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1989

PUBLIC HEARING

before

ASSEMBLY TRANSPORTATION AND COMMUNICATIONS COMMITTEE

ASSEMBLY BILL NO. 2425 (2R)

(Authorizes a \$200,000,000 State bond issue to finance the rehabilitation and improvement of State, county and municipal bridges and the preservation and acquisition of railroad rights-of-way)

SENATE BILL NO. 347 (3R)

(Authorizes a \$200,000,000 State bond issue to finance the rehabilitation and improvement of State, county and municipal bridges)

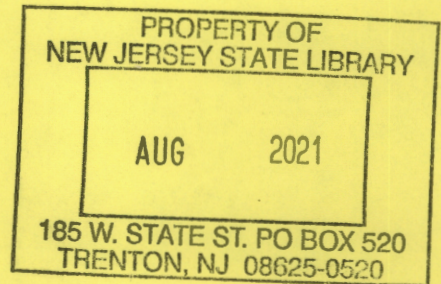
April 13, 1989  
Room 403  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Newton E. Miller, Chairman  
Assemblyman John S. Penn, Vice Chairman  
Assemblyman D. Bennett Mazur

ALSO PRESENT:

Laurence A. Gurman  
Office of Legislative Services  
Aide, Assembly Transportation  
and Communications Committee



\* \* \* \* \*

Hearing Recorded and Transcribed by  
Office of Legislative Services  
Public Information Office  
Hearing Unit  
State House Annex  
CN 068  
Trenton, New Jersey 08625

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 309

LECTURE 10

THE HARMONIC OSCILLATOR

1. Introduction

2. The Simple Harmonic Oscillator

3. The Quantum Harmonic Oscillator

4. The Anharmonic Oscillator

5. The Damped Harmonic Oscillator

6. The Driven Harmonic Oscillator

7. The Coupled Harmonic Oscillators

8. The Pendulum

9. The Simple Pendulum

10. The Physical Pendulum

11. The Compound Pendulum

12. The Torsion Pendulum

13. The Spring-Mass System

14. The Spring-Mass-Damper System

15. The Spring-Mass-Damper-Drive System

16. The Spring-Mass-Damper-Drive System

17. The Spring-Mass-Damper-Drive System





NEWTON E. MILLER  
CHAIRMAN  
JOHN S. PERKINS  
VICE-CHAIRMAN  
ROBERT E. LITTELL  
D. BENNETT MAZUR  
GEORGE A. SPADORO

**New Jersey State Legislature**  
**ASSEMBLY TRANSPORTATION**  
**AND COMMUNICATIONS COMMITTEE**

STATE HOUSE ANNEX, CN-068  
TRENTON, NEW JERSEY 08625  
TELEPHONE: (609) 984-7381

April 3, 1989

**NOTICE OF PUBLIC HEARING**

The Assembly Transportation and Communications Committee will hold a public hearing on Thursday, April 13, 1989, beginning at 1:00 P.M. in Room 403 of the State House Annex, Trenton, New Jersey.

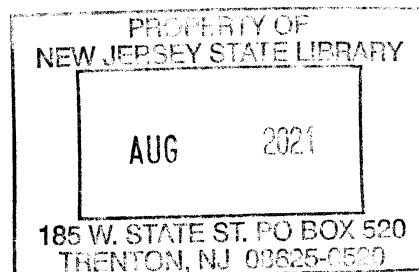
The purpose of the hearing is to consider the effect of the proposed Garden State Parkway toll increase on traffic, highway safety and the environment in New Jersey. In addition, the Committee will study alternate methods for the possible restructuring of the current toll collection system as well as receive testimony as to what measures could be undertaken to facilitate the movement of traffic along the Garden State Parkway. Particular attention will be focused upon gathering information regarding the technology currently available to improve traffic flow at toll barriers and to investigate how this technology functions.

Immediately following the conclusion of the public hearing announced above, the Committee will hold an additional public hearing at the same location concerning the following legislation:

A-2425 (2R)  
Haytaian/Littell

Authorizes a \$200,000,000 State bond issue to finance the rehabilitation and improvement of State, county and municipal bridges and the preservation and acquisition of railroad rights-of-way.

Anyone wishing to testify should contact Laurence Gurman, Committee Aide, at (609) 984-7381.







NEWTON E. MILLER  
CHAIRMAN  
JOHN S. PENN  
VICE-CHAIRMAN  
ROBERT E. LITTELL  
D. BENNETT MAZUR  
GEORGE A. SPADORO

New Jersey State Legislature  
ASSEMBLY TRANSPORTATION  
AND COMMUNICATIONS COMMITTEE  
STATE HOUSE ANNEX, CH-038  
TRENTON, NEW JERSEY 08625  
TELEPHONE: (609) 984-7361

MEMORANDUM

April 10, 1989

TO: MEMBERS OF THE ASSEMBLY TRANSPORTATION AND  
COMMUNICATIONS COMMITTEE

FROM: ASSEMBLYMAN NEWTON E. MILLER, CHAIRMAN

SUBJECT: SUPPLEMENTAL NOTICE  
PUBLIC HEARING - THURSDAY, APRIL 13, 1989

(Address comments to Laurence A. Gurman, Committee Aide, at 609-984-7381.)

Senate Bill No. 347(3R) has been added to the agenda for the consideration of the Committee at its public hearing on April 13, 1989, which legislation shall be considered in conjunction with Assembly Bill No. 2425(2R).

S-347(3R) Authorizes a \$200,000,000 State bond issue to finance the  
Weiss rehabilitation and improvement of State, county and municipal  
bridges.



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[SECOND REPRINT]  
ASSEMBLY, No. 2425

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1988

By Assemblymen HAYTAIAN, LITTELL, Collins,  
Hendrickson, Kamin and Felice

1 AN ACT authorizing the creation of a debt of the State of New  
Jersey by the issuance of bonds of the State in the aggregate  
3 principal amount of \$200,000,000 for the purpose of  
rehabilitating, and improving bridges in the State, and the  
5 preservation and acquisition of railroad rights-of-way;  
providing the ways and means to pay and discharge the  
7 principal and interest on the bonds and refunding bonds;  
providing for the submission of this act to the people at a  
9 general election; and making an appropriation.

11 BE IT ENACTED *by the Senate and General Assembly of the  
State of New Jersey:*

13 1. This act shall be known and may be cited as the "New  
Jersey Bridge Rehabilitation and Improvement and Railroad  
15 Right-of-way Preservation Bond Act of 1988."

2. The Legislature finds and determines that:

17 a. A safe and reliable system of rail and road transportation is  
essential to the well being of the citizens and the economy of this  
19 State.

b. New Jersey's rail and road system is one of the busiest in  
21 the world and provides a corridor for goods and passengers to and  
from not only New York, Pennsylvania and Delaware, but also to  
23 and from distant points in the western, northern, and southern  
regions of our nation.

25 c. More than 150,000 commuters daily rely on New Jersey's  
railroads for transportation to and from their places of  
27 employment.

d. Due to the destructive effect of the elements, the  
29 structural pressures of regular usage, and significant material  
deterioration stemming from a lack of regular maintenance in  
31 recent decades, bridges in the State's rail and road system are

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ATC committee amendments adopted March 14, 1988.

<sup>2</sup> Assembly AAP committee amendments adopted January 23, 1989.

1 desperately in need of rehabilitation and improvement.

3 e. The cost of such essential rehabilitation and improvement  
5 far exceeds the funds which can be provided by regular State  
7 appropriations or will be available from the federal government,  
9 the "New Jersey Transportation Rehabilitation and Improvement  
11 Bond Act of 1979," (P.L.1979, c.165) the "New Jersey Bridge  
13 Rehabilitation and Improvement Bond Act of 1983" (P.L.1983,  
15 c.363) or the "New Jersey Transportation Trust Fund Authority  
17 Act of 1984," P.L.1984, c.73 (C.27:1B-1 et seq.).

11 f. It is in the public interest, and a wholly valid and essential  
13 public purpose, to rehabilitate and improve bridges in the State's  
15 rail and road system through the authorization of the bond issue  
17 provided for herein.

15 g. It is in the public interest, and a wholly valid and essential  
17 public purpose, to preserve and acquire rights-of-way in the  
19 State's rail system through the authorization of the bond issue  
21 provided for herein.

3. As used in this act:

19 a. "Commissioner" means the Commissioner of the  
21 Department of Transportation.

21 b. "Department of Transportation" means the New Jersey  
23 Department of Transportation established by the "Transportation  
25 Act of 1966," P.L.1966, c.301 (C.27:1A-1 et seq.) or any agency  
27 or department successor to its power and responsibilities.

25 c. "Fund" means the New Jersey Bridge Rehabilitation and  
27 Improvement and Railroad Right-of-way Preservation Fund of  
29 1988 established in section 14 of this act.

29 d. "Rehabilitation and improvement of bridges" means the  
31 construction, reconstruction, removal, replacement,  
33 improvement, repair or rebuilding of bridges carrying State  
35 highways or county or municipal roads, including railroad  
37 overhead bridges.

33 e. "Railroad overhead bridge" means any bridge or passage  
35 carrying a State highway or a county or municipal road over and  
37 across a railroad, subway, or street, traction, or electric railway,  
39 or over and across the right of way of such a railroad, subway or  
railway. Unless stated otherwise to the contrary, this definition  
shall not include those bridges or passages over and across a  
railroad or electric railway operated by the State, the State

1 Department of Transportation or the New Jersey Transit  
Corporation.

3 f. "Cost" means, but is not limited to, the construction,  
reconstruction, improvement, rehabilitation, removal, relocation,  
5 renewal, establishment, or repair of bridges, the cost of the  
acquisition, construction, reconstruction, improvement,  
7 rehabilitation, or renewal of railroad rights-of-way as necessary  
for their preservation, the cost of engineering, inspection,  
9 planning, legal, financial and other professional services; the cost  
of a bond registrar and an authenticating agent, the cost of  
11 reimbursement of any fund of the State from which moneys shall  
have been advanced to the fund created herein, and for payment  
13 or security of principal or interest on bonds as the Director of the  
Division of Budget and Accounting in the Department of the  
15 Treasury may determine.

g. "Government securities" means any bonds or other  
17 obligations which as to principal and interest constitute direct  
obligations of, or are unconditionally guaranteed by, the United  
19 States of America, including obligations of any fiscal agency to  
the extent those obligations are unconditionally guaranteed by  
21 the United States of America and any certificates or any other  
evidences of an ownership interest in those obligations of, or  
23 unconditionally guaranteed by, the United States of America or in  
specified portions of those obligations which may consist of the  
25 principal of, or the interest on, those obligations.

4. a. Bonds of the State of New Jersey in the aggregate  
27 principal amount of \$200,000,000.00 are hereby authorized for  
the purpose of rehabilitation and improvement of bridges in the  
29 State and the preservation and acquisition of railroad  
rights-of-way. Of this sum, not more than \$75,000,000.00 shall  
31 be reserved for the cost of rehabilitation and improvement of  
bridges carrying State highways, and not less than \$75,000,000.00  
33 shall be reserved for the State share of the cost of rehabilitation  
and improvement of bridges carrying county and municipal roads  
35 and \$50,000,000.00 shall be reserved for the preservation and  
acquisition of railroad rights-of-way, to be allocated and  
37 expended in compliance with the cost sharing requirements of  
this section.

1       b. With respect to those bridges which carry State highways  
and which are constructed, owned or maintained by the State and  
3 those railroad overhead bridges over and across a railroad or  
electric railway operated by the State, the Department of  
5 Transportation or the New Jersey Transit Corporation, the State  
shall defray <sup>2</sup>[100% of]<sup>2</sup> the cost of rehabilitation and  
7 improvement.

9       c. With respect to those bridges which carry county or  
municipal roads, except those railroad overhead bridges carrying  
11 county or municipal roads which are provided for in subsection b.  
of this section, the State shall defray 90% of the cost of  
rehabilitation and improvement, with the county or municipality  
13 defraying 10% of the cost.

15       d. With respect to railroad overhead bridges, notwithstanding  
the provisions of chapter 12 of Title 48 of the Revised Statutes,  
17 the railroad company whose tracks or right-of-way the bridge  
crosses, shall not be required to contribute to the costs of the  
rehabilitation and improvement of a bridge but shall furnish, at  
19 its own expense, necessary track safety services and engineering  
reviews.

21       e. With respect to those railroad overhead bridges whose  
ownership is not determined or is in doubt, the Department of  
23 Transportation may accept or assign full or partial permanent  
jurisdictions or responsibilities to either the department or to a  
25 county or municipality as provided in this subsection or in  
accordance with P.L.19... c..... (C.....) (now pending before the  
27 Legislature as <sup>1</sup>[Senate] Assembly<sup>1</sup> Bill No. 12450<sup>1</sup> of 1988). The  
department may assign responsibility for routine roadway  
29 maintenance to the local government unit with jurisdiction for  
the approaching roadways. Jurisdiction or responsibility for other  
31 than roadway maintenance shall be accepted by the department  
except in those cases where the department determines by a  
33 preponderance of the evidence that a county or municipality  
already owns or has jurisdiction for a bridge. The department  
35 shall assign or accept such jurisdictions or responsibilities after  
notice and hearing pursuant to the provisions of the  
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
seq.). All cost sharing prescribed in this section shall be  
39 determined after first reducing the cost of rehabilitation and

1 improvement of bridges by the amount of available federal  
funding.

3 f. With respect to the preservation of railroad rights-of-way,  
the Department of Transportation may acquire by purchase,  
5 condemnation, lease, gift or otherwise, on terms and conditions  
and in a manner the department deems proper, any <sup>2</sup>current or  
7 former<sup>2</sup> railroad right-of-way <sup>2</sup>[not in use]<sup>2</sup>, or part thereof,  
and property adjacent or contiguous thereto,<sup>2</sup> and tracks,  
9 appurtenances, ballast, <sup>2</sup>[structures or]<sup>2</sup> buildings <sup>2</sup>[thereon  
and]<sup>2</sup> facilities, stations, and other structures <sup>2</sup>[or buildings]  
11 <sup>2</sup>thereon or<sup>2</sup> adjacent <sup>2</sup>or contiguous<sup>2</sup> thereto, within the State,  
for transportation purposes. The Department of Transportation  
13 may construct, reconstruct, improve, rehabilitate, or renew such  
property as necessary to preserve it for transportation purposes  
15 and may provide, by agreement with other agencies or otherwise,  
for whatever interim or joint uses, including but not limited to  
17 recreational uses, it considers appropriate.

5. The commissioner is authorized to promulgate rules and  
19 regulations pursuant to the "Administrative Procedure Act,"  
P.L.1968, c.410 <sup>1</sup>[(C.52:14B-1)] (C.52:14B-1 et seq.)<sup>1</sup> in order to  
21 effectuate the purposes of the act.

