption of land where a residence has been constructed from the assertion of a riparian claim by the State]* <i>*(1) to establish the criteria by which consideration shall be fixed for a grant or lease of any land subject to the assertion of a riparian claim by the State, which consideration may be less than the fair market value of the State's interest, or nominal; and (2) to differentiate, in establishing these criteria, between properties which are being utilized for different purposes*?</i></p>
	No.	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>The approval of this amendment would allow the Legislature to *[provide, by law, that land on which a private residence is located would be totally or partially exempt from the assertion of a riparian claim by the State]* <i>*establish the basis for setting the prices at which the State may convey its interest in land it claims as riparian. These prices may be less than the fair market value of the State's interest, or nominal, and may be different for land used for different purposes in recognition of the burdens which may be imposed on certain classes of landowners affected by State riparian claims*.</i></p>

ASSEMBLYMAN RAYMOND LESNIAK (Chairman): I would like to call to order the public hearing before the Assembly Agriculture and Environment Committee, on ACR-116. Have the proper notices been sent out?

MR. MILLER: Yes.

ASSEMBLYMAN LESNIAK: We will call the first witness, Commissioner Hughey. It is good to have you here, Commissioner, with your summer suit and nice tan. In fact, you appear to have been out in the environment and enjoying it.

COMMISSIONER ROBERT HUGHEY: Assemblyman, I appeared before your Committee a couple of weeks ago, when we were talking about potential Constitutional Amendments which would address the riparian questions that have been raised in recent weeks, since the adoption of the maps by the Department -- and I think before that, really.

At that point, I think we had some basic disagreements, which really weren't disagreements; they were a matter of not having all the facts in front of both your Committee, and, perhaps, my Department.

But, since that time, I think we have focused in on the main ingredients, or the main problems, that are being created by the adoption of the Riparian maps. Your Committee, my Department, and, I believe, the Governor and certain members of the Senate, have reached a conclusion with a proposed Constitutional amendment that will send back to the Legislature the question of values across classes of properties -- residential, commercial, and industrial. I think the Amendment addresses the crux of the problem as we have seen it arise -- as it has become a people problem. I support the Amendment, which has been reported out of your Committee -- or is about to be reported out of your Committee -- and has been discussed in the Senate.

ASSEMBLYMAN LESNIAK: It has been reported out.

COMMISSIONER HUGHEY: Okay.

ASSEMBLYMAN LESNIAK: Thank you, Commissioner. I

really have no questions. I think the questions are going to be for the Legislature to ask. I think it is going to be a very difficult process that we are going to have to go through. I would imagine -- my concept and idea is -- that it ought to be done by some form of a commission, because to distinguish amongst classifications of property is very complex. The rights of individuals are certainly controversial and very complex.

The intent of this Resolution was to give the proper relief where it is deserved, and not to let speculators, if you will, or trespassers, with notice, off the hook for what they have done to riparian lands. The good faith purchasers, without notice -- homeowners -- ought not to be burdened with riparian claims. At the same time, there may very well be instances where the State should, ought to, and must claim the full market value, and I think this Resolution would afford the Legislature the opportunity to do that.

COMMISSIONER HUGHEY: There is no question that it puts an awesome responsibility on the Legislature -- I guess where it properly belongs. I think the Legislature can make the distinguishing changes that are required in terms of how the properties are evaluated. I think it really accomplishes two purposes. First of all, it provides equality in a system where, right now, that is a questionable item. And, the second thing it can accomplish is that perhaps the same Commission of the Legislature could address a whole range of riparian problems that have arisen over the years with regard to leases and grants.

I think the only way you can do that _____ and do it successfully is to become informed, as the Legislature most certainly will be, on the riparian questions after this Amendment.

ASSEMBLYMAN LESNIAK: Okay. I only wish they were

a little more informed last October when they voted on it.

COMMISSIONER HUGHEY: Yes, I sort of do too.

ASSEMBLYMAN LESNIAK: I voted against it. Thank you, Commissioner.

COMMISSIONER HUGHEY: Thank you.

ASSEMBLYMAN LESNIAK: Is Senator Dickinson here?

(affirmative response) It is an honor for us to have you before us, Senator. You may have some problems with this Resolution.

F A I R L E I G H D I C K I N S O N, J R.: Yes, sir. This is quite brief, and it obviously is at variance with the opinion of many. My name is Fairley S. Dickinson, Jr. I live in Ridgewood, New Jersey. I have been a lifetime resident of Bergen County. Approximately ten years ago, I was a State Senator from Bergen County. At that time, I was particularly interested in the reclamation and orderly development of the Meadowlands. I was, perhaps, the prime mover in passing legislation which led to the Meadowlands Development Commission for the Hackensack.

During that time, I became extremely interested in the question of Riparian Rights of the people of New Jersey. I am here today because I have been deeply concerned about the quality of education in New Jersey. It is my belief that the legislation presently before you will have a permanently negative effect on New Jersey's ability to provide quality public education.

My remarks are not being made as a lawyer, because I am not one, but as an interested citizen. The issue of riparian land is directly related to the issue of public financing of education in New Jersey. It is my opinion that the riparian lands have always been a key resource -- that is, since the founding of the Republic -- for the funding of public education, and they continue to be so today.

I feel that if we do not act carefully, deliberately, and intelligently on this matter, we will, inadvertently, sell the next generation of school children down the river.

And, we would default on our own moral obligation, if you will, to provide quality public education to the very people on whom, one day at a time not far distant, we will greatly depend.

It is my purpose here today not to argue the merits or past inaction or past action, but to restate the knowledge acquired from highly-competent testimony of Dr. Stanislav Willits, who is Chairman of the Economics Department of Columbia University, and of Dr. Sidney Charles Wolf, Professor of Finance at Columbia University, and an authority on the financing of municipal bonds -- and this is in litigation which was instigated by me. Knowledge of this testimony is needed to understand the issues concerning riparian lands, and will be made available to you all, gentlemen, promptly, on request.

I have learned to my complete satisfaction that predictions can be made with a high degree of authority and accuracy. It is, for example, quite possible to state that, based on every expert opinion of which I now know, that the next shortage of school space will occur in the late 1980's. By the mid 1990's, this shortage would be, by any standards, acute, grievous, and hard to bear, even assuming the responsibility traditionally carried by our citizens.

The same problem will occur in the years 2000 and 2015. Certainly, these matters trouble me deeply, and I am sure many, including you gentlemen, will feel the same way. The hurt will be felt by all youngsters of New Jersey who are dependent upon public education, but most heavily and disproportionately by inner-city youngsters.

Parenthetically, I am not here as an advocate of public interest versus property rights, but only to suggest that the schools are obsolete and in greater need of attention in such places.

Obsolescence of school facilities will be the greatest in the inner-cities, where the need for education is greatest and the resources available to finance such education is most

limited. I will not discuss, but will mention, that the burden resulting from a decrease in the funding of education from the sale or other disposition of riparian lands will fall most heavily on minorities, ethnic groups, and the poor who live in the inner-cities.

The school fund of New Jersey is a trust fund which few administrations have utilized to its potential. This statement is not made, parenthetically, as a criticism of the present administration, nor the previous one, but of most, if not all, since the time of Governor Marcus Ward in the days of the Civil War. When Governor Ward addressed the Legislature, he suggested that the school fund should be treated as a trust in the full sense of the word, and the proceeds of this trust should be used for free public education. These thoughts are as true today as they were one hundred years ago.