6. The bonds authorized under this act shall be serial bonds or  
23 term bonds or a combination thereof and known as "1988 Bridge  
Rehabilitation and Improvement and Railroad Right-of-way  
25 Preservation Bonds" and shall be issued from time to time as the  
issuing officials herein named shall determine. The bonds may be  
27 subject to redemption before maturity and shall mature and be  
paid not later than 35 years from the date of their issuance.

29 7. The Governor, State Treasurer and Director of the Division  
of Budget and Accounting in the Department of the Treasury or  
31 any two of such officials (hereinafter referred to as "the issuing  
officials") are authorized to carry out the provisions of this act  
relating to the issuance of bonds, and shall determine all matters  
33 in connection therewith subject to provisions of this act. In case  
an issuing official is absent from the State or incapable of acting  
35 for any reason, his powers and duties shall be exercised and  
performed by such person as shall be authorized by law to act in  
37 his place.

39 8. Bonds issued in accordance with the provisions of this act

1 shall be a direct obligation of the State of New Jersey and the  
3 faith and credit of the State are pledged for the payment of the  
interest thereon as same shall become due and for the payment of  
5 the principal at maturity. The principal and interest of such  
bonds shall be exempt from taxation by the State or by any  
county, municipality or other taxing district of the State.

7 9. The bonds shall be signed in the name of the State by the  
Governor or by his facsimile signature, under the Great Seal of  
9 the State, and attested by the manual or facsimile signature of  
the Secretary of State, or an assistant Secretary of State, shall  
11 be countersigned by the facsimile signature of the Director of the  
Division of Budget and Accounting in the Department of the  
13 Treasury and may be authenticated by an authenticating agent or  
bond registrar, as the issuing officials shall determine. Interest  
15 coupons attached to the bonds shall be signed by the facsimile  
signature of the director. The bonds may be issued  
17 notwithstanding that any of the officials signing them or whose  
facsimile signature appear on the bonds or coupons shall have  
19 ceased to hold office at the time of such issue or at the time of  
delivery of the bonds to the purchaser.

21 10. a. The bonds shall recite that they are issued for the  
purposes set forth in section 4 of this act and that they are issued  
23 in pursuance of this act and that this act was submitted to the  
people of the State at the general election held in the month of  
25 November, 1988, and that it was approved by a majority of the  
legally qualified voters of the State voting thereon at such  
27 election. The recital shall be conclusive evidence of the  
authority of the State to issue said bonds and their validity. Any  
29 bonds containing such recital shall in any suit, action or  
proceeding involving their validity be conclusively deemed to be  
31 fully authorized by this act and to have been issued, sold,  
executed and delivered in conformity herewith and with all other  
33 provisions of statutes applicable thereto, and shall be  
incontestable for any cause.

35 b. The bonds shall be issued in the denominations and in the  
form or forms, whether coupon or registered as to both principal  
37 and interest, and with or without such provisions for  
interchangeability thereof, as may be determined by the issuing  
39 officials.

1       11. When the bonds are issued from time to time the bonds of  
3 each issue shall constitute a separate series to be designated by  
5 the issuing officials. Each series of bonds shall bear such rate or  
7 rates of interest as from time to time may be determined by the  
9 issuing officials, which interest shall be payable semiannually;  
11 provided, that the first and last interest periods may be longer or  
13 shorter, in order that intervening semiannual payments may be at  
15 convenient dates.

17       12. The bonds shall be issued and sold at such price or prices  
19 and under such terms, conditions and regulations, as the issuing  
21 officials may prescribe, after notice of the sale, published at  
23 least once in at least three newspapers published in the State of  
25 New Jersey, and at least once in a publication carrying municipal  
27 bond notices and devoted primarily to financial news, published in  
29 the city of New York or in New Jersey, the first notice to be at  
31 least five days prior to the day of bidding. The notice of sale  
may contain a provision to the effect that any or all bids in  
pursuance thereof may be rejected. In the event of rejection or  
of failure to receive any acceptable bid, the issuing officials, at  
any time within 60 days from the date of such advertised sale,  
may sell such bonds at private sale at such price or prices and  
under such terms and conditions as the issuing officials may  
prescribe. The issuing officials may sell all or part of the bonds  
of any series as issued to any State fund or to the federal  
government or any agency thereof, at private sale, without  
advertisement.

13       13. Until permanent bonds can be prepared, the issuing  
15 officials may, in their discretion, in lieu of such permanent bonds,  
17 issue temporary bonds in such form and with such privileges as to  
19 registration and exchange for permanent bonds as may be  
21 determined by the issuing officials.

23       14. The proceeds from the sale of bonds shall be paid to the  
25 State Treasurer and be held by him in a separate fund, and be  
27 deposited in such depositories as may be selected by him to the  
29 credit of the fund, which fund shall be known as the "New Jersey  
31 Bridge Rehabilitation and Improvement and Railroad  
1[Rights-of-way] Right-of-way<sup>1</sup> Preservation Fund of 1988."

33       15. a. The moneys in the New Jersey Bridge Rehabilitation  
35 and Improvement and Railroad Right-of-way Preservation Fund  
37  
39

1 of 1988 are hereby dedicated and shall be applied to the cost of  
the purposes set forth in section 4 of this act and all such moneys  
3 are appropriated to the Department of Transportation for such  
purposes, but no such money shall be expended for such purposes,  
5 except as otherwise authorized, without the further specific  
appropriation thereof by the Legislature. Bonds may be issued as  
7 herein provided notwithstanding that the Legislature shall not  
have then adopted an act making a specific appropriation of any  
9 moneys.

Moneys in the New Jersey Bridge Rehabilitation and  
11 Improvement and Railroad Right-of-way Preservation Fund of  
1988 may be appropriated or expended for the purpose of  
13 providing the nonfederal share of any federal program which  
finances the preservation or acquisition of railroad rights-of-way  
15 or the rehabilitation and improvement of bridges.

b. At any time prior to the issuance and sale of bonds under  
17 this act, the State Treasurer is authorized to transfer from  
available money in any fund of the treasury of the State to the  
19 credit of the "New Jersey Bridge Rehabilitation and Improvement  
and Railroad Right-of-way Preservation<sup>1</sup> Fund of 1988," such  
21 sum as the State Treasurer may deem necessary. The sums so  
transferred shall be returned to the same fund of the treasury by  
23 the State Treasurer from the proceeds of the sale of the first  
issue of bonds.

16. Pending their application to the purposes provided in this  
25 act, moneys in the New Jersey Bridge Rehabilitation and  
27 Improvement and Railroad Right-of-way Preservation Fund of  
1988 may be invested and reinvested as other trust funds in the  
29 custody of the State Treasurer in the manner provided by law.  
Net earnings received from the investment or deposit of such  
31 fund shall be paid into the general treasury and become a part of  
the General Fund.

17. In case any coupon bonds or coupons thereunto  
33 appertaining or any registered bond shall become lost, mutilated  
35 or destroyed, a new bond shall be executed and delivered of like  
tenor, in substitution for the lost, mutilated or destroyed bonds or  
37 coupons, upon the owner furnishing to the issuing officials  
evidence satisfactory to them of such loss, mutilation or  
39 destruction, proof of ownership and such security and indemnity

1 and reimbursement for expenses as the issuing officials may  
require.

3 18. Accrued interest received upon the sale of the bonds shall  
be applied to the discharge of a like amount of interest upon the  
5 bonds when due. Any expense incurred by the issuing officials for  
advertising, engraving, printing, clerical, authenticating,  
7 registering, legal or other services necessary to carry out the  
duties imposed upon them by the provisions of this act shall be  
9 paid from the proceeds of the sale of the bonds, by the State  
Treasurer upon warrant of the Director of the Division of Budget  
11 and Accounting in the Department of the Treasury, in the same  
manner as other obligations of the State are paid except as  
13 otherwise provided herein.

15 19. Bonds of each series issued hereunder shall mature,  
including any sinking fund redemptions, at such times, not more  
than thirty-five years following the date of issuance thereof, and  
17 in such amounts as shall be determined by the issuing officials,  
and the issuing officials may reserve to the State by appropriate  
19 provision in the bonds of any series the power to redeem all or  
any of such bonds prior to maturity at such price or prices and  
21 upon such terms and conditions as may be provided in such bonds.

23 20. The issuing officials may issue refunding bonds in an  
amount not to exceed the amount necessary to effectuate the  
refinancing of all or any bonds issued pursuant to this act, at any  
25 time and from time to time, for the purpose of refinancing any  
bond or bonds issued pursuant to this act, subject to the following  
27 provisions:

29 a. Refunding bonds may be issued at such time prior to the  
maturity or redemption of the bonds to be refinanced thereby as  
the issuing officials shall determine.

31 b. Each series of refunding bonds may be issued in a sufficient  
amount to pay or to provide for the payment of the principal of  
33 the bonds to be refinanced thereby, together with any redemption  
premium thereon, any interest accrued or to accrue on such bonds  
35 to be refinanced to the date of payment of such outstanding  
bonds, the expense of issuing such refunding bonds and the  
37 expenses, if any, of paying such bonds to be refinanced.

39 c. No refunding bonds shall be issued unless the issuing  
officials shall first determine that the present value of the

1 aggregate principal of and interest on such refunding bonds is less  
3 than the present value of the aggregate principal of and interest  
5 on the bonds to be refinanced thereby; provided, for the purposes  
7 of this limitation, present value shall be computed using a  
9 discount rate equal to the yield of such refunding bonds, and yield  
shall be computed using an actuarial method based upon a  
360-day year with semiannual compounding and upon the price or  
prices paid to the State by the initial purchasers of such  
refunding bonds.

d. Any refinancing authorized hereunder may be effected by  
the sale of the refunding bonds and the application of the  
proceeds thereof to the immediate payment of the principal of  
the bonds to be refinanced thereby, together with any redemption  
premium thereon, any interest accrued or to accrue on such bonds  
to be refinanced to the date of payment of such bonds, the  
expenses of issuing the refunding bonds and the expenses, if any,  
of paying such bonds to be refinanced, or, to the extent not  
required for such immediate payment, shall be deposited,  
together with any other moneys legally available therefor, in  
trust with one or more trustees or escrow agents, which trustees  
or escrow agents shall be trust companies or national or state  
banks having powers of a trust company, located either within or  
without the State, to be applied solely to the payment when due  
of the principal of, redemption premium, if any, and interest due  
and to become due on the bonds to be refinanced on or prior to  
the redemption date or maturity date thereof, as the case may  
be. Any such proceeds or moneys so held by such trustees or  
escrow agents may be invested in government securities,  
including government securities issued or held in book-entry form  
on the books of the Department of Treasury of the United States;  
provided, such government securities shall not be subject to  
redemption prior to their maturity other than at the option of the  
holder thereof. Except as otherwise provided in this subsection,  
neither government securities or moneys so deposited with such  
trustees or escrow agents shall be withdrawn or used for any  
purpose other than, and shall be held in trust for, the payment of  
the principal of, redemption premium, if any, and interest on the  
bonds to be refinanced thereby; provided that any cash received  
from such principal or interest payments on such government

1 securities deposited with such trustees or escrow agents, to the  
2 extent such cash will not be required at any time for such purpose  
3 shall be paid over to such trustees or escrow agents, and to the  
4 extent such cash will be required for such purpose at a later date,  
5 shall, to the extent practicable and legally permissible, be  
6 reinvested in government securities maturing at times and in  
7 amounts sufficient to pay when due the principal of, redemption  
8 premium, if any, and interest to become due on the bonds to be  
9 refinanced on and prior to such redemption date or maturity date  
10 thereof, as the case may be, and interest earned from such  
11 reinvestments to the extent not required for the payment of  
12 bonds shall be paid over to the State, as received by such trustees  
13 or escrow agents. Notwithstanding anything to the contrary  
14 contained herein: (1) such trustees or escrow agents shall, if so  
15 directed by the issuing officials, apply moneys on deposit with  
16 such trustees or escrow agents pursuant to the provisions of  
17 <sup>1</sup>[the] this section and redeem or sell government securities so  
18 deposited with such trustees or escrow agents and apply the  
19 proceeds thereof to the purchase of the bonds which were  
20 refinanced by the deposit with such trustees or escrow agents of  
21 such moneys and government securities and immediately  
22 thereafter cancel all such bonds so purchased or apply the  
23 proceeds to the purchase of different government securities;  
24 provided, however, that the moneys and government securities on  
25 deposit with such trustees or escrow agents after such purchase  
26 and cancellation of such outstanding bonds <sup>1</sup>[of] or<sup>1</sup> such  
27 purchase of different government securities shall be sufficient to  
28 pay when due the principal of, redemption premium, if any, and  
29 interest on all other bonds in respect of which such moneys and  
30 government securities were deposited with such trustees or  
31 escrow agents on or prior to the redemption date or maturity  
32 date thereof, as the case may be; and (2) in the event that on any  
33 date, as a result of any purchases and cancellations of such bonds  
34 or any purchases of different government securities as provided  
35 in this subsection, the total amount of moneys and government  
36 securities remaining on deposit with such trustees or escrow  
37 agents is in excess of the total amount which have been required  
38 to be deposited with such trustees or escrow agents on such date  
39 in respect of the remaining bonds for which such deposit was

1 made in order to pay when due the principal of, redemption  
premium, if any, and interest on such remaining bonds, such  
3 trustees or escrow agents, shall, if so directed by the issuing  
officials, pay the amount of such excess to the State. Any  
5 amounts held by the State Treasurer in a separate fund or funds  
for the payment of the principal of and interest on bonds to be  
7 refinanced, as provided herein, shall, if so directed by the issuing  
officials, be transferred by the State Treasurer for deposit with  
9 one or more trustees or escrow agents as provided herein to be  
applied to the payment when due of the principal of, redemption  
11 premium, if any, and interest to become due on such bonds to be  
refinanced as provided in this section, or be applied by the State  
13 Treasurer to the payment when due of the principal of and  
interest on refunding bonds, issued hereunder to refinance such  
15 bonds. The State Treasurer is authorized to enter into any  
contract or contracts with one or more trust companies or  
17 national or state banks, as provided herein, subject to the  
approval of the issuing officials.

19 e. Notwithstanding the provisions of section 12 hereof, any  
series of refunding bonds issued pursuant to this section shall  
21 mature at any time or times not later than five years following  
the latest scheduled final maturity date, determined without  
23 regard to any redemptions prior thereto, of any of the bonds to be  
refunded thereby, and in no event later than 35 years following  
25 the date of issuance of such series of refunding bonds, and such  
refundings bonds may be sold at public or private sale at such  
27 prices and under such terms, conditions and regulations as the  
issuing officials may prescribe. Refunding bonds shall be entitled  
29 to all the benefits of this act and subject to all its limitations  
except as to sale provisions and to the extent therein otherwise  
31 expressly provided.

33 f. Upon the decision by the issuing officials to issue refunding  
bonds pursuant to this section, and prior to the sale of those  
bonds, the issuing officials shall transmit to the Joint Budget  
35 Oversight Committee, or its successor, a report that a decision  
has been made, reciting the basis on which the decision was  
37 made, including an estimate of the debt service savings to be  
achieved and the calculations upon which the issuing officials  
39 relied when making the decision to issue refunding bonds. The

1 report shall also disclose the intent of the issuing officials to  
issue and sell the refunding bonds at public or private sale and the  
3 reasons therefor.

g. The Joint Budget Oversight Committee, or its successor,  
5 shall have authority to approve or disapprove the sales of  
refunding bonds as included in each report submitted in  
7 accordance with subsection f. of this section. The committee, or  
its successor, shall notify the issuing officials in writing of the  
9 approval or disapproval as expeditiously as possible.

h. No refunding bonds shall be issued unless the report  
11 has been submitted to and approved by the Joint Budget  
Oversight Committee, or its successor, as set forth in subsection  
13 g. of this section.

i. Within 30 days after the sale of the refunding bonds, the  
15 issuing officials shall notify the committee, or its successor, of  
the result of that sale, including the prices and terms, conditions  
17 and regulations concerning the refunding bonds, the actual  
amount of debt service savings to be realized as a result of the  
19 sale of refunding bonds, and the intended use of the proceeds  
from the sale of those bonds.

j. The committee, or its successor, shall, however, review all  
21 information and reports submitted in accordance with this section  
and may, on its own initiative, make observations and  
23 recommendations to the issuing officials, or to the Legislature, or  
25 both, as it deems appropriate.

21. Any bond or bonds issued hereunder shall no longer be  
27 deemed to be outstanding, shall no longer constitute a direct  
obligation of the State of New Jersey and the faith and credit of  
29 the State, shall no longer be pledged to the payment of the  
principal of and interest on such bonds, and such bonds shall be  
31 secured solely by and payable solely from moneys and government  
securities deposited in trust with one or more trustees or escrow  
33 agents, which trustees and escrow agents shall be trust companies  
or national or state banks having powers of a trust company,  
35 located either within or without the State, as provided herein,  
whenever there shall be deposited in trust and with such trustees  
37 or escrow agents as provided herein either moneys or government  
securities, including government securities issued or held in  
39 book-entry form on the books of the Department of Treasury of

1 the United States, the principal of and interest on which when  
3 due will provide money which, together with the moneys, if any,  
5 deposited with such trustees or escrow agents at the same time,  
7 shall be sufficient to pay when due the principal of, redemption  
9 premium, if any, and interest due and to become due on such  
11 bonds on or prior to the redemption date or maturity date  
13 thereof, as the case may be; provided, such government securities  
15 shall not be subject to redemption prior to their maturity other  
17 than at the option of the holder thereof. The State of New  
19 Jersey hereby covenants with the holders of any bonds for which  
21 government securities or moneys shall have been deposited in  
23 trust with such trustees or escrow agents as provided <sup>1</sup>[it] in<sup>1</sup> this  
25 section that, except as otherwise provided in this section, neither  
27 the government securities nor moneys so deposited with such  
29 trustees or escrow agents shall be withdrawn or used by the State  
31 for any purpose other than, and shall be held in trust for, the  
33 payment of the principal of, redemption premium, if any, and  
35 interest to become due on such bonds; provided that any cash  
37 received from such principal or interest payments on such  
39 government securities deposited with such trustees or escrow  
agents, to the extent such cash will not be required at any time  
for such purpose, shall be paid over to the State as received by  
such trustees or escrow agents free and clear of any trust, lien,  
pledge or assignment securing such bonds; and to the extent such  
cash will be required for such purpose at a later date, shall, to  
the extent practicable and legally permissible, be reinvested in  
government securities maturing at times and in amounts  
sufficient to pay when due the principal of, redemption premium,  
if any, and interest to become due on such bonds on and prior to  
such redemption date or maturity date thereof, as the case may  
be, and interest earned from such reinvestments shall be paid  
over to the State, as received by such trustees or escrow agents,  
free and clear of any trust, lien or pledge securing such bonds.  
Notwithstanding anything to the contrary contained herein: a.  
such trustees or escrow agents shall, if so directed by the issuing  
officials, apply moneys on deposit with such trustees or escrow  
agents pursuant to the provisions of this section and redeem or  
sell government securities so deposited with such trustees or  
escrow agents and apply the proceeds thereof to (1) the purchase

1 of the bonds which were refinanced by the deposit with such  
trustees or escrow agents of such moneys and government  
3 securities and immediately thereafter cancel all bonds so  
purchased, or (2) the purchase of different government securities;  
5 provided, however, that the moneys and government securities on  
deposit with such trustees or escrow agents after such purchase  
7 and cancellation of such bonds or such purchase of different  
government securities shall be sufficient to pay when due the  
9 principal of, redemption premium, if any, and interest on all  
other bonds in respect of which such moneys and government  
11 securities were deposited with such trustees or escrow agents on  
or prior to the redemption date or maturity date thereof, as the  
13 case may be; and b. in the event that on any date, as a result of  
any purchases and cancellations of bonds or any purchases of  
15 different government securities as provided in this sentence, the  
total amount of moneys and government securities remaining on  
17 deposit with such trustees or escrow agents is in excess of the  
total amount which would have been required to be deposited  
19 with such trustees or escrow agents on such date in respect of the  
remaining bonds for which such deposit was made in order to pay  
21 when due the principal of, redemption premium, if any, and  
interest on such remaining bonds, such trustees or escrow agents  
23 shall, if so directed by the issuing officials, pay the amount of  
such excess to the State free and clear of any trust, lien, pledge  
25 or assignment securing such refunding bond.

22. Refunding bonds issued pursuant to section 20 of this act  
27 may be consolidated with bonds issued pursuant to section 4 of  
this act or with bonds issued pursuant to any other act for  
29 purposes of sale.

23. To provide funds to meet the interest and principal  
31 payment requirements for the bonds issued under this act and  
outstanding, there is appropriated in the order following:

33 a. Revenue derived from the collection of taxes under the  
"Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), or  
35 so much thereof as may be required; and

37 b. If, at any time, funds necessary to meet the interest and  
principal payments on outstanding bonds issued under this act, are  
insufficient or not available, there shall be assessed, levied and  
39 collected annually in each of the municipalities of the counties of

1 this State, a tax on the real and personal property upon which  
2 municipal taxes are or shall be assessed, levied and collected,  
3 sufficient to meet the interest on all outstanding bonds issued  
4 hereunder and on the bonds proposed to be issued under this act in  
5 the calendar year in which the tax is to be raised and for the  
6 payment of bonds falling due in the year following the year for  
7 which the tax is levied. The tax shall be assessed, levied and  
8 collected in the same manner and at the same time as other taxes  
9 upon real and personal property. The governing body of each  
10 municipality shall pay to the treasurer of the county in which the  
11 municipality is located, on or before December 15 in each year,  
12 the amount of tax herein directed to be assessed and levied, and  
13 the county treasurer shall pay the amount of the tax to the State  
14 Treasurer on or before December 20 in each year.

15 If on or before December 31 in any year, the issuing officials,  
16 by resolution, determine that there are moneys in the General  
17 Fund beyond the needs of the State, sufficient to meet the  
18 principal of bonds falling due and all interest payable in the  
19 ensuing calendar year, the issuing officials shall file the  
20 resolution in the office of the State Treasurer, whereupon the  
21 State Treasurer shall transfer the moneys to a separate fund to  
22 be designated by him, and shall pay the principal and interest out  
23 of that fund as the same shall become due and payable, and the  
24 other sources of payment of the principal and interest provided  
25 for in this section shall not then be available, and the receipts for  
26 the year from the tax specified in subsection a. of this section  
27 shall be considered part of the General Fund, available for  
28 general purposes.

29 24. Should the State Treasurer, by December 31 of any year,  
30 deem it necessary, because of insufficiency of funds collected  
31 from the sources of revenues as provided in this act, to meet the  
32 interest and principal payments for the year after the ensuing  
33 year, the State Treasurer shall certify to the Director of the  
34 Division of Budget and Accounting in the Department of the  
35 Treasury the amount necessary to be raised by taxation for those  
36 purposes, which is to be assessed, levied and collected for and in  
37 the ensuing calendar year. The director shall, on or before March  
38 1 following, calculate the amount in dollars to be assessed, levied  
39 and collected in each county as herein set forth. This

1 calculation shall be based upon the corrected assessed valuation  
of each county for the year preceding the year in which the tax is  
3 to be assessed, but the tax shall be assessed, levied and collected  
upon the assessed valuation of the year in which the tax is  
5 assessed and levied. The director shall certify the amount to the  
county board of taxation and the treasurer of each county. The  
7 county board of taxation shall include the proper amount in the  
current tax levy of the several taxing districts of the county in  
9 proportion to the ratables ascertained for the current year.

25. For the purpose of complying with the provisions of the  
11 State Constitution this act shall, at the general election to be  
held in the month of November, 1988, be submitted to the  
13 people. In order to inform the people of the contents of this act  
it shall be the duty of the Secretary of State, after this section  
15 takes effect, and at least 15 days prior to the election, to cause  
this act to be published in at least 10 newspapers published in the  
17 State and notify the clerk of each county of this State of the  
passage of this act, and the clerks respectively, in accordance  
19 with the instructions of the Secretary of State, shall have each of  
the ballots printed, as follows:

21 If you approve the act entitled below, make a cross (X), plus (+)  
or check (✓) mark in the square opposite the word "Yes."

23 If you disapprove the act entitled below, make a cross (X), plus  
(+), or check (✓) mark in the square opposite the word "No."

25 If voting machines are used, a vote of "Yes" or "No" shall be  
equivalent to these markings respectively.

27 <sup>1</sup>[The fact and date of the approval or passage of this act, as  
the case may be, may be inserted in the appropriate place after  
29 the title in the ballot. No other requirements of law as to notice  
or procedure, except as herein provided, need to be adhered to.

31 The vote cast for and against the approval of this act, by ballot  
or voting machine, shall be counted and the result thereof  
33 returned by the election officer, and a canvass of the election  
had in the same manner as is provided for by law in the case of  
35 the election of a Governor, and the approval or disapproval of  
this act so determined shall be declared in the same manner as  
37 the result of an election for a Governor, and if there shall be a  
majority of all votes cast for and against it at the election in  
39 favor of the approval of this act, then all the provisions of this  
act not made effective theretofore shall take effect forthwith.]<sup>1</sup>

1 3 5 7 9 11 13 15 17 19 21	YES.	<p style="text-align: center;">NEW JERSEY BRIDGE REHABILITATION AND IMPROVEMENT AND RAILROAD RIGHT-OF-WAY BOND ACT OF 1988</p> <p>Shall the New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-way Bond Act of 1988, authorizing the creation of a debt of the State of New Jersey by issuance of bonds of the State in the sum of \$200,000,000 for the purpose of rehabilitating and improving bridges in the State and preserving and acquiring railroad rights-of-way; providing the ways and means to pay and discharge the principal and interest on the bonds and to refinance all or any of the bonds if the same will result in a present value savings; be approved?</p>
23 25 27 29 31 33 35 37 39 41 43 45 47	NO.	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>Approval of this act would authorize the sale of <del>1</del>[\$200,000,000] \$200,000,000.00<sup>1</sup> in State bonds for the rehabilitation and improvement of State, county and municipal bridges, and preservation and acquisition of railroad rights-of-way. Not more than \$75,000,000.00 would be reserved for the costs of State bridge projects and not less than \$75,000,000.00 would be reserved to fund a portion of the costs of county and municipal bridge projects. The costs of these bridge repairs and improvements exceed funding which can be provided by moneys generated through two previous bridge bond acts and the Transportation Trust Fund and exceed funding available by other State appropriations. The sum of \$50,000,000.00 would be reserved to fund the costs of preservation and acquisition of railroad rights-of-way. The act also authorizes the issuance of bonds in a sufficient amount to refinance all or any of these bonds if the same will result in a present value savings.</p>

49  
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<sup>1</sup>The fact and date of the approval or passage of this act, as the case may be, may be inserted in the appropriate place after the title in the ballot. No other requirements of law as to notice or procedure, except as herein provided, need to be adhered to.

55

The vote cast for and against the approval of this act, by ballot or voting machine, shall be counted and the result thereof returned by the election officer, and a canvass of the election

1 had in the same manner as is provided for by law in the case of  
2 the election of a Governor, and the approval or disapproval of  
3 this act so determined shall be declared in the same manner as  
4 the result of an election for a Governor, and if there shall be a  
5 majority of all votes cast for and against it at the election in  
6 favor of the approval of this act, then all the provisions of this  
7 act not made effective theretofore shall take effect forthwith.<sup>1</sup>

8 26. There is appropriated the sum of \$5,000.00 to the  
9 Secretary of State for expenses in connection with the  
10 publication of notice pursuant to section 25 of this act.

11 27. The commissioner shall submit to the State Treasurer and  
12 the New Jersey Commission on Capital Budgeting and Planning,  
13 with the department's annual budget request, a plan for the  
14 expenditure of funds from the New Jersey Bridge Rehabilitation  
15 and Improvement and Railroad Right-of-way Preservation Fund  
16 of 1988 for the upcoming fiscal year. Such plan shall include, but  
17 not be limited to, a performance evaluation of the expenditures  
18 made from that fund to date; a description of programs planned  
19 during the upcoming fiscal year, a copy of the rules and  
20 regulations governing the operation of programs to be financed,  
21 in part or in whole, by funds from the New Jersey Bridge  
22 Rehabilitation and Improvement and Railroad Right-of-way  
23 Preservation Fund of 1988; and an estimate of expenditures for  
24 the upcoming fiscal year.

25 28. Not less than 30 days prior to the commissioner entering  
26 into any contract, lease, obligation, or agreement to effectuate  
27 the purposes of this act, the commissioner shall report to and  
28 consult with the Joint Budget Oversight Committee or its  
29 successor.

30 29. All appropriations from the bond fund shall be by specific  
31 allocation for each major project, and any transfer of any funds  
32 so appropriated shall require the approval of the Joint Budget  
33 Oversight Committee or its successor.

34 30. Immediately following the submission to the Legislature of  
35 the Governor's Annual Budget Message, the commissioner shall  
36 submit to the Transportation and Communications Committee of  
37 the Senate and the Transportation<sup>1</sup>[, Communications and High  
38 Technology] and Communications<sup>1</sup> Committee of the General  
39 Assembly, or their designated successors, a copy of the plan

1 pursuant to section 27 of this act together with such changes  
therein as may have been required by the Governor's budget  
3 message.