This is not a time for "quick fixes" or cure-all solutions, but a time to carefully weigh the future needs of public education in the State of New Jersey. Your decision will affect youngsters presently attending our public schools and unborn generations of children to whom we have a moral obligation.

I have asked Mr. E. Carter Carston and his colleagues at the firm of Breslin and Breslin to provide, should you wish it, testimony and documentation in support of these stated facts.

In conclusion, it is my opinion that the proposed bill should not be passed because its enactment would be detrimental to the goal of providing quality education to the present and future generations.

Parenthetically, last night -- and this was an oddity -- Betty, my wife, was looking through old papers at home and she found a document which was signed by Governor Myner, George Smith, of Johnson and Johnson, and me, as, respectively, Chairman

and Co-Chairman of a committee to study the matter of riparian lands and the treatment of tidelands and the question of riparian rights. The document said: "I cannot concede the argument advanced by some, that the State is acting unreasonably in asserting a claim to the lands. My investigation has convinced me that the Constitution of the United States, as well as that of New Jersey, permits no other course. Just as commissions of the State Legislature, beginning with the Haines Commission, some twenty-odd years ago, concluded, the Legislature cannot constitutionally extend or limit the ownership by the State of riparian lands." Now this, to be direct, was referring to an act of the Legislature and not to a Constitutional amendment.

"Any act which has, as its effect, the deprivation of land or other assets dedicated to the school fund without adequate consideration is wrong and will ultimately be declared void."

Parenthetically, I have left out any question of the conservation issues because I understand that somebody is going to speak to those issues, which I know are very close to all of you.

I have not discussed the legal matters, which I know have caused a lot of heat, a lot of worry, and a lot of trouble. But, the material which is behind what I have said is available to you. Personally, I don't think that the State of New Jersey, because it has a right or a duty, need act like the Spanish Inquisition, as I said to someone today, but should act reasonably, and it can do so if it takes the time to set up the basis on which such actions can take place.

I am willing to give you any time that you might wish, gentlemen, but I have nothing to add now, and I certainly appreciate your time.

ASSEMBLYMAN LESNIAK: Senator, if I may, I have some of the same concerns you have. A former proposal that I made

regarding giving the State the opportunity to exercise its legitimate claims throughout the State did not find support in the Legislature. This remedy is somewhat dangerous if it is abused by an irresponsible Legislature. I would hope, expect, and pray that that doesn't occur.

Without this remedy, however, that concern that we both have -- and that all of us have -- for public education will be shared by homeowners, many of whom will be severely impacted, if not, in some cases, destroyed by the fact that the State is exercising a claim to property that they have purchased for a value, without notice of this claim, in good faith.

So, this remedy -- I happen to think -- although somewhat dangerous, is the only avenue that we have available to us, because without it not only would peoples' properties be lost to them in many cases, but they would not be able to sell their property unless they purchased, for full market value, the riparian grant.

With regard to the environmental aspect, I don't see how this amendment -- I saw how the other amendment, which I voted against, brought us to where we are today -- impacts at all on the environmental aspect of this problem.

There was a Constitutional amendment proposed in the Senate that would have required that the Tidelands Council grant to record owners the riparian claim, which I found to be one of the most reprehensible pieces of legislation I have ever seen in my five years in the Legislature. Thankfully, that is not moving -- at my insistence it is not moving. So, I think, at least in terms of the environmental concerns, we can be assured it is somewhat alleviated.

This deals with the economic aspects of it, and its relationship to the free public schools, and I admit there is a danger of a run-away Legislature, if you will. But, nevertheless, it is my opinion that it is necessary to protect

some people who could be severely impacted. Again, I hope, pray, and expect that the Legislature will, if this is passed, act responsibly in this respect.

MR. DICKINSON: I was aware of that, and I agree with you. I was sort of pleased that it didn't happen.

ASSEMBLYMAN LESNIAK: I would be screaming from the top of this building if that were moved -- and I did, almost.

MR. DICKINSON: I heard that you did. Also, Mr. Lesniak, I would like to say that in these matters judicial notice was taken of your position, as it was then known by any of us to be, with respect to the time frame in which these matters might be considered, and while this matter is still pending, I am kind of hesitant to say what a court would do. It would be safe to say that they considered what was proposed there to be a matter of considerable significance, and indeed there was testimony to the effect that it probably would be the best approach then in sight if it was extended one more year. Other than that, I think that someone more competent than I am would have to talk about the legal aspects, because I could truly easily put my foot in my mouth.

ASSEMBLYMAN LESNIAK: Thank you, Senator. I wish I had more people agree with me on that one. Thank you very much; I appreciate your testimony.

our next witness will be John McDermitt, Chairman of the Riparian Lands Committee of the New Jersey Title Insurance Association.

J O H N M c D E R M I T T: Good afternoon, sir.

ASSEMBLYMAN LESNIAK: Do you have a prepared statement?

MR. McDERMITT: No, I have not, sir. I am John H. McDermitt. I live at 2905 South Bay Avenue in Beach Haven, New Jersey. I am now in the private practice of law, and I was formerly connected with the insurance industry, as an attorney for a number of the different Title Insurance Companies, writing

business in this State. I appreciate the opportunity to address you, gentlemen, on the topic of the resolution that is pending before the Assembly as Number 116, and the companion Resolution in the Senate.

ASSEMBLYMAN LESNIAK: The hearing today is on ACR-116.

MR. McDERMITT: Fine. I should like to speak as an attorney who has spent the best part of the 32 years I have been in practice in real estate law. I have been involved with real estate conveyancing and real estate title insurance, and I would like to raise my voice in favor of this amendment to our Constitution.

This problem has been pending in the State for at least 22 years, since the State Highway Department versus Sisselman and Bergen County Associates, and it has progressed at a snail's pace towards resolution. And, with the amendment to the Constitution, passed last year, it has now reached the point where the public has begun to understand the broad scope of the estate claims.

Somebody much wiser than I am said that the law is not logic but human experience. You will hear a great deal about, in the testimony before you, the sacrosanct school fund. You will hear assertions, as you just did, that the riparian lands of the State are dedicated to the school fund. Such is not the law. There is another case that stands as law, and has for 60 or 70 years. It is the proceeds from the lands, and not the lands themselves which are so dedicated.

ASSEMBLYMAN LESNIAK: The lands themselves are to be held in public trust.*

MR. McDERMITT: They certainly are held in trust by the State for the benefit of the entire State.

If you go back a little further to Oliver Wendell Holmes, Jr., whom I just quoted, Jeremy Bentham, the 18th Century sociologist and philosopher, is the man who originated the concept that government exists for the greatest good of the greatest number. It is in meeting this claim of the public

*18A:56-5 provides: "All lands belonging to this state now or formerly lying under water are dedicated to the support of public schools...."

trusts' demand that there be equity for individual citizens of our State, who are entitled to equal protection - as well as the school children - that I believe this amendment begins to bring about a solution. It is impossible to define within the framework of a Constitutional amendment all of the problems involved in proving the extent of the land that is flowed by the tides.

Equally, it is impossible within the scope of this Amendment to consider the impact of the Wharf Act of 1851, and the settling which went on under that Act of many of what are now the urban areas of our State. The Back Bays of our State, from Sandy Hook -- in fact, from higher than Sandy Hook, from the Elizabeth River and south -- have always been subject, in the natural state, to the ebb and flow of the tide along streams, etc.