5 31. This section and sections 25 and 26 of this act shall take  
effect immediately and the remainder of the act shall take effect  
as and when provided in section 25 of this act.  
7

9 TRANSPORTATION

Bridges and Tunnels

11 Authorizes a \$200,000,000 State bond issue to finance the  
13 rehabilitation and improvement of State, county and municipal  
bridges and the preservation and acquisition of railroad  
15 rights-of-way.

ASSEMBLY TRANSPORTATION AND  
COMMUNICATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2425

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 10, 1988

The Assembly Transportation and Communications Committee reports favorably Assembly Bill No. 2425 with committee amendments.

This amended bill, entitled the "New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-way Preservation Bond Act of 1988," authorizes the issuance of \$200,000,000.00 in State general obligation bonds for the rehabilitation and improvement of bridges in the State and the preservation and acquisition of railroad rights-of-way. The authorization of the bond issuance requires voter approval at the next general election.

The bill provides that not more than \$75,000,000 shall be reserved for the cost of rehabilitation and improvement of bridges carrying State highways. In addition, not less than \$75,000,000 shall be reserved for the State share of the cost of rehabilitation and improvement of bridges carrying county and municipal roads. The sum of \$50,000,000 would be reserved to fund the costs of preservation and acquisition of railroad rights-of-way. The bonds are to be issued for a period not exceeding 35 years and may be refinanced during that period. For the local bridge projects, the bond act provides that the State share of the local projects shall equal 90% of the costs and the county or municipality share shall equal 10% of the costs. The bill also provides that the Department of Transportation may accept or assign jurisdiction or responsibility for those railroad overhead bridges whose ownership is not determined or is in doubt. In assigning that jurisdiction or responsibility, the department may assign responsibility for routine road maintenance to the local government unit with jurisdiction for the approaching roadways. Jurisdiction or responsibility for other than roadway maintenance shall be accepted by the department except in those cases where the department determines by a preponderance of evidence that a county or municipality already

owns or has jurisdiction for a bridge. In assigning the jurisdiction or responsibility, the department shall give notice and hold hearings pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The bill further provides that the cost of a local bridge project shall be determined after first reducing the total project cost by the amount of available federal funds.

An appropriation of \$5,000.00 from the General Fund to the Secretary of State is included in the bill to pay the costs of publication of notice of the bond question prior to the election.

The committee amendments are technical in nature and make consistent all references to the bond fund.

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator WEISS

1 AN ACT authorizing the creation of a debt of the State of New  
Jersey by the issuance of bonds of the State in the aggregate  
3 principal amount of \$200,000,000 for the purpose of  
rehabilitating<sup>1</sup>[,]<sup>1</sup>and improving bridges in the State<sup>1</sup>, and the  
5 preservation and acquisition of railroad rights-of-way<sup>1</sup>;  
providing the ways and means to pay and discharge the  
7 principal and interest on the bonds and refunding bonds;  
providing for the submission of this act to the people at a  
9 general election; and making an appropriation.

11 BE IT ENACTED *by the Senate and General Assembly of the*  
*State of New Jersey:*

13 1. This act shall be known and may be cited as the "New Jersey  
Bridge Rehabilitation and Improvement <sup>1</sup>and Railroad  
15 Right-of-way Preservation<sup>1</sup> Bond Act of 1988."

2. The Legislature finds and determines that:

17 a. A safe and reliable system of rail and road transportation is  
essential to the well being of the citizens and the economy of this  
19 State.

21 b. New Jersey's rail and road system is one of the busiest in  
the world and provides a corridor for goods and passengers to and  
from not only New York, Pennsylvania and Delaware, but also to  
23 and from distant points in the western, northern, and southern  
regions of our nation.

25 c. More than 150,000 commuters daily rely on New Jersey's  
railroads for transportation to and from their places of  
27 employment.

29 d. Due to the destructive effect of the elements, the structural  
pressures of regular usage, and significant material deterioration  
stemming from a lack of regular maintenance in recent decades,  
31 bridges in the State's rail and road system are desperately in  
need of rehabilitation and improvement.

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate STC committee amendments adopted January 28, 1988.

<sup>2</sup> Senate SRF committee amendments adopted February 29, 1988.

<sup>3</sup> Assembly AAP committee amendments adopted January 23, 1989.

1 e. The cost of such essential rehabilitation and improvement  
2 far exceeds the funds which can be provided by regular State  
3 appropriations or will be available from the federal government,  
4 the "New Jersey Transportation Rehabilitation and Improvement  
5 Bond Act of 1979," (P.L.1979, c.165) the "New Jersey Bridge  
6 Rehabilitation and Improvement Bond Act of 1983" (P.L.1983,  
7 c.363) or the "New Jersey Transportation Trust Fund Authority  
8 Act of 1984," P.L.1984, c.73 (C.27:1B-1 et seq.).

9 f. It is in the public interest, and a wholly valid and essential  
10 public purpose, to rehabilitate and improve bridges in the State's  
11 rail and road system through the authorization of the bond issue  
12 provided for herein.

13 1g. It is in the public interest, and a wholly valid and essential  
14 public purpose, to preserve and acquire rights-of-way in the  
15 State's rail system through the authorization of the bond issue  
16 provided for herein.<sup>1</sup>

17 3. As used in this act:

18 a. "Commissioner" means the Commissioner of the Department  
19 of Transportation.

20 b. "Department of Transportation" means the New Jersey  
21 Department of Transportation established by the "Transportation  
22 Act of 1966," P.L.1966, c.301 (C.27:1A-1 et seq.) or any agency  
23 or department successor to its power and responsibilities.

24 c. "Fund" means the New Jersey Bridge Rehabilitation and  
25 Improvement <sup>1</sup>and Railroad Right-of-way Preservation<sup>1</sup> Fund of  
26 1988 established in section 14 of this act.

27 d. "Rehabilitation and improvement of bridges" means the  
28 construction, reconstruction, removal, replacement,  
29 improvement, repair or rebuilding of bridges carrying State  
30 highways or county or municipal roads, including railroad  
31 overhead bridges.

32 e. "Railroad overhead bridge" means any bridge or passage  
33 carrying a State highway or a county or municipal road over and  
34 across a railroad, subway, or street, traction, or electric railway,  
35 or over and across the right of way of such a railroad, subway or  
36 railway. Unless stated otherwise to the contrary, this definition  
37 shall not include those bridges or passages over and across a  
38 railroad or electric railway operated by the State, the State  
39 Department of Transportation or the New Jersey Transit  
40 Corporation.

1 f. "Cost" means, but is not limited to, the construction,  
reconstruction, improvement, rehabilitation, removal, relocation,  
3 renewal, establishment, or repair of bridges, <sup>1</sup>the cost of the  
acquisition, construction, reconstruction, improvement,  
5 rehabilitation, or renewal of railroad rights-of-way as necessary  
for their preservation,<sup>1</sup> the cost of engineering, inspection,  
7 planning, legal, financial and other professional services; the cost  
of a bond registrar and an authenticating agent, the cost of  
9 reimbursement of any fund of the State from which moneys shall  
have been advanced to the fund created herein, and for payment  
11 or security of principal or interest on bonds as the Director of the  
Division of Budget and Accounting in the Department of the  
13 Treasury may determine.

15 g. "Government securities" means any bonds or other  
obligations which as to principal and interest constitute direct  
obligations of, or are unconditionally guaranteed by, the United  
17 States of America, including obligations of any fiscal agency to  
the extent those obligations are unconditionally guaranteed by  
19 the United States of America and any certificates or any other  
evidences of an ownership interest in those obligations of, or  
21 unconditionally guaranteed by, the United States of America or in  
specified portions of those obligations which may consist of the  
23 principal of, or the interest on, those obligations.

25 4. a. Bonds of the State of New Jersey in the aggregate  
principal amount of \$200,000,000.00 are hereby authorized for  
the purpose of rehabilitation and improvement of bridges in the  
27 State <sup>1</sup>and the preservation and acquisition of railroad  
rights-of-way<sup>1</sup>. Of this sum, not more than <sup>1</sup>[\$100,000,000.00]  
29 \$75,000,000.00<sup>1</sup> shall be reserved for the cost of rehabilitation  
and improvement of bridges carrying State highways, and not less  
31 than <sup>1</sup>[\$100,000,000.00] \$75,000,000.00<sup>1</sup> shall be reserved for the  
State share of the cost of rehabilitation and improvement of  
33 bridges carrying county and municipal roads <sup>1</sup>and \$50,000,000.00  
shall be reserved for the preservation and acquisition of railroad  
35 rights-of-way<sup>1</sup>, to be allocated and expended in compliance with  
the cost sharing requirements of this section.

37 b. With respect to those bridges which carry State highways  
and which are constructed, owned or maintained by the State and  
39 those railroad overhead bridges over and across a railroad or  
electric railway operated by the State, the State Department of

1 Transportation or the New Jersey Transit Corporation, the State  
shall defray <sup>3</sup>[100% of]<sup>3</sup> the cost of rehabilitation and  
3 improvement.

c. With respect to those bridges which carry county or  
5 municipal roads, except those railroad overhead bridges carrying  
county or municipal roads which are provided for in subsection b.  
7 of this section, the State shall defray 90% of the cost of  
rehabilitation and improvement, with the county or municipality  
9 defraying 10% of the cost.

d. With respect to railroad overhead bridges, notwithstanding  
11 the provisions of chapter 12 of Title 48 of the Revised Statutes,  
the railroad company whose tracks or right-of-way the bridge  
13 crosses, shall not be required to contribute to the costs of the  
rehabilitation and improvement of a bridge but shall furnish, at  
15 its own expense, necessary track safety services and engineering  
reviews.

e. With respect to those railroad overhead bridges whose  
ownership is not determined or is in doubt, the Department of  
19 Transportation may accept or assign full or partial permanent  
jurisdictions or responsibilities to either the department or to a  
21 county or municipality as provided in this subsection <sup>1</sup>or in  
accordance with P.L.19 , c. (C. ) (now pending before the  
23 Legislature as Senate Bill No. 2044 of 1988)<sup>1</sup>. The department  
may assign responsibility for routine roadway maintenance to the  
25 local government unit with jurisdiction for the approaching  
roadways. Jurisdiction or responsibility for other than roadway  
27 maintenance shall be accepted by the department except in those  
cases where the department determines by a preponderance of  
29 the evidence that a county or municipality already owns or has  
jurisdiction for a bridge. The department shall assign or accept  
31 such jurisdictions or responsibilities after notice and hearing  
pursuant to the provisions of the "Administrative Procedure  
33 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). All cost sharing  
prescribed in this section shall be determined after first reducing  
35 the cost of rehabilitation and improvement of bridges by the  
amount of available federal funding.

37 <sup>1</sup>f. With respect to the preservation of railroad rights-of-way,  
the Department of Transportation may acquire by purchase,  
39 condemnation, lease, gift or otherwise, on terms and conditions  
and in a manner the department deems proper, any <sup>3</sup>current or

1 former<sup>3</sup> railroad right-of-way <sup>3</sup>[not in use]<sup>3</sup>, or part thereof,  
 2 <sup>3</sup>and property adjacent or contiguous thereto,<sup>3</sup> and tracks,  
 3 appurtenances, ballast, <sup>3</sup>[structures or]<sup>3</sup> buildings, <sup>3</sup>[thereon  
 4 and],<sup>3</sup> facilities, stations, and other structures <sup>3</sup>[or buildings]  
 5 thereon or<sup>3</sup> adjacent <sup>3</sup>or contiguous<sup>3</sup> thereto, within the State,  
 6 for transportation purposes. The Department of Transportation  
 7 may construct, reconstruct, improve, rehabilitate, or renew such  
 8 property as necessary to preserve it for transportation purposes  
 9 and may provide, by agreement with other agencies or otherwise,  
 10 for whatever interim or joint uses, including but not limited to  
 11 recreational uses, it considers appropriate.<sup>1</sup>

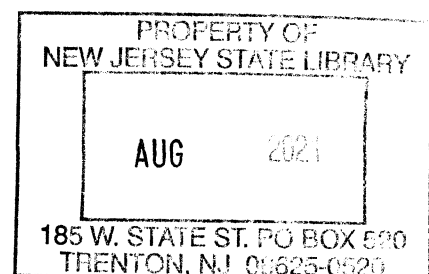
12 5. The commissioner is authorized to promulgate rules and  
 13 regulations pursuant to the "Administrative Procedure Act,"  
 14 P.L.1968, c.410 (C.52:14B-1) in order to effectuate the purposes  
 15 of the act.

16 6. The bonds authorized under this act shall be serial bonds or  
 17 term bonds or a combination thereof and known as "1988 Bridge  
 18 Rehabilitation and Improvement <sup>1</sup>and Railroad Right-of-way  
 19 Preservation<sup>1</sup> Bonds" and shall be issued from time to time as the  
 20 issuing officials herein named shall determine. The bonds may be  
 21 subject to redemption before maturity and shall mature and be  
 22 paid not later than 35 years from the date of their issuance.

23 7. The Governor, State Treasurer and Director of the Division  
 24 of Budget and Accounting in the Department of the Treasury or  
 25 any two of such officials (hereinafter referred to as "the issuing  
 26 officials") are authorized to carry out the provisions of this act  
 27 relating to the issuance of bonds, and shall determine all matters  
 28 in connection therewith subject to provisions of this act. In case  
 29 an issuing official is absent from the State or incapable of acting  
 30 for any reason, his powers and duties shall be exercised and  
 31 performed by such person as shall be authorized by law to act in  
 32 his place.

33 8. Bonds issued in accordance with the provisions of this act  
 34 shall be a direct obligation of the State of New Jersey and the  
 35 faith and credit of the State are pledged for the payment of the  
 36 interest thereon as same shall become due and for the payment of  
 37 the principal at maturity. The principal and interest of such  
 38 bonds shall be exempt from taxation by the State or by any  
 39 county, municipality or other taxing district of the State.

9. The bonds shall be signed in the name of the State by the



1 Governor or by his facsimile signature, under the Great Seal of  
the State, and attested by the manual or facsimile signature of  
3 the Secretary of State, or an assistant Secretary of State, shall  
be countersigned by the facsimile signature of the Director of the  
5 Division of Budget and Accounting in the Department of the  
Treasury and may be authenticated by an authenticating agent or  
7 bond registrar, as the issuing officials shall determine. Interest  
coupons attached to the bonds shall be signed by the facsimile  
9 signature of the director. The bonds may be issued  
notwithstanding that any of the officials signing them or whose  
11 facsimile signature appear on the bonds or coupons shall have  
ceased to hold office at the time of such issue or at the time of  
13 delivery of the bonds to the purchaser.

10. a. The bonds shall recite that they are issued for the  
15 purposes set forth in section 4 of this act and that they are issued  
in pursuance of this act and that this act was submitted to the  
17 people of the State at the general election held in the month of  
November, 1988, and that it was approved by a majority of the  
19 legally qualified voters of the State voting thereon at such  
election. The recital shall be conclusive evidence of the  
21 authority of the State to issue said bonds and their validity. Any  
bonds containing such recital shall in any suit, action or  
23 proceeding involving their validity be conclusively deemed to be  
fully authorized by this act and to have been issued, sold,  
25 executed and delivered in conformity herewith and with all other  
provisions of statutes applicable thereto, and shall be  
27 incontestable for any cause.

b. The bonds shall be issued in the denominations and in the  
29 form or forms, whether coupon or registered as to both principal  
and interest, and with or without such provisions for  
31 interchangeability thereof, as may be determined by the issuing  
officials.

33 11. When the bonds are issued from time to time the bonds of  
each issue shall constitute a separate series to be designated by  
35 the issuing officials. Each series of bonds shall bear such rate or  
rates of interest as from time to time may be determined by the  
37 issuing officials, which interest shall be payable semiannually;  
provided, that the first and last interest periods may be longer or  
39 shorter, in order that intervening semiannual payments may be at  
convenient dates.

1       12. The bonds shall be issued and sold at such price or prices  
and under such terms, conditions and regulations, as the issuing  
3 officials may prescribe, after notice of the sale, published at  
least once in at least three newspapers published in the State of  
5 New Jersey, and at least once in a publication carrying municipal  
bond notices and devoted primarily to financial news, published in  
7 the city of New York or in New Jersey, the first notice to be at  
least five days prior to the day of bidding. The notice of sale  
9 may contain a provision to the effect that any or all bids in  
pursuance thereof may be rejected. In the event of rejection or  
11 of failure to receive any acceptable bid, the issuing officials, at  
any time within 60 days from the date of such advertised sale,  
13 may sell such bonds at private sale at such price or prices and  
under such terms and conditions as the issuing officials may  
15 prescribe. The issuing officials may sell all or part of the bonds  
of any series as issued to any State fund or to the federal  
17 government or any agency thereof, at private sale, without  
advertisement.

19       13. Until permanent bonds can be prepared, the issuing officials  
may, in their discretion, in lieu of such permanent bonds, issue  
21 temporary bonds in such form and with such privileges as to  
registration and exchange for permanent bonds as may be  
23 determined by the issuing officials.

25       14. The proceeds from the sale of bonds shall be paid to the  
State Treasurer and be held by him in a separate fund, and be  
deposited in such depositories as may be selected by him to the  
27 credit of the fund, which fund shall be known as the "New Jersey  
Bridge Rehabilitation and Improvement <sup>1</sup>and Railroad  
29 <sup>2</sup>[Rights-of-way] Right-of-way<sup>2</sup> Preservation<sup>1</sup> Fund of 1988."

31       15. a. The moneys in the New Jersey Bridge Rehabilitation and  
Improvement <sup>1</sup>and Railroad <sup>2</sup>[Rights-of-way] Right-of-way<sup>2</sup>  
33 Preservation<sup>1</sup> Fund of 1988 are hereby dedicated and shall be  
applied to the cost of the purposes set forth in section 4 of this  
35 act and all such moneys are appropriated to the Department of  
Transportation for such purposes, but no such money shall be  
37 expended for such purposes, except as otherwise authorized,  
without the further specific appropriation thereof by the  
Legislature. Bonds may be issued as herein provided  
39 notwithstanding that the Legislature shall not have then adopted  
an act making a specific appropriation of any moneys.

1 Moneys in the New Jersey Bridge Rehabilitation and  
Improvement 1and Railroad Right-of-way Preservation<sup>1</sup> Fund of  
3 1988 may be appropriated or expended for the purpose of  
providing the nonfederal share of any federal program which  
5 finances the 1preservation or acquisition of railroad  
rights-of-way or the<sup>1</sup> rehabilitation and improvement of bridges.

7 b. At any time prior to the issuance and sale of bonds under  
this act, the State Treasurer is authorized to transfer from  
9 available money in any fund of the treasury of the State to the  
credit of the "New Jersey Bridge Rehabilitation and Improvement  
11 1and Railroad Right-of-way Preservation<sup>1</sup> Fund of 1988," such  
sum as the State Treasurer may deem necessary. The sums so  
13 transferred shall be returned to the same fund of the treasury by  
the State Treasurer from the proceeds of the sale of the first  
15 issue of bonds.

16. Pending their application to the purposes provided in this  
17 act, moneys in the New Jersey Bridge Rehabilitation and  
Improvement 1and Railroad Right-of-way Preservation<sup>1</sup> Fund of  
19 1988 may be invested and reinvested as other trust funds in the  
custody of the State Treasurer in the manner provided by law.  
21 Net earnings received from the investment or deposit of such  
fund shall be paid into the general treasury and become a part of  
23 the General Fund.

17. In case any coupon bonds or coupons thereunto  
25 appertaining or any registered bond shall become lost, mutilated  
or destroyed, a new bond shall be executed and delivered of like  
27 tenor, in substitution for the lost, mutilated or destroyed bonds or  
coupons, upon the owner furnishing to the issuing officials  
29 evidence satisfactory to them of such loss, mutilation or  
destruction, proof of ownership and such security and indemnity  
31 and reimbursement for expenses as the issuing officials may  
require.

18. Accrued interest received upon the sale of the bonds shall  
33 be applied to the discharge of a like amount of interest upon the  
bonds when due. Any expense incurred by the issuing officials for  
35 advertising, engraving, printing, clerical, authenticating,  
37 registering, legal or other services necessary to carry out the  
duties imposed upon them by the provisions of this act shall be  
39 paid from the proceeds of the sale of the bonds, by the State  
Treasurer upon warrant of the Director of the Division of Budget

1 and Accounting in the Department of the Treasury, in the same  
manner as other obligations of the State are paid except as  
3 otherwise provided herein.

19. Bonds of each series issued hereunder shall mature,  
5 including any sinking fund redemptions, at such times, not more  
than thirty-five years following the date of issuance thereof, and  
7 in such amounts as shall be determined by the issuing officials,  
and the issuing officials may reserve to the State by appropriate  
9 provision in the bonds of any series the power to redeem all or  
any of such bonds prior to maturity at such price or prices and  
11 upon such terms and conditions as may be provided in such bonds.

20. The issuing officials may issue refunding bonds in an  
13 amount not to exceed the amount necessary to effectuate the  
refinancing of all or any bonds issued pursuant to this act, at any  
15 time and from time to time, for the purpose of refinancing any  
bond or bonds issued pursuant to this act, subject to the following  
17 provisions:

a. Refunding bonds may be issued at such time prior to the  
19 maturity or redemption of the bonds to be refinanced thereby as  
the issuing officials shall determine.

b. Each series of refunding bonds may be issued in a sufficient  
21 amount to pay or to provide for the payment of the principal of  
the bonds to be refinanced thereby, together with any redemption  
23 premium thereon, any interest accrued or to accrue on such bonds  
to be refinanced to the date of payment of such outstanding  
25 bonds, the expense of issuing such refunding bonds and the  
expenses, if any, of paying such bonds to be refinanced.  
27

c. No refunding bonds shall be issued unless the issuing officials  
29 shall first determine that the present value of the aggregate  
principal of and interest on such refunding bonds is less than the  
31 present value of the aggregate principal of and interest on the  
bonds to be refinanced thereby; provided, for the purposes of this  
33 limitation, present value shall be computed using a discount rate  
equal to the yield of such refunding bonds, and yield shall be  
35 computed using an actuarial method based upon a 360-day year  
with semiannual compounding and upon the price or prices paid to  
37 the State by the initial purchasers of such refunding bonds.

d. Any refinancing authorized hereunder may be effected by  
39 the sale of the refunding bonds and the application of the  
proceeds thereof to the immediate payment of the principal of

1 the bonds to be refinanced thereby, together with any redemption  
premium thereon, any interest accrued or to accrue on such bonds  
3 to be refinanced to the date of payment of such bonds, the  
expenses of issuing the refunding bonds and the expenses, if any,  
5 of paying such bonds to be refinanced, or, to the extent not  
required for such immediate payment, shall be deposited,  
7 together with any other moneys legally available therefor, in  
trust with one or more trustees or escrow agents, which trustees  
9 or escrow agents shall be trust companies or national or state  
banks having powers of a trust company, located either within or  
11 without the State, to be applied solely to the payment when due  
of the principal of, redemption premium, if any, and interest due  
13 and to become due on the bonds to be refinanced on or prior to  
the redemption date or maturity date thereof, as the case may  
15 be. Any such proceeds or moneys so held by such trustees or  
escrow agents may be invested in government securities,  
17 including government securities issued or held in book-entry form  
on the books of the Department of Treasury of the United States;  
19 provided, such government securities shall not be subject to  
redemption prior to their maturity other than at the option of the  
21 holder thereof. Except as otherwise provided in this subsection,  
neither government securities or moneys so deposited with such  
23 trustees or escrow agents shall be withdrawn or used for any  
purpose other than, and shall be held in trust for, the payment of  
25 the principal of, redemption premium, if any, and interest on the  
bonds to be refinanced thereby; provided that any cash received  
27 from such principal or interest payments on such government  
securities deposited with such trustees or escrow agents, to the  
29 extent such cash will not be required at any time for such purpose  
shall be paid over to such trustees or escrow agents, and to the  
31 extent such cash will be required for such purpose at a later date,  
shall, to the extent practicable and legally permissible, be  
33 reinvested in government securities maturing at times and in  
amounts sufficient to pay when due the principal of, redemption  
35 premium, if any, and interest to become due on the bonds to be  
refinanced on and prior to such redemption date or maturity date  
37 thereof, as the case may be, and interest earned from such  
reinvestments to the extent not required for the payment of  
39 bonds shall be paid over to the State, as received by such trustees  
or escrow agents. Notwithstanding anything to the contrary

1 contained herein: (1) such trustees or escrow agents shall, if so  
2 directed by the issuing officials, apply moneys on deposit with  
3 such trustees or escrow agents pursuant to the provisions of  
4 <sup>2</sup>[the] this<sup>2</sup> section and redeem or sell government securities so  
5 deposited with such trustees or escrow agents and apply the  
6 proceeds thereof to the purchase of the bonds which were  
7 refinanced by the deposit with such trustees or escrow agents of  
8 such moneys and government securities and immediately  
9 thereafter cancel all such bonds so purchased or apply the  
10 proceeds to the purchase of different government securities;  
11 provided, however, that the moneys and government securities on  
12 deposit with such trustees or escrow agents after such purchase  
13 and cancellation of such outstanding bonds <sup>2</sup>[of] or<sup>2</sup> such  
14 purchase of different government securities shall be sufficient to  
15 pay when due the principal of, redemption premium, if any, and  
16 interest on all other bonds in respect of which such moneys and  
17 government securities were deposited with such trustees or  
18 escrow agents on or prior to the redemption date or maturity  
19 date thereof, as the case may be; and (2) in the event that on any  
20 date, as a result of any purchases and cancellations of such bonds  
21 or any purchases of different government securities as provided  
22 in this subsection, the total amount of moneys and government  
23 securities remaining on deposit with such trustees or escrow  
24 agents is in excess of the total amount which have been required  
25 to be deposited with such trustees or escrow agents on such date  
26 in respect of the remaining bonds for which such deposit was  
27 made in order to pay when due the principal of, redemption  
28 premium, if any, and interest on such remaining bonds, such  
29 trustees or escrow agents, shall, if so directed by the issuing  
30 officials, pay the amount of such excess to the State. Any  
31 amounts held by the State Treasurer in a separate fund or funds  
32 for the payment of the principal of and interest on bonds to be  
33 refinanced, as provided herein, shall, if so directed by the issuing  
34 officials, be transferred by the State Treasurer for deposit with  
35 one or more trustees or escrow agents as provided herein to be  
36 applied to the payment when due of the principal of, redemption  
37 premium, if any, and interest to become due on such bonds to be  
38 refinanced as provided in this section, or be applied by the State  
39 Treasurer to the payment when due of the principal of and  
interest on refunding bonds, issued hereunder to refinance such

1 bonds. The State Treasurer is authorized to enter into any  
contract or contracts with one or more trust companies or  
3 national or state banks, as provided herein, subject to the  
approval of the issuing officials.

5 e. Notwithstanding the provisions of section 12 hereof, any  
series of refunding bonds issued pursuant to this section shall  
7 mature at any time or times not later than five years following  
the latest scheduled final maturity date, determined without  
9 regard to any redemptions prior thereto, of any of the bonds to be  
refunded thereby, and in no event later than 35 years following  
11 the date of issuance of such series of refunding bonds, and such  
refunding bonds may be sold at public or private sale at such  
13 prices and under such terms, conditions and regulations as the  
issuing officials may prescribe. Refunding bonds shall be entitled  
15 to all the benefits of this act and subject to all its limitations  
except as to sale provisions and to the extent therein otherwise  
17 expressly provided.

f. Upon the decision by the issuing officials to issue refunding  
19 bonds pursuant to this section, and prior to the sale of those  
bonds, the issuing officials shall transmit to the Joint Budget  
21 Oversight Committee, or its successor, a report that a decision  
has been made, reciting the basis on which the decision was  
23 made, including an estimate of the debt service savings to be  
achieved and the calculations upon which the issuing officials  
25 relied when making the decision to issue refunding bonds. The  
report shall also disclose the intent of the issuing officials to  
27 issue and sell the refunding bonds at public or private sale and the  
reasons therefor.

29 g. The Joint Budget Oversight Committee, or its successor,  
shall have authority to approve or disapprove the sales of  
31 refunding bonds as included in each report submitted in  
accordance with subsection f. of this section. The committee, or  
33 its successor, shall notify the issuing officials in writing of the  
approval or disapproval as expeditiously as possible.

35 h. No refunding bonds shall be issued unless the report has been  
submitted to and approved by the Joint Budget Oversight  
37 Committee, or its successor, as set forth in subsection g. of this  
section.

39 i. Within 30 days after the sale of the refunding bonds, the  
issuing officials shall notify the committee, or its successor, of

1 the result of that sale, including the prices and terms, conditions  
and regulations concerning the refunding bonds, the actual  
3 amount of debt service savings to be realized as a result of the  
sale of refunding bonds, and the intended use of the proceeds  
5 from the sale of those bonds.

j. The committee, or its successor, shall, however, review all  
7 information and reports submitted in accordance with this section  
and may, on its own initiative, make observations and  
9 recommendations to the issuing officials, or to the Legislature, or  
\*both, as it deems appropriate.