The Wharf Act was designed in 1851 to permit the use of that land, and it was in the urban areas that it was done -- the urban areas of Jersey City, Hoboken, and the other parts of the Port of New York, as well as Atlantic City -- a thriving, developing City at that time -- and Camden. The State has consistently refused to recognize those claims. It is in the areas such as Barnegat Bay and Great Bay where development since World War II has occurred, where riparian grants, in many cases, have been granted, and it is in both of these areas -- the urban areas, the Back Bays, Absecon Island, for instance, and the length of the Passaic River, from the Dundee Dam out to Newark Bay -- that literally thousands of parcels have been held in private title, and that have paid taxes from time almost immemorial. It is a very difficult thing to establish values, not only because of the quantum of land claimed by the State and the proofs in connection with its location, but also because there is such a gross inequity between the claim of a private owner - who has paid taxes for ten, twenty, or thirty years and who has suffered to be so assessed - and the claim of the State, who, for a one-time payment, acquires its title.

To my mind, to say that the school fund must be augmented, or that my great grandchildren, in 2,015, will not have schools, may be theoretically provable by a statistician, but you gentlemen and I have lived through a period of time when our school system throughout the State increased enormously in size, which prompted a great deal of large construction of grammar schools and regional high schools, and now we are seeing the pendulum swing the other way; there is a decreasing school population.

But, the problem of the public trust with regard to the school fund ought to be looked at in the framework of the taxpaying citizens, and in the framework of what it, in fact, yields to the school children and to the operation of our schools.

I can't quote precise numbers, but I analyzed this problem ten years ago, and the yield from the State School Fund to the schools was in the order of 90¢ to \$1.00 per child. Today, the Fund has risen to \$38 million dollars, after 160 years of existence. Call it \$40 million dollars and call the yield \$4 million in today's market. Yet, it is but a drop in the bucket, that \$1.50, \$2.00, or \$3.00 per pupil, against the \$1,500 or \$2,000 per pupil which is now being raised by taxing the very individuals whose titles are now being questioned.

ASSEMBLYMAN LESNIAK: It would be more than that if you consider the fact that the fund is also used to guarantee school bonds.

MR. McDERMITT: It may well be. I am not wise enough to comment on the leverage effect of the bonds, Assemblyman.

If there is any particular point I wanted to make, it is that the support of the public schools of this State comes from the taxpaying citizen, in far larger measure than it comes from the State School Fund.

The statutes talk about the tacit consent of the State, 120 years ago, and this is what creates -- to my mind -- the legitimate complaint by many of our citizens that that

tacit consent lured them into a position where their titles are now subject to attack and are unmarketable -- they cannot be conveyed.

I think that is as much as I want to say. I thank you for your time. I don't mean to trespass on other speaker's time.

ASSEMBLYMAN LESNIAK: I would just like to ask you a couple of questions. Do you have any idea of what percentage of -- just a real ball park guess -- the property owners would be covered by title insurance, at least to some extent? I know very few of them would be covered to the extent of the value of the property, but how many at least have title insurance where there is not a riparian exemption?

MR. McDERMITT: I would think, off the top of my head, in the neighborhood of twenty-five or thirty percent of the property owners -- private property owners, particularly. I have never made a count.

ASSEMBLYMAN LESNIAK: Right. I know, it is a difficult question to ask -- all of a sudden I am saying riparian exemptions on property and we didn't have that before. Thank you very much.

MR. McDERMITT: Thank you.

ASSEMBLYMAN LESNIAK: John Weigel. John, can you enter your statement into the record?

MR. WEIGEL: With one deletion. We thought the hearing was going to extend to both the Senate Concurrent Resolution and the Assembly Concurrent Resolution.

ASSEMBLYMAN LESNIAK: Okay.

MR. WEIGEL: We don't have any desire to read our statement into the record.

ASSEMBLYMAN LESNIAK: Okay. I would appreciate it if you would enter the statement into the record. If you want to summarize it, you are certainly welcome to do so.

MR. WEIGEL: That statement speaks for itself. Obviously,

we are in support of ACR-116.

ASSEMBLYMAN LESNIAK: Thank you. May we have a copy of your statement?

MR. WEIGEL: You have one.

ASSEMBLYMAN LESNIAK: Okay. Thank you.

(Complete statement of N. J. Land Title Association on page 1x)

C. Clinton Cooper, former Deputy Attorney General.

Where are you working these days?

C. C L I N T O N C O O P E R: In Hawthorne and Manahawkin.

By way of introduction, my name is C. Clinton Cooper, and I am an attorney at law in the State of New Jersey. I am a resident of Sparta in Sussex County, and I am a member of the firm of Rosenberg and Brower in Hawthorne and Mantoloking.

ASSEMBLYMAN LESNIAK: I have to say the same thing to you that I have said to everybody else. If you have a prepared statement, we would like you to enter it into the record and summarize it for us.

MR. COOPER: My problem is that it is prepared but it is not in duplicative form. It is only in my handwritten notes at this moment.

ASSEMBLYMAN LESNIAK: Okay. How long is it?

MR. COOPER: It is a little lengthy.

ASSEMBLYMAN LESNIAK: Could you please summarize it then because we are pressed for time?

MR. COOPER: Yes.

ASSEMBLYMAN LESNIAK: You can submit it later, by the way. We will hold the record open until Tuesday, at the close of the business day on Tuesday.

MR. COOPER: Fine. All right, thank you.

I think I would like to start by indicating that I think the current era of the tidelands question has arisen since the 1967 O'Niell decision by the State Supreme Court. In response to that decision, the Legislature of this State passed what has now become N.J.S.A. 13:1(b)-13.1, Et Seq.

It is interesting to note that during the time period from 1968 to the present, this legislative body has seen fit to extend the time within which the maps were to be completed on several occasions. At present, that statute requires the mapping to be completed by 1980. It has not been extended beyond that date.

ASSEMBLYMAN LESNIAK: But, at no time was there ever a period where if the mapping weren't done that the claims were to be cut off.

MR. COOPER: That's correct.

ASSEMBLYMAN LESNIAK: Until the Constitutional Amendment was passed last November.

MR. COOPER: It is also interesting to note that during the same interim period, the Legislature approved various DEP budgets, which earmarked approximately \$7 million for expenditures by the Office of Environmental Analysis with respect to the production of the maps, which have since been published in May of this year.

ASSEMBLYMAN LESNIAK: Are you for or against the Amendment?

MR. COOPER: Well, my purpose is to put certain information before this public body and before the citizens. I perceive it as being apolitical. I am not taking a side on the Amendment. I was unaware that Senator Dickinson was going to be here, and there was certain information pertaining to the law suit, which he has instituted in Bergen County, that I thought was pertinent. In particular, it was some of the testimony relating to the impact upon the school fund by the Constitutional Amendment itself.

It must be noted that Dr. Willis, who was referred to by the Senator, indicated that by the year 1995 the fund would not be able to support the outstanding bonds as of that date.

ASSEMBLYMAN LESNIAK: There is no doubt that the Constitutional Amendment that passed last November is going to have an impact on the School Fund. There is not going to be one hundred percent of the riparian property claimed by the State by November. I think that figure is somewhere around seventy percent, or thereabouts. In any event, the problem today is that we are discussing this legislation.

MR. COOPER: I understand that. The way I perceive this legislation is, unfortunately I think it pits the approximately four and one-half percent of the citizens of this State who would be subjected to riparian claims, unwittingly, against the other ninety five percent who are ultimately the beneficiaries of the trust fund. I don't perceive that as being necessary or appropriate. We have a very small percentage of people who will actually be affected by claims.

The individual impact on any one homeowner is difficult to ascertain at this time because of the questions of title insurance, good faith dealings with the property, payment of real estate taxes, and a variety of issues that must be addressed on a property-by-property basis.

So, in essence, what the Legislature seeks to do is to put legislation before the public which seeks to benefit a small group, potentially at the expense of a very large group -- that is the ninety-five percent of the people who are not subject to claims.

I think there is a definite need for legislation. I think there are very open avenues with respect to relief that can be afforded to the homeowners who fall into certain categories, and they don't have to be just residential categories. But, I think you have to look long and hard at the problem. I think it is inappropriate to pass legislation that allows the legislative body to deal with certain classifications without first defining the classifications anticipated.

I think that, in essence, what the Legislature seeks

to do is to put this before the public and ask them to rubber stamp, if you will, an opportunity for the Legislature to deal with the problem, without knowing the parameters within which they might deal with the problem.

ASSEMBLYMAN LESNIAK: That's wrong. I wouldn't use the word "rubber stamp." They are going to have to vote for it, and since it is my bill, I think I know my intent. But, that is essentially correct, we do not know, exactly, how we are going to deal with the problem. However, without having the authority to deal with it, it would be impossible, of course, to effectuate--

MR. COOPER: I would respectfully disagree that you don't have the authority. I don't mean to interrupt, but there is presently--

ASSEMBLYMAN LESNIAK: You just did.

MR. COOPER: I'm sorry.

ASSEMBLYMAN LESNIAK: If you want to address that legal issue, I would be glad to hear that. In any event, the problem is, if we don't act now we will be waiting until next November and there will be hardships wreaked upon people who will have claims on their property and they won't be able to pay them without paying full market value.

The one thing I do want to say about your analogy of four and one-half percent, or five percent, versus ninety-five percent is, the problem is one of degree. If that five percent is dramatically impacted and forced to suffer a hardship, we as a Legislature do not want to see that happen just to give either an insignificant or a minor benefit to the other ninety-five percent. So, your figure is impressive in one way, and in another way we wouldn't want to help destroy five percent to just give a minimal benefit to the other ninety-five percent either.

MR. COOPER: I'm not suggesting that you do. My figures of four and one-half percent come from press releases

from the Department of Environmental Protection.

ASSEMBLYMAN LESNIAK: I understand the percentage; I am just speaking about the impact.

MR. COOPER: Well, I perceive that what the legislation does may pit those two segments of the citizens of this State against one another, and I am suggesting that it should not. I am suggesting that, first of all, there are at least two legislative acts now that deal with the setting of consideration for riparian grants, both under Title 12 and under Title 13. I don't see why there must be a Constitutional amendment to allow this legislative body to amend acts which are already in existence. In particular, Title 13:1(b)-13.9 deals with the specifics of good faith, with the property under the color of title, and with the consideration of payment of taxes. All it says is that the Tidelands Resource Council shall consider those in setting the consideration for a grant. That Act could be amended to require certain set-offs for the payment of taxes and make certain things more mandatory on the Council, or whoever derives the consideration to be paid for the grant.

I am not of the legal opinion that a Constitutional Amendment is required to deal with various legislation that already exists, and that could be amended for the benefit of those people who are substantially impacted by the claims maps.

The one thing I would like to say in closing is, the perception that the public has at the moment is that the only avenue is to pay for a riparian grant. I think that is a gross misconception. The riparian claims are only claims, and merely that. The history with respect to the State's success is one of varying degrees over the last ten years. They certainly can litigate.

ASSEMBLYMAN LESNIAK: They can hire an attorney.

MR. COOPER: Well, they can hire an attorney; they can hire other experts. But, to the extent that they could litigate, there are areas where legislation could be passed

for their benefit also, certifying certin classes so that the expense would be nominal, certifying that no cost would be associated with litigation -- that is filing fees and so forth.

So, I think there are a variety of avenues that are open to the public, and I would just like the legislative body to consider, in depth, the variety of pieces of legislation, not only the particular bill we are discussing today but the various ones, and come up with some comprehensive legislation to benefit those people who are substantially impacted.

ASSEMBLYMAN LESNIAK: It is my opinion and the opinion of the Commissioner, and the Attorney General's office that a Constitutional amendment is needed for any type of remedy that we are interested in.

Mike, do you have a question?

MR. CATANIA: Mr. Cooper, are you familiar with the Atlantic City Electric Case?

MR. COOPER: No, I am not.

MR. CATANIA: Let me phrase the question a little differently then. Some of the case load seems to say that the Council, the Commissioner, and the Governor can convey lands below fair market value, but not so far below that it impairs the assets of the fund. In your opinion, what does that mean in terms of check-offs, or considerations of counsel -- or whoever is making that decision -- that can be made when they set the considerations for a grant?

MR. COOPER: Well, some of the things I think have suggested are, when you are dealing with a good faith purchaser who has acted under the color of title, payments of real estate taxes which might be pro-rated against the actual riparian interest on that land, I think, would be appropriate set off, and I don't think the public body as a whole would have difficulty in dealing with that or approving it.

ASSEMBLYMAN LESNIAK: But, would you think an appropriate

set-off would be a nominal consideration for that?

MR. COOPER: Well, the problem with nominal consideration as a--

ASSEMBLYMAN LESNIAK: Forget about appropriate, would it be constitutional?

MR. COOPER: I have questions as to whether or not it would be constitutional, because you may be affecting a legal, chosen action which has already been established by the filing of the claims.

My biggest problem, I suppose, is that I would hate to see legislation be passed, or even a Constitutional Amendment be passed, that would be subject to further legal encumbrances and challenges. I think it is time that legislation be passed that everyone can accept and agree to so that the problem can move forward and the people can deal with it.

ASSEMBLYMAN LESNIAK: I agree. I happen to think this is the remedy. Thank you.

MR. COOPER: Thank you.

ASSEMBLYMAN LESNIAK: Mr. Ferguson.

ROBERT F. FERGUSON, JR.: I am Robert F. Ferguson. I represent the New Jersey Association of Realtors. We are supportive of the legislation under consideration today. I am not going to go through the horror stories I have heard, or the telephone calls I have received. I would just like to point out that the confusion that now exists amongst property owners in certain areas of this State are unbelievable.

Legitimate closings are being cancelled. People are going to City Hall, and the maps are at the engineers' office, and when they see the maps and they don't see their grant and claim, confusion reigns supreme.

I think there are things we should be considering in addition to your legislation. First of all, I think it would be appropriate for a bill to be introduced that would

create a legislative study commission, so that we could go about implementing the concepts embodied in ACR-116.

ASSEMBLYMAN LESNIAK: When did you come up with that?

MR. COOPER: I just thought if we could get moving on it now, we could do it outside the atmosphere of pressure.

ASSEMBLYMAN LESNIAK: I agree with that, and I had suggested that to Assemblyman Doyle last week.

MR. COOPER: The final item I would like to suggest is something that is probably not necessarily done legislatively, but perhaps your Committee might have members come in from the DEP and suggest to them that they prepare something for the general public, explaining their rights and procedures in plain language. Those of us who have just had to revise our real estate contracts appreciate plain language.