11 21. Any bond or bonds issued hereunder shall no longer be  
deemed to be outstanding, shall no longer constitute a direct  
13 obligation of the State of New Jersey and the faith and credit of  
the State, shall no longer be pledged to the payment of the  
15 principal of and interest on such bonds, and such bonds shall be  
secured solely by and payable solely from moneys and government  
17 securities deposited in trust with one or more trustees or escrow  
agents, which trustees and escrow agents shall be trust companies  
19 or national or state banks having powers of a trust company,  
located either within or without the State, as provided herein,  
21 whenever there shall be deposited in trust and with such trustees  
or escrow agents as provided herein either moneys or government  
23 securities, including government securities issued or held in  
book-entry form on the books of the Department of Treasury of  
25 the United States, the principal of and interest on which when  
due will provide money which, together with the moneys, if any,  
27 deposited with such trustees or escrow agents at the same time,  
shall be sufficient to pay when due the principal of, redemption  
29 premium, if any, and interest due and to become due on such  
bonds on or prior to the redemption date or maturity date  
31 thereof, as the case may be; provided, such government securities  
shall not be subject to redemption prior to their maturity other  
33 than at the option of the holder thereof. The State of New  
Jersey hereby covenants with the holders of any bonds for which  
35 government securities or moneys shall have been deposited in  
trust with such trustees or escrow agents as provided in this  
37 section that, except as otherwise provided in this section, neither  
the government securities nor moneys so deposited with such  
39 trustees or escrow agents shall be withdrawn or used by the State  
for any purpose other than, and shall be held in trust for, the

1 payment of the principal of, redemption premium, if any, and  
interest to become due on such bonds; provided that any cash  
3 received from such principal or interest payments on such  
government securities deposited with such trustees or escrow  
5 agents, to the extent such cash will not be required at any time  
for such purpose, shall be paid over to the State as received by  
7 such trustees or escrow agents free and clear of any trust, lien,  
pledge or assignment securing such bonds; and to the extent such  
9 cash will be required for such purpose at a later date, shall, to  
the extent practicable and legally permissible, be reinvested in  
11 government securities maturing at times and in amounts  
sufficient to pay when due the principal of, redemption premium,  
13 if any, and interest to become due on such bonds on and prior to  
such redemption date or maturity date thereof, as the case may  
15 be, and interest earned from such reinvestments shall be paid  
over to the State, as received by such trustees or escrow agents,  
17 free and clear of any trust, lien or pledge securing such bonds.  
Notwithstanding anything to the contrary contained herein: a.  
19 such trustees or escrow agents shall, if so directed by the issuing  
officials, apply moneys on deposit with such trustees or escrow  
21 agents pursuant to the provisions of this section and redeem or  
sell government securities so deposited with such trustees or  
23 escrow agents and apply the proceeds thereof to (1) the purchase  
of the bonds which were refinanced by the deposit with such  
25 trustees or escrow agents of such moneys and government  
securities and immediately thereafter cancel all bonds so  
27 purchased, or (2) the purchase of different government securities;  
provided, however, that the moneys and government securities on  
29 deposit with such trustees or escrow agents after such purchase  
and cancellation of such bonds or such purchase of different  
31 government securities shall be sufficient to pay when due the  
principal of, redemption premium, if any, and interest on all  
33 other bonds in respect of which such moneys and government  
securities were deposited with such trustees or escrow agents on  
35 or prior to the redemption date or maturity date thereof, as the  
case may be; and b. in the event that on any date, as a result of  
37 any purchases and cancellations of bonds or any purchases of  
different government securities as provided in this sentence, the  
39 total amount of moneys and government securities remaining on  
deposit with such trustees or escrow agents is in excess of the

1 total amount which would have been required to be deposited  
with such trustees or escrow agents on such date in respect of the  
3 remaining bonds for which such deposit was made in order to pay  
when due the principal of, redemption premium, if any, and  
5 interest on such remaining bonds, such trustees or escrow agents  
shall, if so directed by the issuing officials, pay the amount of  
7 such excess to the State free and clear of any trust, lien, pledge  
or assignment securing such refunding bond.

9 22. Refunding bonds issued pursuant to section 20 of this act  
may be consolidated with bonds issued pursuant to section 4 of  
11 this act or with bonds issued pursuant to any other act for  
purposes of sale.

13 23. To provide funds to meet the interest and principal  
payment requirements for the bonds issued under this act and  
15 outstanding, there is appropriated in the order following:

17 a. Revenue derived from the collection of taxes under the  
"Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), or  
so much thereof as may be required; and

19 b. If, at any time, funds necessary to meet the interest and  
principal payments on outstanding bonds issued under this act, are  
21 insufficient or not available, there shall be assessed, levied and  
collected annually in each of the municipalities of the counties of  
23 this State, a tax on the real and personal property upon which  
municipal taxes are or shall be assessed, levied and collected,  
25 sufficient to meet the interest on all outstanding bonds issued  
hereunder and on the bonds proposed to be issued under this act in  
27 the calendar year in which the tax is to be raised and for the  
payment of bonds falling due in the year following the year for  
29 which the tax is levied. The tax shall be assessed, levied and  
collected in the same manner and at the same time as other taxes  
31 upon real and personal property. The governing body of each  
municipality shall pay to the treasurer of the county in which the  
33 municipality is located, on or before December 15 in each year,  
the amount of tax herein directed to be assessed and levied, and  
35 the county treasurer shall pay the amount of the tax to the State  
Treasurer on or before December 20 in each year.

37 If on or before December 31 in any year, the issuing officials,  
by resolution, determine that there are moneys in the General  
39 Fund beyond the needs of the State, sufficient to meet the  
principal of bonds falling due and all interest payable in the

1 ensuing calendar year, the issuing officials shall file the  
2 resolution in the office of the State Treasurer, whereupon the  
3 State Treasurer shall transfer the moneys to a separate fund to  
4 be designated by him, and shall pay the principal and interest out  
5 of that fund as the same shall become due and payable, and the  
6 other sources of payment of the principal and interest provided  
7 for in this section shall not then be available, and the receipts for  
8 the year from the tax specified in subsection a. of this section  
9 shall be considered part of the General Fund, available for  
10 general purposes.

11 24. Should the State Treasurer, by December 31 of any year,  
12 deem it necessary, because of insufficiency of funds collected  
13 from the sources of revenues as provided in this act, to meet the  
14 interest and principal payments for the year after the ensuing  
15 year, the State Treasurer shall certify to the Director of the  
16 Division of Budget and Accounting in the Department of the  
17 Treasury the amount necessary to be raised by taxation for those  
18 purposes, which is to be assessed, levied and collected for and in  
19 the ensuing calendar year. The director shall, on or before March  
20 1 following, calculate the amount in dollars to be assessed, levied  
21 and collected in each county as herein set forth. This calculation  
22 shall be based upon the corrected assessed valuation of each  
23 county for the year preceding the year in which the tax is to be  
24 assessed, but the tax shall be assessed, levied and collected upon  
25 the assessed valuation of the year in which the tax is assessed and  
26 levied. The director shall certify the amount to the county board  
27 of taxation and the treasurer of each county. The county board  
28 of taxation shall include the proper amount in the current tax  
29 levy of the several taxing districts of the county in proportion to  
30 the ratables ascertained for the current year.

31 25. For the purpose of complying with the provisions of the  
32 State Constitution this act shall, at the general election to be  
33 held in the month of November, 1988, be submitted to the  
34 people. In order to inform the people of the contents of this act  
35 it shall be the duty of the Secretary of State, after this section  
36 takes effect, and at least 15 days prior to the election, to cause  
37 this act to be published in at least 10 newspapers published in the  
38 State and notify the clerk of each county of this State of the  
39 passage of this act, and the clerks respectively, in accordance  
40 with the instructions of the Secretary of State, shall have each of

1 the ballots printed, as follows:

3 If you approve the act entitled below, make a cross (X), plus (+)  
or check (✓) mark in the square opposite the word "Yes."

5 If you disapprove the act entitled below, make a cross (X), plus  
(+), or check (✓) mark in the square opposite the word "No."

7 If voting machines are used, a vote of "Yes" or "No" shall be  
equivalent to these markings respectively.

9 <sup>2</sup>[The fact and date of the approval or passage of this act, as  
the case may be, may be inserted in the appropriate place after  
the title in the ballot. No other requirements of law as to notice  
11 or procedure, except as herein provided, need to be adhered to.

13 The vote cast for and against the approval of this act, by ballot  
or voting machine, shall be counted and the result thereof  
returned by the election officer, and a canvass of the election  
15 had in the same manner as is provided for by law in the case of  
the election of a Governor, and the approval or disapproval of  
17 this act so determined shall be declared in the same manner as  
the result of an election for a Governor, and if there shall be a  
19 majority of all votes cast for and against it at the election in  
favor of the approval of this act, then all the provisions of this  
21 act not made effective theretofore shall take effect forthwith.]<sup>2</sup>

1 3 5 7 9 11 13 15 17 19	YES.	<p>NEW JERSEY BRIDGE REHABILITATION AND IMPROVEMENT <sup>1</sup>AND RAILROAD RIGHT-OF-WAY<sup>1</sup> BOND ACT OF 1988</p> <p>Shall the New Jersey Bridge Rehabilitation and Improvement <sup>1</sup>and Railroad Right-of-way<sup>1</sup> Bond Act of 1988, authorizing the creation of a debt of the State of New Jersey by issuance of bonds of the State in the sum of \$200,000,000.00 for the purpose of rehabilitating and improving bridges in the State <sup>1</sup>and preserving and acquiring railroad rights-of-way<sup>1</sup>; providing the ways and means to pay and discharge the principal and interest on the bonds and to refinance all or any of the bonds if the same will result in a present value savings; be approved?</p>
21 23 25 27 29 31 33 35 37 39 41 43 45 47	NO.	<p>INTERPRETIVE STATEMENT</p> <p>Approval of this act would authorize the sale of \$200,000,000.00 in State bonds for the rehabilitation and improvement of State, county and municipal bridges<sup>1</sup>, and preservation and acquisition of railroad rights-of-way<sup>1</sup>. [of which not] Not<sup>1</sup> more than <sup>1</sup>[\$100,000,000] \$75,000,000.00<sup>1</sup> would be reserved for the costs of State bridge projects and not less than <sup>1</sup>[\$100,000,000] \$75,000,000.00<sup>1</sup> would be reserved to fund a portion of the costs of county and municipal bridge projects. The costs of these bridge repairs and improvements exceed funding which can be provided by moneys generated through two previous bridge bond acts and the Transportation Trust Fund and exceed funding available by other State appropriations. <sup>1</sup>The sum of \$50,000,000.00 would be reserved to fund the costs of preservation and acquisition of railroad rights-of-way.<sup>1</sup> The act also authorizes the issuance of bonds in a sufficient amount to refinance all or any of these bonds if the same will result in a present value savings.</p>

49 <sup>2</sup>The fact and date of the approval or passage of this act, as  
 51 the case may be, may be inserted in the appropriate place after  
 the title in the ballot. No other requirements of law as to notice  
 or procedure, except as herein provided, need to be adhered to.

53 The vote cast for and against the approval of this act, by ballot  
 or voting machine, shall be counted and the result thereof  
 55 returned by the election officer, and a canvass of the election  
 had in the same manner as is provided for by law in the case of

1 the election of a Governor, and the approval or disapproval of  
2 this act so determined shall be declared in the same manner as  
3 the result of an election for a Governor, and if there shall be a  
4 majority of all votes cast for and against it at the election in  
5 favor of the approval of this act, then all the provisions of this  
6 act not made effective theretofore shall take effect forthwith.<sup>2</sup>

7 26. There is appropriated the sum of \$5,000.00 to the Secretary  
8 of State for expenses in connection with the publication of notice  
9 pursuant to section 25 of this act.

10 27. The commissioner shall submit to the State Treasurer and  
11 the New Jersey Commission on Capital Budgeting and Planning,  
12 with the department's annual budget request, a plan for the  
13 expenditure of funds from the New Jersey Bridge Rehabilitation  
14 and Improvement <sup>1</sup>and Railroad Right-of-way Preservation<sup>1</sup>  
15 Fund of 1988 for the upcoming fiscal year. Such plan shall  
16 include, but not be limited to, a performance evaluation of the  
17 expenditures made from that fund to date; a description of  
18 programs planned during the upcoming fiscal year, a copy of the  
19 rules and regulations governing the operation of programs to be  
20 financed, in part or in whole, by funds from the New Jersey  
21 Bridge Rehabilitation and Improvement <sup>1</sup>and Railroad  
22 Right-of-way Preservation<sup>1</sup> Fund of 1988; and an estimate of  
23 expenditures for the upcoming fiscal year.

24 28. Not less than 30 days prior to the commissioner entering  
25 into any contract, lease, obligation, or agreement to effectuate  
26 the purposes of this act, the commissioner shall report to and  
27 consult with the Joint Budget Oversight Committee or its  
28 successor.

29 29. All appropriations from the bond fund shall be by specific  
30 allocation for each major project, and any transfer of any funds  
31 so appropriated shall require the approval of the Joint Budget  
32 Oversight Committee or its successor.

33 30. Immediately following the submission to the Legislature of  
34 the Governor's Annual Budget Message, the commissioner shall  
35 submit to the Transportation and Communications Committee of  
36 the Senate and the Transportation, Communications and High  
37 Technology Committee of the General Assembly, or their  
38 designated successors, a copy of the plan pursuant to section 27  
39 of this act together with such changes therein as may have been  
40 required by the Governor's budget message.

1       31. This section and sections 25 and 26 of this act shall take  
effect immediately and the remainder of the act shall take effect  
3 as and when provided in section 25 of this act.

5

TRANSPORTATION-HIGHWAYS AND ROADS

7

Bridges and Tunnels

9       Authorizes a \$200,000,000 State bond issue to finance the  
rehabilitation and improvement of State, county and municipal  
11 bridges and the preservation and acquisition of railroad  
rights-of-way.

ASSEMBLYMAN NEWTON E. MILLER (Chairman): We have a bond hearing on the agenda this afternoon also. This is A-2425, a bill by Assemblymen Haytaian and Littell, and Senate Bill 347, which is Senator Weiss' bill. We will hear both of these together. The bill is entitled, "New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-way Preservation Bond Act of 1988," and authorizes the issuance of \$200 million in State general obligation bonds for the rehabilitation and improvement of bridges in the State. And of course, this will require the approval of the voters at the next general election. I think that just about covers the overview of what this hearing is about.

John Koehler, why don't you introduce yourself -- we know who you are, but the rest of the world probably doesn't -- and tell us why you are here.

MR. KOEHLER: (Assembly Majority Staff) Thank you, Mr. Chairman.