I think the folks out there, who are now thrown into a bureaucratic maze, would appreciate it if somebody could spell out what is going on and what their legitimate remedies are. Thank you very much.

MR. COOPER: Ann Auerbach. (no response) Charles Lee Harp. Is Charles here? (no response) Robert Kiss, Attorney, Surf City. (no response) Robert is not here. Terry Bottinelli, Hackensack. (no response) Terry is not here. This can't be. Bill Halsey. I know Bill is here. Bill, you are going to tell me we finally agree on something too, right?

W I L L I A M E. H A L S E Y: Good afternoon, Mr. Chairman. My name is William Halsey. I am the Legislative Representative for the New Jersey State Chamber of Commerce.

We are pleased that the Legislature is acting on a problem that we have anticipated for a number of years. Rather than going through the historical summary that I have put on the first page of the testimony, I would like to get to the heart of our primary concern.

ASSEMBLYMAN LESNIAK: Oh, you are not testifying in favor of it then?

MR. HALSEY: We have reservations on the Amendment. We agree that it is discriminatory to property owners -- whether they be residential or business owners. That is our primary concern. We support the rest of the resolution, but we are concerned with the wording.

ASSEMBLYMAN LESNIAK: We want to discriminate, and when I say discriminate I am talking about "discriminate" and not "discriminative." There are many different classifications of people and entities, some of which operate in good faith, and some of which operate not in good faith, whether they be businesses or homeowners. Some could be charged with having better knowledge and others could not be charged with having better knowledge.

MR. HALSEY: Better knowledge of the issue, or the fact that they would actually have title to the land? I think that cloud of doubt, as it is mentioned in the testimony, has been a concern of business investors as well as people who buy residential property. I don't know that there is a difference.

ASSEMBLYMAN LESNIAK: That may be a big difference, because when you are talking about a business investment, you are talking about an investment for the purpose of making a profit. I think most people -- most people, not everybody -- when they purchase a home, for instance, are not thinking in terms of making a profit.

MR. HALSEY: But, they think they are making an investment.

ASSEMBLYMAN LESNIAK: They are thinking, primarily, in terms of having a place to live in. Obviously, they would love to have it appreciate in value. But, I would think that the primary concern of most homeowners is where they are going to live. So, there are different reasons for buying property out there, and that is the reason why this legislation has been drafted, so that we can formulate different remedies.

As you know, without this legislation businesses would have no options.

MR. HALSEY: As I stated, we support the concept

of the resolution. I would disagree with you, obviously, in terms of being a property owner.

ASSEMBLYMAN LESNIAK: But, as far as having no Resolution, or this Resolution -- and this is the only one I could pass this year -- you would be in favor of it?

MR. HALSEY: Why couldn't the wording be amended so that it would be non-discriminatory between business and residential property?

ASSEMBLYMAN LESNIAK: The Constitutional Amendment is not discriminatory. It allows the Legislature to discriminate. So, when the enabling legislation goes through the Legislature, you will not have to deal with me; you will have to deal with the Revenue, Finance, and Appropriations Committee. That, I think, would be the proper forum to address that issue.

MR. HALSEY: Well, it is a major concern. I have expressed it, and we will deal with the issue at that time.

ASSEMBLYMAN LESNIAK: As it stands, through, assuming that this is the bill that will be voted on -- and I presume that it is going to be; it is either this or none -- would you support it?

MR. HALSEY: We couldn't support it in its present form with that wording -- with the discriminatory language.

ASSEMBLYMAN LESNIAK: Thank you, Bill.

Is there anyone else who wishes to testify?

MR. MILLER: Peter Hibbard from the Builders Association.

ASSEMBLYMAN LESNIAK: Peter Hibbard from the Builders Association. Where is Peter?

P E T E R H I B B A R D: Good afternoon, Mr. Chairman, and members of the Committee. My name is Peter Hibbard. I am the Director of Environmental Affairs for the New Jersey Builders Association, and on behalf of the New Jersey Builders Association, I am speaking this afternoon in support of ACR-116. There are certain reservations, and you have the statement in front of you, so I won't read it; but, I would like to summarize

certain salient points.

One of those points is that many members of the public who are going to be affected by this particular action of the State -- and by that I mean the entire claim process -- believe they own the property and have acted in good faith and in a void concerning State action, which led them to believe that it was their property, and on that property they have made certain investments and improvements -- all of which acted in some way to the benefit of the State of New Jersey. It increased the property taxes, which go to support the school fund. It increased the value of the area. It increased the desirability of living in a given community. This was all done in good faith and we feel--

ASSEMBLYMAN LESNIAK: Was it all done in good faith?

MR. HIBBARD: Those who acted in good faith should be protected in some way. No, I cannot say it was all done in good faith. There are certain people who had other intentions in mind, and those people should not be protected by the legislation. The law is designed to protect other people from them. So, I will make exceptions for those.

Those who acted in good faith should be protected, and one suggestion that we would have is that claims by the State be limited to the value of the land, and not the improvements that they placed on the land at their own expense.

We have certain reservations--

ASSEMBLYMAN LESNIAK: We may even go further than that in some instances, and we may not go that far. But, the Constitutional Amendment is giving us the opportunity to frame some type of remedy. Those types of decisions will be acted on later.

MR. HIBBARD: Yes, I understand that. It is our concern that all of these points be recognized, perhaps, at this point. They will be brought up again, as appropriate, at a later time.

The provisions for discriminating between land uses would perhaps be appropriate if it were determined that a nominal fee would be used. But, in reference to fair market value, we feel that that particular structure may be unfair in that the higher value of the land, for different purposes, may in itself constitute a differential in the value of the riparian grant. So that, a different structure placing, say for example, commercial against residential would have a burdensome and duplicative effect.

The key to what we are concerned with is the fact that the State has not acted until recently; that people have acted, for the most part, with an honest belief that they own the land; and that these people should be protected.

With regard to the issue of public education and the fact that this fund goes to support -- the money from the sale of riparian land goes to the free public school fund, I can't speak against public education because the prime factor in the sale of a home is the availability of a good school system. We have to support a good, strong educational system. But, the school system has not been planned, in a long-term sense, on the windfall from the funds of the sales of vast quantities of land. It has not been budgeted and it won't collapse based on that sole factor alone.

However, there are a number of private finances of individual citizens that may collapse if these aspects are not addressed and they are not protected. The issue does not seem to be either the environmental or the commerce value of the waterways, but the extending of the definition of riparian -- beyond the purpose established in English Common Law, or beyond environmental concerns.

ASSEMBLYMAN LESNIAK: You gave me the summary and you are saying more than is in the written testimony.

MR. HIBBARD: Well, this is a little additional testimony

in response to what has been stated today. The summary of the statement addressed, pretty much, our concern with this bill.

ASSEMBLYMAN LESNIAK: Your statement will be entered into the record. Thank you, Mr. Hibbard.

MR. HIBBARD: But, there is also concern because we have to support the public school fund.

ASSEMBLYMAN LESNIAK: You will have an opportunity, by the way, to address the specific legislation once this Constitutional Amendment -- if it passes -- passes both Houses of the Legislature.

MR. HIBBARD: I would like to add one brief personal note. I am a surf fisherman, and one of the things I have seen frequently -- because people talk to the fishermen -- is a number of people walking along the beach, looking very concerned, and the fears they express on this lead me to believe that this has to be addressed very promptly. Speed is of the essence. But, I would hope that speed would not get in the way of equity for either the requirements of the State or the protection of the citizens. Thank you.

ASSEMBLYMAN LESNIAK: Thank you. Do we have anyone else here to testify for or against ACR-116? There being no response, I will now close the hearing. Thank you.

(Hearing Concluded)

TESTIMONY
OF
ROBERT F. FERGUSON, JR., EXECUTIVE VICE PRESIDENT
NEW JERSEY ASSOCIATION OF REALTORS
AT THE
PUBLIC HEARING
OF THE
ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE
WITH RESPECT TO
ACR 116 AND ACR 65

June 18, 1982

MY NAME IS ROBERT F. FERGUSON, JR., I AM A RESIDENT OF WALL TOWNSHIP NEW JERSEY.

I APPEAR BEFORE YOU TODAY AS THE EXECUTIVE VICE PRESIDENT OF THE 15,000 MEMBER NEW JERSEY ASSOCIATION OF REALTORS TO SPEAK IN SUPPORT OF ASSEMBLY CONCURRENT RESOLUTION 116 AS AMENDED.

I WOULD LIKE TO THANK THE ASSEMBLY COMMITTEE ON AGRICULTURE AND ENVIRONMENT FOR THE OPPORTUNITY TO EXPRESS THE VIEWS AND CONCERNS OF THE ASSOCIATION ON THIS IMPORTANT PROPERTY RIGHTS ISSUE.

I PARTICULARLY WOULD LIKE TO CONGRATULATE THE SPONSOR OF ASSEMBLY CONCURRENT REOLUTION 116 FOR HIS LEADERSHIP IN RESPONDING TO A MONUMENTAL PROBLEM CREATED BY THE TIDELANDS RESOURCE COUNCIL'S ACTION IN ADOPTING SOME 710 MAPS DELINEATING COASTAL AREA LANDS WHICH IT IS CLAIMED CURRENTLY OR FORMERLY FLOWED BY MEAN HIGH TIDE WATERS.

THE INITIAL REACTION TO THESE MAPS THROUGHOUT MANY AREAS OF THE STATE HAS BEEN DEVASTATING, CAUSING PANIC AND CONFUSION ON THE PART OF TENS OF THOUSANDS OF PROPERTY OWNERS IN 17 OF OUR 21 COUNTIES.

OVERNIGHT, UNSOPHISTICATED INDIVIDUALS HAVE BEEN THRUST INTO A COMPLEX AND MISUNDERSTOOD BUREAUCRATIC MAZE.

THE LANGUAGE OF THE PRESENT STATUTE WHICH REQUIRES THE TIDELANDS RESOURCE COUNCIL TO COLLECT "MARKET VALUE" OF THE PROPERTY AT THE TIME OF CONVEYANCE COULD, IN MANY INSTANCES, PROVE TO BE A FINANCIAL DISASTER.

TO CIRCUMVENT THIS POTENTIAL PROBLEM IS PRECISELY WHY ACR 116 (AS AMENDED) SHOULD BE PLACED ON THE BALLOT FOR VOTER APPROVAL ON NOVEMBER 2, 1982.

UNFORTUNATELY, EVEN A DELAY UNTIL NOVEMBER 1982 WILL PROVE TO BE A DISASTER FOR THOSE WHO SEEK TO SELL THEIR PROPERTY WHERE THE RIPARIAN CLOUDS HANG OVER IT.

I HAVE HAD CALLS FROM REALTORS WHO FIND THAT CLOSINGS ARE BEING CANCELLED BECAUSE OF THE MERE THREAT OF A RIPARIAN CLAIM, VALID OR NOT.

UNFORTUNATELY, THE MAPS PROVIDED BY THE TIDELANDS RESOURCE COUNCIL LEAVE A GREAT DEAL TO BE DESIRED.

THE ENTIRE PROCESS GIVES ONE A VERY UNEASY FEELING KNOWING THAT THOSE WHO CREATED THE MAPS WILL ALSO INTERPRET AND PROCESS CLAIMS AND REQUESTS FOR INFORMATION FROM THE PUBLIC.

ACR 65 THE SECOND CONCURRENT RESOLUTION WHICH IS ALSO THE SUBJECT OF THIS PUBLIC HEARING, IS OPPOSED BY NJAR.

NOW THAT THE "CAT IS OUT OF THE BAG", SO TO SPEAK, WE FEEL IT IS UNFAIR TO EXTEND THE TIME TO COMPLETE THE MAPS FOR ANOTHER THREE YEARS. THERE IS NO GUARANTEE THAT AFTER 3 YEARS THE END PRODUCT WILL BE ANY IMPROVEMENT OVER WHAT WE HAVE AT THE PRESENT TIME.

LET'S SOLVE THE PROBLEM NOW AND NOT PUT OFF THE DAY OF DECISION THREE YEARS DOWN THE ROAD.

WE ARE DEALING WITH PEOPLE, THEIR HOMES AND BUSINESS. THEY CAN'T WAIT TO KNOW WHERE THEY STAND INSOFAR AS THE OWNERSHIP OF THEIR PROPERTY IS CONCERNED.

BEFORE I CONCLUDE MY REMARKS I WOULD LIKE TO MAKE SEVERAL SUGGESTIONS WHICH I FEEL ARE GERMANE TO THE SUBJECT UNDER DISCUSSION TODAY.

FIRST, NJAR WOULD URGE THAT A LEGISLATIVE STUDY COMMISSION CONSISTING OF ELECTED OFFICIALS, PROPERTY OWNERS AND OTHERS BE CREATED TO BEGIN THE TASK OF DEVELOPING A FORMULA WHICH COULD BE ADOPTED TO CARRY OUT THE OBJECTIVES OF ACR 116. WE SHOULD NOT WAIT UNTIL AFTER NOVEMBER TO BEGIN THE STUDY OF THIS PROBLEM.

NJAR FEELS THE LEGISLATURE SHOULD BE IN A POSITION TO RESPOND IMMEDIATELY AFTER VOTER APPROVAL FOR ACR 116 IS SECURED.

SECONDLY, NJAR FEELS THE LEGISLATURE SHOULD CONSIDER A REVIEW OF THE PROGRAMS AND METHODOLOGY THAT PRODUCED THE MAY 27TH MAPS. HAVING SPOKEN TO MANY INDIVIDUALS WHO HAVE LOOKED AT THE END RESULT, THERE APPEARS TO BE SOME UNANSWERED QUESTIONS.

IN CONCLUSION, WE RECOMMEND THAT THE TIDELANDS RESOURCE COUNCIL PREPARE INFORMATION FOR PUBLIC CONSUMPTION THAT IS WRITTEN IN "PLAIN LANGUAGE". MANY OF THE PROCEDURES WHICH OWNERS MUST BE AWARE OF ARE CONFUSING TO SAY THE LEAST.

PLEASE VOTE TO RELEASE ACR 116 (AS AMENDED) AND DO NOT RELEASE ACR 65.

THANK YOU AND REST ASSURED NJAR IS WILLING TO WORK OR SERVE IN ANY PRACTICAL MANNER TO ASSIST IN THE EQUITABLE RESOLUTION OF THE RIPARIAN LANDS PROBLEM.