Mr. Chairman, Assemblyman Penn, Assemblyman Mazur: I am here today representing Assemblyman Haytaian, simply to state that he is sorry he can't be here. An unexpected glitch came up in his scheduling, so he sent me -- the sacrificial lamb -- instead.

I don't have to convince you of the importance of this bridge bond issue. This Committee, I think, recognized that in '88, when it released the bill from Committee. This bill also made it through full Appropriations, and is presently in its second reading. I believe it was amended in Appropriations upon the request of the Department of Transportation, to give that Department the ability to acquire railroad rights-of-way under moneys from this bond issue.

Thanks a lot for having the hearing today, in accordance with Assembly rules.

I would like to state that there may be certain allegations at this stage concerning the constitutionality of

this bill, based on OLS information provided to Mr. Haytaian. I would like to state at this time -- and I don't want to speak for OLS -- but that information was not in the form of a legal opinion in any way, shape, or form. It did not address constitutional questions. As far as Assemblyman Haytaian -- I don't want to speak for Senator Weiss -- but as far as Assemblyman Haytaian is concerned, this bill certainly is constitutional.

Thank you very much.

ASSEMBLYMAN MILLER: Thank you. Does anyone else care to discuss this?

C A R O L Y N S. M c C A L L U M: I would like to speak after Gus.

ASSEMBLYMAN MILLER: Okay, fine. Come on, Gus, and introduce yourself.

A U G U S T U S N A S M I T H, E S Q.: I will be very brief. I am Augustus Nasmith. I represent Conrail and other smaller railroads. I would like to introduce Larry DeYoung, of Conrail.

We have never opposed this legislation. We approve the concept. We have tried-- I personally have spoken to both the Senate and the Assembly sponsors. Our concerns are that if the bond issue is approved, it might be held to be unconstitutional, contrary to John. We have doubts about that aspect of it. We are here to present testimony and a legal brief.

ASSEMBLYMAN MILLER: The legal brief--

MR. NASMITH: Without further ado, I present Mr. DeYoung, of Conrail, if that is satisfactory.

ASSEMBLYMAN MILLER: And the legal brief will explain to us why you consider it to be unconstitutional?

MR. NASMITH: Yes, sir.

ASSEMBLYMAN MILLER: Okay, please do.

L A R R Y A. D e Y - O U N G: Mr. Chairman, members of the Committee and staff: Thank you for the opportunity to testify.

I have a copy here of my statement, which I will provide to you. I believe Mr. Nasmith has already provided you with a copy of the legal statement that he made reference to.

Conrail supports the overall thrust of Assembly Bill 2425 and Senate 347. The bills, with one exception, are what we consider to be good public policy. The enactment of this legislation will help New Jersey to preserve valuable infrastructure.

I should say at this point that Conrail now, under existing law, and other railroads, when we have a line which is abandoned, submit that line for the consideration of the New Jersey Department of Transportation before we sell such property, and they have a period of time during which they review that to see if that is a proper acquisition for the State. The problem they have had heretofore, is that they have not had the funds available to make that kind of a purchase. This bill clearly, with the bond issue, would enable them to accomplish that.

Conrail is concerned about the language granting the Commissioner of Transportation the power to take by condemnation the rights-of-way of "current or former" railroads. As the treatise which Conrail attorney John Broker, Esq. prepared, which you have, states, the Federal government is the exclusive authority over existing, or, as the law says, "current" railroads. We have repeatedly discussed this matter with New Jersey Department of Transportation staff members, and thought, at one point, that we had reached agreement on language which would meet the State's needs, protect its interests, and avoid needless disagreement, only later to have the Department reassert the need for this particular type of wording. Since extensive case law demonstrates that the attempt to grant to the State the power of eminent domain over

an existing rail carrier is unconstitutional, to protect the integrity of the program, we are submitting for your consideration amendments to permit the type of action the Department contemplates, without risking needless litigation and delay to sound programs. With the inclusion of these amendments, this legislation would have the full support of Conrail.

ASSEMBLYMAN MILLER: Well, I am not an attorney here. I just have to accept what I've heard; what I will be hearing. I'm sure that if this ever gets on the floor and gets through and becomes a law, that we will be seeing more action on it, if, in fact, you hold to your position and we can't get together in some agreement of some kind to iron our differences out.

MR. DeYOUNG: I hope you understand fully that in the broad thrust, this legislation is no problem to us. We support the idea. We think it makes good sense.

ASSEMBLYMAN MILLER: But you don't believe--

MR. DeYOUNG: We are at a loss to understand why there seems to be this necessity to have the language phrased in the particular way it has come out. But if we could reach an agreement on it, I don't see any problem at all.

ASSEMBLYMAN MILLER: Accomplish the same purpose, but find some way to do it. In your opinion--

MR. DeYOUNG: That is our hope, yes, because we understand the purpose of it. We support that purpose. We don't see that as a problem at all. It's just that essentially we believe that there is a trap here in the way it is phrased now.

ASSEMBLYMAN MILLER: Well, see, you could very well be right, but then again, as I understand it, our Attorney General says that you're wrong. So, I don't know. Who am I to say who's right and who's wrong, if the powers to be indicate that it is constitutional? Lord knows they tell us enough times when it is not constitutional. And I--

MR. DeYOUNG: We want to make sure we're on the record, sir. That's the essence of it.

ASSEMBLYMAN MILLER: That's fine. I understand that. I have a very -- well, I call it a good habit. Locally, I do things before I ask the attorney, because once he tells you, then you can't do it any more, you know? But if I do a little checking around first, and then if-- I know that DOT is very familiar with this, because I have done things in my town on State highways that they didn't appreciate. In the end, though, they come around to my way of thinking. So, it's not too bad. It works out very well. I'm going on past history.

Okay, thank you. We appreciate your comments. We certainly will be giving them consideration. I think you should be talking to the sponsor of the bill, as far as trying to get the amendments in. If what you say holds, then it can be amended on the floor at second reading, to take care of the problem. Of course, you have Senator Weiss also to consider in this. So, I think--

MR. NASMITH: May I make it clear, we have spoken to both sponsors.

MR. DeYOUNG: They are aware of our position.

MR. NASMITH: They have heard that the Attorney General thinks it is all right. I have never seen a copy of his opinion. The sponsors are aware of our--

ASSEMBLYMAN MILLER: Your position, okay. Fair enough. Anyone else care to-- (no response)

All right, Ms. DOT.

MS. McCALLUM: I don't think it really needs to be put on the record that the Department strongly supports this bond bill, but I do want to respond to the comments that were made by Conrail representatives.

I think everybody knows that the Federal law preempts the State law, and the only time a question of constitutionality would come into play, is if the State

misapplied the law. That is when it would come into play. When this question was first raised by Conrail, the Attorney General's Office was asked, and they do, indeed, believe that there is not any conflict with the Federal law, and does not appear to raise any legal problem on that point. Actually, they also felt that Mr. Nasmith's proposed change might be unduly restrictive.

ASSEMBLYMAN MILLER: Is that opinion readily available, Carolyn, for Mr. Nasmith?

MS. McCALLUM: Well, it's one that was sent to me by Deputy Attorney General Yannotti. I certainly feel I can give it to the staff for the record.

ASSEMBLYMAN MILLER: Okay. Let's do it that way. Then, if you want a copy of that, we can certainly arrange for that, too.

I am all for the bond issue. I am all for taking care of bridges, because I have a couple in my area, Carolyn, that I would love to see taken down and taken care of. If this is going to help do that--

MS. McCALLUM: Well, it also enables us to make use of the rail lines that exist.

ASSEMBLYMAN MILLER: That's right. That's very important; very, very important. Is this the -- what do they call it, the orphan bridges? Does that come into this, too?

MS. McCALLUM: Yes, it is. You know, the orphan bridge bill was passed, and that doesn't mean a thing until this bond -- until there is money put to it. So it really enables the orphan bridge bill to be implemented.

ASSEMBLYMAN MILLER: Isn't that the case where the orphan bridges came about because Conrail bought the railroad, but didn't buy the bridges that went with it -- the overhead bridges? Isn't that what that was--

MS. McCALLUM: I have heard stories on that. That is how they became orphans.

ASSEMBLYMAN MAZUR: Somewhere along the line they got lost.

ASSEMBLYMAN MILLER: And they became orphans, yeah -- wards of the State. I see some of those bridges, and I don't know what is holding them up, really. They have been around for a long time, and they are pretty much rusted out.

ASSEMBLYMAN MAZUR: Some of the State highway bridges look that way, too.

MS. McCALLUM: I understand.

ASSEMBLYMAN MAZUR: Particularly on Route 4.

MS. McCALLUM: On Route 4.

ASSEMBLYMAN MILLER: Some of them should be replaced with wider underpasses, too, right, especially 17 and 4. Anything else, Carolyn?

MS. McCALLUM: No.

ASSEMBLYMAN MILLER: Very good.

MS. McCALLUM: I just wanted to be on the record to clarify.

ASSEMBLYMAN MILLER: Thank you. I appreciate your being here this afternoon also. Anyone else care to testify? Yes, sir? Is it Frank Reilly?

ASSEMBLYMAN PENN: You do know there's a tax increase, don't you?

ASSEMBLYMAN MILLER: Pardon?

ASSEMBLYMAN PENN: You do know there's a tax increase, don't you in the bill? Read on page 15. How are you going to pay the bonds back?

ASSEMBLYMAN MILLER: Well, you always pay bonds back.

ASSEMBLYMAN PENN: Yeah, but how do you pay them back? If there is not enough from the sales tax, then you gotta -- you put a property tax on people's homes.

ASSEMBLYMAN MILLER: Oh, hold onto that noise.

ASSEMBLYMAN PENN: I think you agreed on that. Read it over.

ASSEMBLYMAN MILLER: Yes, sir, Mr. Reilly.

F R A N K T. R E I L L Y: Yes. Thank you for the opportunity this afternoon. I see it's getting on in hours, so I will just summarize our statement. I am the Executive Director of the Morris County Department of Transportation Management.

We strongly support the bridge bond issue and the railroad right-of-way acquisition. We do feel, however, that the railroad right-of-way acquisition should be restricted to abandoned railroad rights-of-way, and the money not be used to purchase any active, profitable railroads, of which there is a possibility of happening.

We feel there are a number of abandoned railroad rights-of-way that must be preserved in New Jersey for future transportation use. And as a matter of fact, this afternoon, we expect to get a consultant's report on one line that is 28 and a half miles long. It runs through Morris, Sussex, and Warren Counties between Lake Hopatcong and the Delaware Water Gap, known as the Lackawanna Cut-off.

Unfortunately, that is in private hands. It was sold by Conrail to two private parties. One spent a million dollars for 27 miles, and a smaller amount for the other mile and a half. The consultant's report -- the initial review of it -- indicated that that line is extremely important to meeting the transportation needs of northwest New Jersey. And naturally, we would like to see the words, "Lackawanna Cut-off" included in this legislation.

That concludes what I had to say. I would be pleased to answer any questions.

ASSEMBLYMAN PENN: I thought you just said-- The "Lackawanna Cut-off--" Is that an abandoned railroad?

MR. REILLY: Unfortunately, it is.

ASSEMBLYMAN PENN: I thought when they bought it, the idea was they were going to operate it.

MR. REILLY: No. The gentleman who purchased it, purchased it to dispose of the massive fills. When the railroad was built, it was built as an almost perfectly level route across North Jersey. And when they came to a mountain, they cut it out; when they came to a valley, they filled it in. One fill alone is 3.2 miles long and 110 feet high. In other words, it is like a huge wall. It is the largest railroad embankment in the world.

ASSEMBLYMAN PENN: What did he spend the million dollars on then?

MR. REILLY: At the time, they were proposing to build West Way in New York. They were looking for massive amounts of fill. He estimated that he would get in the neighborhood of \$90 million in selling the fill. As we all know, the West Way went down the tubes, and this gentleman now has the railroad right-of-way. He has been unable to secure fill removal permits from either the State or the municipalities. He came up with an alternate idea last year, which was to take some of the massive cuts and, as a good neighbor, restore the natural contour of the land by making them solid waste landfill sites. They were virtually unanimously opposed to by local residents.

So, this right-of-way is totally intact -- the entire 28 and a half miles. The maximum grade on it is one-half of 1%, which is unbelievable in engineering terms these days. It ranges from a minimum of 100 feet wide to 600 feet wide. The consultant said, "This is probably one of the best transportation finds in the entire North American continent." They said, "Today you could not build that cutoff probably for under \$10 billion.

ASSEMBLYMAN MAZUR: In addition to this, may I add something? The National-- In addition to this, the National-- Who is it has the--

MR. REILLY: The National Park Service, up in the Water Gap?

ASSEMBLYMAN MAZUR: The National Park Service. They have taken over a rail line -- the old Lackawanna rail line over in Scranton -- Shroudsburg, rather -- no, Scranton--

MR. REILLY: Scranton to Shroudsburg.

ASSEMBLYMAN MAZUR: Yeah, and they have operated--

MR. REILLY: Shroudsburg.

ASSEMBLYMAN MAZUR: I'm getting my "s's" all mixed up. But, they are going to extend a -- how would you call it? -- a--

MR. REILLY: It's a passenger steam excursion.

ASSEMBLYMAN MAZUR: Excursion down to the Delaware Water Gap, on old Lackawanna lines. And this is where the western terminus of this cutoff is, over there by the Delaware Water Gap. Some day, perhaps, we might get the National Park Service to extend that on down into Morris County.

MR. REILLY: Yes. As a matter of fact, the National Park Service has estimated an increase in the people from North Jersey going to visit the Delaware Water Gap region, by about four million people per year, within the next six years. And they would like to see this cutoff preserved as well, to be used on weekends to bring people into that region. It is an exciting project. We did get a Federal grant of \$125,000 to perform this study.

ASSEMBLYMAN MAZUR: There is no list of items with this 200,000 (sic), is there?

MR. REILLY: As far as I know, there is not.

ASSEMBLYMAN MAZUR: No. It is not going to be spelled out as yet, but we will bear it in mind when the time comes, I'm sure.

There is no list of particulars with this particular-- He's asking that it be included in the list of particulars, but there are none.

ASSEMBLYMAN MILLER: I don't think-- Well, again, I think you probably have to have something separate and above

that in a separate bill to do that. I can name a couple of spots, too, that have to do with bridges. You rest assured, I will put a bill in to take care of a couple of bridges I know about. I think the same would have to happen in this particular case, too.

MR. REILLY: Certainly.

ASSEMBLYMAN MILLER: Wasn't it Assemblyman Littell's bill also on this railroad--

MR. REILLY: Yes.

ASSEMBLYMAN MILLER: --that you are talking about? Of course, he's co-sponsor on this bill, so Bob would be the one to talk to about handling that particular situation.