STATEMENT
OF THE
NEW JERSEY STATE CHAMBER OF COMMERCE
BEFORE THE
ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE
ON
ASSEMBLY CHAMBER - 1:30 P.M.
STATE HOUSE, TRENTON, NEW JERSEY

GOOD AFTERNOON, MR. CHAIRMAN. MY NAME IS WILLIAM E. HALSEY. I AM THE LEGISLATIVE REPRESENTATIVE FOR THE NEW JERSEY STATE CHAMBER OF COMMERCE. I APPRECIATE THIS OPPORTUNITY TO PRESENT OUR VIEWS CONCERNING RIPARIAN GRANTS AS REPRESENTED BY ACR-116.

THE NEW JERSEY STATE CHAMBER IS A NON-PROFIT ORGANIZATION WHICH IS SUPPORTED BY ITS DUES PAYING MEMBERS IN THE BUSINESS COMMUNITY. IT PROVIDES INFORMATION AND ACTS AS REPRESENTATIVE FOR ITS MEMBERS ON A BROAD RANGE OF ISSUES AFFECTING THE GROWTH AND ECONOMIC WELL-BEING OF THE ENTIRE STATE.

THE STATE CHAMBER OF COMMERCE IS PLEASED THAT THE LEGISLATURE IS ACTING UPON A PROBLEM WE HAVE ANTICIPATED FOR MANY YEARS WOULD COME TO PASS.

THE CONCEPT OF PROPERTY OWNERSHIP RIGHTS IN NEW JERSEY WERE RADICALLY ALTERED IN THE EARLY 1960's WHEN, IN THE CASE OF "SISSELMAN VS HIGHWAY DEPARTMENT," RIPARIAN LANDS WERE REDEFINED AS BEING THOSE LANDS THAT WERE "EVER FLOWED BY THE TIDES. THIS GREATLY BROADENED DEFINITION SERVED TO ENCOMPASS ENUMERABLE ADDITIONAL PARCELS OF LAND IN MANY COUNTIES - LAND ON WHICH PROPERTY OWNERS HAD EVERY REASON TO BELIEVE THAT THEY HELD CLEAR TITLE ON WHICH THEY HAD PAID PROPERTY TAXES FOR YEARS - EVEN GENERATIONS.

A SECONDARY RESULT OF THIS DECISION WAS THE CASTING OF A CLOUD OF DOUBT OVER THE GENERAL RIGHTS OF PROPERTY OWNERSHIP IN NEW JERSEY IN THE EYES OF POTENTIAL PROPERTY BUYERS WHETHER FOR RESIDENTIAL, BUSINESS, OR INSTITUTIONAL PURPOSES. THIS CLOUD OF DOUBT HAS NOT HELPED NEW JERSEY IN ITS EFFORTS TO STIMULATE INVESTMENT IN JOB-PRODUCING ENTERPRISES.

THAT CLOUD HAS PERSISTED EVER SINCE THE COURT DECISION OF THE 1960's. THE STATE CHAMBER FELT STRONGLY THAT THE STATE HAD HAD LONG ENOUGH TO ASSERT ITS CLAIMS TO SUCH LAND. WE STRONGLY SUPPORTED LAST YEAR'S REFERENDUM PROPOSAL TO LIMIT SUCH CLAIMS TO ONE ADDITIONAL YEAR, AND THE VOTERS ENDORSED THAT PROPOSAL.

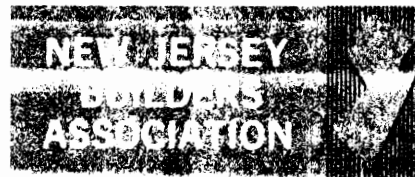
WHILE WE SUPPORT THE BASIC GOAL OF ACR-116, TO MINIMIZE THE ADVERSE IMPACT UPON PROPERTY OWNERS, WE OBJECT TO THE AMENDMENT AUTHORIZING THE LEGISLATURE, IN SETTING THE CRITERIA FOR THE DETERMINATION OF CONSIDERATION FOR THE GRANTING OF TITLE OR LEASE OF STATE-CLAIMED RIPARIAN PROPERTY, TO DIFFERENTIATE BETWEEN PROPERTIES USED FOR DIFFERENT PURPOSES.

THE AMENDMENT MAKES OWNERS OF LAND USED FOR INSTITUTIONAL, COMMERCIAL OR INDUSTRIAL PURPOSES "2nd CLASS CITIZENS." THE RATIO OF RIPARIAN GRANT COSTS TO FAIR MARKET VALUE SHOULD BE THE SAME FOR ALL PROPERTY OWNERS. TO DO OTHERWISE IS TO AID AND ABET THE ALREADY DAMAGING BELIEF THAT NEW JERSEY'S ECONOMIC ENVIRONMENT IS HOSTILE TO INVESTMENT FOR BUSINESS OR INSTITUTIONAL PURPOSES. A RESOLUTION OF THE RIPARIAN LANDS ISSUE IS BADLY NEEDED BUT WE CANNOT SUPPORT ACR-116 IN ITS PRESENT FORM BECAUSE IT IS DISCRIMINATORY.

THE RIGHTS OF PROPERTY OWNERSHIP IN NEW JERSEY SHOULD BE EQUALLY SECURE REGARDLESS OF HOW AN OWNER MAY LAWFULLY UTILIZE HIS OR HER LAND.

THANK YOU.

JUNE 18, 1982



TESTIMONY OF
PETER C. HIBBARD, DIRECTOR OF ENVIRONMENTAL AFFAIRS
NEW JERSEY BUILDERS ASSOCIATION

TESTIMONY
BEFORE
ASSEMBLY ENERGY AND ENVIRONMENTAL COMMITTEE
ON ACR-116

JUNE 18, 1982

1000 Route 9
Woodbridge, NJ 07095
(201) 636-6100

GOOD AFTERNOON, MY NAME IS PETER HIBBARD, AND I AM HERE REPRESENTING THE NEW JERSEY BUILDERS ASSOCIATION.

ON BEHALF OF THE NEW JERSEY BUILDERS ASSOCIATION, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO EXPRESS SUPPORT FOR ACR-116.

THE CLAIMS RAISED BY THE STATE REGARDING RIPARIAN LAND HAS RESULTED IN CONFUSION AND FEAR. THE CITIZENRY HAS, FOR YEARS, PAID TAXES AND IMPROVED ON LAND, BELIEVING IN FEE SIMPLE OWNERSHIP. THE VOID WHICH THE STATE ALLOWED TO CONTINUE UNTIL ONLY RECENTLY HAS RESULTED IN THE ALLEGATION OF GRAVE INJUSTICE AGAINST THE PEOPLE. WE ARE CONCERNED ABOUT THE EXTENT OF THE STATE'S INTEREST, IN THAT THE CLAIM SHOULD NOT EXTEND TO IM-

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PROVEMENTS MADE IN GOOD FAITH BY THE PROPERTY OWNER, BUT SHOULD BE LIMITED TO THE LAND. WE DISAGREE WITH THE PROVISIONS FOR DISCRIMINATING BETWEEN LAND USES. A HIGHER VALUE IN THE LAND ALONE WILL PROVIDE A HIGHER COST OF THE GRANT. TO ADD AN ADDITIONAL PREMIUM FOR LAND USE IN THE FEE STRUCTURE RESULTS IN AN UNFAIR, AND DUPLICATORY BURDEN. BECAUSE THE STATE HAS NOT ACTED UNTIL RECENTLY TO CLAIM RIPARIAN LAND, MANY CITIZENS HAVE MADE IMPROVEMENTS TO THEIR LAND IN THE HONEST BELIEF THAT IT WAS NOT SUBJECT TO STATE CLAIM. WE URGE THAT THE BENEFIT TO THE STATE IN ECONOMIC GROWTH, TAXES, AND LAND VALUE, SHOULD BE CONSIDERED WHEN A DETERMINATION IS MADE REGARDING AN EQUITABLE VALUE OF THE RIPARIAN GRANT.

WITH THESE RESERVATIONS, WE URGE ALL SPEED IN RESOLVING THIS CONFLICT IN THE INTEREST OF EMOTIONAL AND ECONOMIC WELL-BEING OF THE STATE AND HER CITIZENS.

NEW JERSEY LAND TITLE ASSOCIATION

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Deputy Director

STATEMENT OF WILLIAM J. LOUGHNANE PRESIDENT OF THE NEW JERSEY LAND TITLE ASSOCIATION AT THE PUBLIC HEARING ON SCR-114 AND ACR-116 ON JUNE 18, 1982, GENERAL ASSEMBLY CHAMBER, TRENTON, NEW JERSEY

HONORABLE MEMBERS OF THE LEGISLATURE:

The New Jersey Land Title Association is the trade association of the 18 underwriters who conduct essentially all of the title insurance business in New Jersey. We also count among our members a number of title insurance agents, title abstracters, and attorneys interested in real estate matters. In defense of our policyholders, our Association has been active over the last dozen years in efforts in the courts to see that the State's tideland claims are properly mapped in accordance with law.

The New Jersey Land Title Association supports SCR-114 and ACR-116 and will work for adoption of the constitutional amendment by the voters in the General Election. We take this position although we believe that this proposal does not go far enough to resolve the festering problem which exists. We offer the following comments:

1. Our Association would have preferred a limitation on the assertion of tideland claims. Property owners have generally dealt with these lands in good faith and paid taxes believing they possessed good title. As the benevolent protector of its people, the State has an overriding obligation to act fairly and in a manner which least harms its citizens. Fairness and a strong public policy favoring repose point in the direction of a limitation on the State's ability to assert claims to lands which have not been tideflowed for some period of time. The State is presently subject to a 20-year statute of limitations on all other actions for real property, and we believe that in fairness and equity such a limitation should apply to these claims as well.

2. We are concerned about the suggestion in the constitutional amendment that consideration for a grant of the State's interest may be fixed at different levels depending upon the use to which the property has been put. These tideland claims are unrelated to use. Residential, commercial, and industrial landowners are affected by these claims in the same way, and the resolution of such problems should be accomplished on a fair and uniform basis. The proposed constitutional amendment does not require a classification based upon use, however, and hopefully the Legislature will establish more relevant criteria for the consideration for a riparian grant, such as the payment of taxes, improvements on the land, the length of time the property in question has not been tideflowed, the good faith of the applicant, and other equities which may appear in a given situation. The proposed constitutional amendment clearly authorizes the Legislature to establish criteria other than "use" which may be resorted to in fixing the consideration for a riparian grant or lease.

3. The time and cost involved in the administrative process necessary to resolve these claims is also of great concern. Hopefully, the Legislature will address this concern in implementing the proposed constitutional amendment. It typically takes years to obtain a riparian grant, and a landowner must submit costly surveys and appraisals with his grant application. Even a "nominal" consideration for a grant instrument will not be of much help if the applicant must spend thousands of dollars in survey, appraisal and legal fees to obtain such a grant. There must be a quick and inexpensive administrative procedure to clear these titles.

4. The State should be required to issue a grant to resolve a title dispute in circumstances where the property in question is not presently tideflowed. The availability of a grant for a "nominal" consideration is not a useful remedy if the issuance of a riparian grant is left to the absolute discretion of the Tidelands Resource Council.

* *

The careful development and prompt adoption of implementing legislation is obviously critical to the success of this proposed constitutional amendment in alleviating this festering problem. The drafting of legislation should begin now so that the Legislature will be in a position to act quickly if this proposed amendment is approved by the voters in November, as we believe it will be. The New Jersey Land Title Association stands ready to provide whatever assistance it can in the development of such legislation.

Thank you.

June 28, 1982

Honorable Raymond Lesniak, Chairman
Assembly Agriculture and Environment Comm.
State House
Trenton, NJ 08625

ATT: Norman Miller

Dear Chairman Lesniak:

My name is David F. Moore. I am Chairman of the Tidelands Resource Council. I am speaking only as an individual and not representing the Council. The issue being considered at this hearing is complex; understanding the history and practice of riparian law is extremely difficult.

I would like to point out a few questions and problems the legislature faces in connection with seeking equitable solutions for properties clouded by riparian interests.

It should be made clear that the recent release of 713 riparian maps had nothing to do with the Constitutional amendment taking effect in November 1982. Mapping of riparian interests has been a continuous process since the lands were originally set aside by the framers of the New Jersey Constitution. The line between the public trust lands and upland private holdings was always difficult to define. It moves constantly, sometimes imperceptibly, but often quite rapidly. State bureaucracies have never been able to map that line precisely nor to provide surveillance to insure its integrity until quite recently. Even now methods of mapping are subject to question and debated among the experts and the courts. The first maps adopted under the current mapping mandate located in the Passaic and Hackensack estuary have led to refinements in both mapping techniques and valuation systems.

The TRC has been handling quiet title suits and title disputes since its creation in the mid-1800's. Attempts to simplify and classify valuation systems in order both to protect the public and to be reasonable and fair to private parties have been made over the years. Current TRC practice has evolved from court decisions and years of deliberation, a process that is necessarily a continuous one.

We must remember that if riparian maps are accurate, lands shown seaward of the line of mean high tide were or are underwater. Therefore, those seaward lands now dry were filled, either legally or illegally. The maps and supporting

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background data, together with grants and other occupational instruments, can tell us if the fill was done legally and when. But circumstances vary widely, so much so that the TRC has come to the conclusion by its practices that each situation needs to be dealt with individually.

There are many questions to answer. Should the State treat someone who should not have filled land differently than someone who "inherited" an illegally filled tract? And how then does the State determine culpability? Does time make a difference; i.e., should someone who was on the land at the time of filling, regardless of how long ago it was, be treated differently than someone with recent occupation?

With respect to value, does time of ownership make a difference? Does culpability? The State has, up to this time, assessed "back rent" for lands granted or leased from either the time of occupation, time of ownership, or the first reliable record. Valuation by current use as opposed to highest and best use provides fairness problems. Should the owner of a marina in Newark pay the same price for riparian land as the owner in Rumson? Or Fortescue? Is it fair to charge a land owner single family residential rates even though an application is pending for conversion of the property to multiple family condominium use?

Is it fair to expect people of the State of New Jersey to donate land to those occupying state land because the occupants were not aware that the land so occupied was illegally filled? Is ignorance of the law an excuse? Do we ignore the failure of professionals in the land surveying, engineering and legal fields to properly inform land owners? Is it proper for the people of the State of New Jersey to subsidize title insurance companies? If so, to what degree?

The preceeding sampling of questions barely scratches the surface of the issues the Legislature must deal with if some equitable set of standards is to be chosen for transferring title from the State to private land owners on illegally filled tidelands.

Very truly yours,


David F. Moore

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Morristown, NJ 07960