MR. REILLY: Yes.

ASSEMBLYMAN MILLER: All right? We'll do it that way. Carolyn, did you have a comment on this?

MS. McCALLUM: (speaking from audience) I just wanted to say that, of the 200 million, 15 million is for the railroad right-of-ways, both current and abandoned. So, they are certainly not ruled out.

As the last time with the bridge bill, there are appropriation bills. So, whatever ends up being the railroad right-of-way, and I don't how much of the 200 will stand in the final bill on the ballot-- But then there would be an appropriation bill for both situations.

ASSEMBLYMAN MILLER: Can you tell me, Carolyn, why -- why we would want to get involved in purchasing with this bond money active railroads? What is the rationale?

MS. McCALLUM: That was put in at the request of Senator Weiss, because at the time the railroad museum group was looking at various situations for their museum. And this would permit them to buy, if it were a working railroad, or if it were not. And it was just a safety thing, so that, indeed, unless there was a special fund set up for that, it wouldn't have been possible at some of the sites they were looking at.

ASSEMBLYMAN MAZUR: The Museum Commission has chosen the Black River and Western Railroad, which is an operating railroad up for sale. And it has equipment, etc., etc., but they picked that particular railroad because it is an operating railroad, and it has the equipment that they would want to have for those excursions and that kind of activity.

ASSEMBLYMAN MILLER: I think what I am getting to here, is that if the objections of Con -- yeah, Conrail-- If their objection happens to be the purchasing of active railroads, why, then, could that not be -- it would be up to the sponsors, of course-- Why could that not be taken out of the bill, and then put the other bill in to purchase that particular railroad with these funds? Would that not then satisfy the question of the constitutionality of purchasing--

MS. McCALLUM: I think it is satisfied. The Attorney General overruled--

ASSEMBLYMAN MILLER: I don't know. I'm just saying--

MS. McCALLUM: It is only if we would misapply it. We have to follow general law and control.

ASSEMBLYMAN MILLER: I see.

MS. McCALLUM: So, if we misapply the State law, indeed by not following it so we would be contrary to Federal law, then we would be out of order, and the constitutional question would arise.

ASSEMBLYMAN MILLER: Well, I am not going to get involved in the constitutionality. As I said before, I think that is up to authority higher than mine, or my knowledge of this thing, to settle that particular situation.

Gus, do you have something else?

MR. NASMITH: Could I make one comment? I think our problem is we don't seem to understand each other. This is my personal idea. I understand if they want to buy the Black River and Western, they want the bond issue to give them that power. If they -- the bond issue provided that they had the

power to acquire by purchase an operating railroad, we would have no objection. But that same phrase gives them the power to condemn an operating railroad. So I'm saying, if they split it, and said we have the power to purchase, or acquire by the purchase or lease, whatever, the railroad now in effect, and we have the power to condemn an abandoned railroad by ICC, our problem would dissipate.

In other words, they want the power, under the bond issue, to acquire, apparently, this operating railroad. And if they stop there and do not include the power to condemn, we wouldn't be here talking.

ASSEMBLYMAN MILLER: Do you have only problems with--

MR. NASMITH: We have never had the chance to discuss this head to head with Yannotti or any lawyers for the State, but I am trying to clarify it. I think we are on the same concept, but we are going off in different wave lengths.

ASSEMBLYMAN MILLER: Would you--

MR. NASMITH: I don't think they have to have the power to condemn an operating railroad in order to acquire the Black River and Western.

ASSEMBLYMAN MILLER: Well, suppose they had the power to condemn this particular railroad, specific, and no other? Would that satisfy your objection?

MR. NASMITH: Sure, if that was their only power to condemn, yes. I think, you know, we are all on the--

ASSEMBLYMAN MILLER: Same wave length, but--

MR. NASMITH: We're speaking in the same vein, and so is Mr. Reilly.

MR. REILLY: Yeah.

MR. NASMITH: And somehow we are bogged down in language.

ASSEMBLYMAN MILLER: All right. Well, as I say, that would be up to the sponsors of the bill to get together with you people to explain it and see what they can change around.

Now, one other-- Jack, you mentioned something to me just a minute ago about the--

ASSEMBLYMAN PENN: Well, yeah, I just had a thing-- You know, yesterday, in this very room--

ASSEMBLYMAN MILLER: What page are you on there, Jack?

ASSEMBLYMAN PENN: Pardon?

ASSEMBLYMAN MILLER: What page on the--

ASSEMBLYMAN PENN: I'm on -- sorry -- on page 15. It just strikes me as a thing-- Yesterday, in this very room, they had Appropriations meetings and so forth, talking about a budget shortfall of approximately half a billion dollars for next year. I look at this language down here, and it says: To provide funds to meet the interest and principal payments required under the bonds issued under this act and outstanding, there is appropriated the following: Revenue derived from the collection of taxes under the Sales and Use Tax. However, if, at any time, funds necessary to meet the interest and principal on outstanding bonds issued under this act, are insufficient or not available, there will be assessed, levied, and collected annually in each of the municipalities of the counties of this State, a tax on the real and personal property upon which these taxes are or shall be assessed, levied, and collected--

We couldn't meet that obligation this year. So what we're saying is that if we pass this act-- This is really a tax increase. I just want to bring that out, Mr. Chairman.

ASSEMBLYMAN MILLER: Jack, as I understand it, this is boiler plate. Larry (referring to Committee Aide) just told us this is a boiler plate approach, and you would probably find this in any bond issue that is put out in this State.

ASSEMBLYMAN PENN: Probably very true, but I am just pointing out the fact that we don't have that money right now in our Treasury under the present Sales and Use Tax collected, to meet the obligations we already have. So, it may be boiler plate, but it would probably be effective boiler plate, if we

are not able to meet it. I am not opposed to it. I would just like to see if we had any other revenue source that we could tie to it.

ASSEMBLYMAN MILLER: All right. Well, as I read this, if, in fact, we default on bonds, that is where we would get involved in this particular--

ASSEMBLYMAN PENN: That's not what it says, though. It says: If, at any time, funds to meet the interest and principal payments on outstanding bonds--

ASSEMBLYMAN MILLER: Well, okay. I'm saying--

ASSEMBLYMAN PENN: Which might be default.

ASSEMBLYMAN MILLER: That's the default I'm talking about. If you don't have the interest and whatnot, then it has to be spread someplace. It has to come from someplace. That's why we have the rating we have in this State in our bond, because we are able to handle it.

I can agree with you, Jack. My concern would be there, too, if, in fact, that were to happen. But I haven't seen it happening anyplace on these bond -- on any bond issues we have out there. Lord knows, we have enough bonds we've floated in the past, so--

All right, anything else that anyone else would have to contribute to this? Yes, sir?

C H U C K W A L S H: Mr. Chairman?

ASSEMBLYMAN MILLER: Come on down.

MR. WALSH: Thank you.

MR. REILLY: While he is coming down, I'll just take a second to show you a picture of that one fill that is over three miles long.

ASSEMBLYMAN MILLER: Ah, yeah.

MR. REILLY: Route 206 goes underneath this near Andover.

ASSEMBLYMAN MILLER: Is this the railroad as it exists today?

MR. REILLY: There are no tracks, but outside of that and some shrubbery, that's it.

ASSEMBLYMAN MILLER: Very good. Did you see it, Jack? Let me show it to you, Ben. Have you seen it?

ASSEMBLYMAN MAZUR: Yeah, I've seen it. I've been down the length of it by vehicle. (brief discussion about picture among Committee members at this point)

ASSEMBLYMAN MILLER: Yes, sir. Will you identify yourselves, gentlemen?

MR. WALSH: Yes. I'm Chuck Walsh, and I'm President of the North Jersey Rail Commuter Association. This is Fred Wertz, who is the founder. We have some things we want you to look at after we are done, which we'll only take briefly.

I would like to point out that rail banking is essentially what we are talking about -- is something which is not new. It would be new to New Jersey, but it has been something which has been going on for a number of years in several other states. And I think it is looked upon as being an investment toward a future.

Now, as far as this total bond issue is concerned, bridges are something which are built, and over a period of time deteriorate. In fact, there are approximately 6500 bridges which are currently kept track of in the Federal Highway Inspection Program here in New Jersey. And, of those 6500 bridges, apparently from what I am told, there is a rule of thumb that about approximately one-third are in new or in very good condition; perhaps one-third which are in good condition to deteriorated condition; and one-third which are in the condition where they should be replaced within a short period of time, or extensive repairs should be done.

So, we're talking about, perhaps, maybe 1500 bridges at this very time which are in need of certainly either replacement or substantial repairs. This will continue. For example, there was an article not more than a week ago in The

Sunday Star-Ledger, saying that the infrastructure in the United States is deteriorating, and that the investment has not been sufficient to maintain it. In fact, they stated a figure of \$365 billion would be needed just to bring things up to par across the United States.

Now, if we just figure that on a per capita basis, New Jersey certainly talks about a very substantial amount of money. Now, this particular bond issue probably only addresses the tip of the iceberg, if you will. It would bring us up to speed with maintenance certainly. And the rights-of-way, of course, is really a breakthrough, as far as making sure that in the future there is room for expansion, for our mass transit system, especially considering that New Jersey is a heavily populated, densely populated State. And we can only anticipate that that situation will only get worse, and that we have no safety valve built in at present. I think that this would certainly -- and preservation of the rights-of-way -- would guarantee that we have that safety valve that would be present.

And so, in the long run, I think this is an extremely good investment. As far as rights-of-way are concerned, it has been found that the longer they are abandoned, the greater the chances are that a piece is taken out. It doesn't matter where that piece is. You render the entire right-of-way--

ASSEMBLYMAN MILLER: Useless.

MR. WALSH: --useless in most cases, if you just take one, the weakest chain in the link, of the entire chain out. So, I think that it is very important that this legislation move forth, and that we have the opportunity here, in the most densely populated State-- There are states that are less densely populated, which to me, if you look at them, you may think that they may not be as pressed for the preservation of these rights-of-way, but they have gone ahead years ago and done this.

So, I urge you very strongly to consider that this legislation is extremely important for the maintenance of infrastructure, not only in the present, but the future, because deferred maintenance on bridges, for example, is very costly. For example, last year, the Williamsburg Bridge-- There were thoughts of even having to tear the bridge down because it couldn't be salvaged, because of deferred maintenance. So, we see that it is a sound investment in the future. And since we don't anticipate that there will be an increase in the number of highways, that we have to maintain what we have.

There was talk earlier about taking off tolls. Well, roadways and bridges are never really paid for. There is always money that is needed to maintain them, whether to replace or whatever. But it is a constant thing which never can end.

ASSEMBLYMAN MILLER: Very good. Yes, sir?

F R E D H. W E R T Z: Oh, yes. I wanted to bring an example up, Mr. Chairman. I live in Sparta, New Jersey. We have what we used to call a "Sussex Branch," which rail right-of-way-wise is a good example of what Chuck was mentioning. You leave it alone long enough, it's abused, people encroach upon it, they use it for fill. Well, you may know Route 80. We now have a traffic problem coming in from the west -- from Sussex County to and from the corporate work centers in Parsippany. Most of the corporate work centers people live in either Pennsylvania, Sussex County, Hunterdon County, Warren County. So, if we had had the hindsight to preserve Sussex Branch, it would have helped maybe delay some of this problem we have about aging.

So again, we-- That is hindsight, okay. Now, we are going to take the bull by the horns, with your support, Mr. Chairman and Committee members, to have this Assembly Bill 2425 go to the full Assembly, in conjunction with the Senator

Weiss version. We can preserve our whole optional -- multi-use of these optional -- this use for the road -- railroad rights-of-way for multi-use: vehicles, buses, rail; and you get the pressure off the highways.

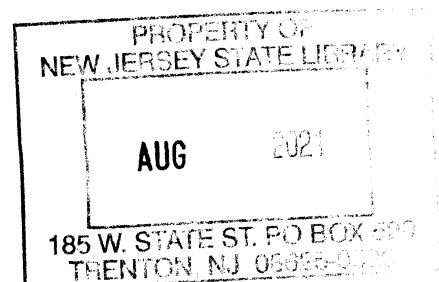
And on bridges-- Chuck emphasized that very well. I have some folders here of clippings that we have accumulated over some time, and also a symbol, if I may present this to you, Mr. Chairman? It is an old golden spike that I had painted golden. It is not the one from Promontory, Utah. But I thought with all the laborious work of keeping good track of papers, this may identify Assembly Bill 2425.

ASSEMBLYMAN MILLER: Thank you.

ASSEMBLYMAN MAZUR: That may help him on the floor of the Assembly, too.

ASSEMBLYMAN MILLER: Nail it down. I might point out to you also that I think the State, right now, has right of first refusal on all railroad rights-of-way, if I am not mistaken. Now, I don't know whether it is a case of they have the right of first refusal, or must be given the right of first refusal. It might just be they have the right, but they don't have to be approached. I don't know.

I can tell you about from my town of Wayne to Greenwood Lake, we had the Greenwood Lake Line at one time. That particular right-of-way has been used, in part at least, for Wanaque's south water line, to get up to the new reservoir. I know there are bridges on that line that have to be replaced. They are certainly in no condition to be used. But there is a situation where I think, and I have been harping this for a long time, that line should be put back in place, if not for trains at this particular point in time, at least for what you could call the old trolley cars, or some sort of method to get them from up-county down to the rail head to get them into New York or Newark or whatever the case may be.



There just isn't enough concern on the part of most people -- by far the majority -- about this type infrastructure program. We look at roads, and we say, "Well, we have to widen them because there are too many cars." But nobody is saying, "Let's not widen the road, or if we do, let's widen it with -- at the same time--" Well, let me give you this example: Bo Sullivan said, "Give me \$2 billion, and I will straighten out the Turnpike, and give you all the road space you need, and all the interchanges you need, to take care of the traffic to 2004." I said, "Bo, what happens in 2005?"

You know, there-- Okay, fine, give them the money for that, bring it up to 2004, but 2005 there should be enough public conveyance that for every car going on the road, there will be a car coming off, because-- In other words, it would stabilize, because the people are using public means of transportation. Constantly throwing the money at macadam and cement is not the answer to our problem. The answer to our problem is what you're talking about here right now. Whether it be surface, whether it be monorail, whatever, it has to be something of that nature. It could be stole planes, or stole airports, I don't know, but something has to happen in that direction.

I am concerned. We had eight hearings here the last session on our transportation problems in this State. It boils down to one thing: We are gridlocked. And it is going to get worse. Now we talk about rail transportation, and I'm told, from these studies we had -- these hearings -- we have room for one more tunnel under the Hudson River for railroad purposes, for a billion dollar cost in '86 money. That is just for the tunnel. Now you need the approaches on both sides and the underground work on the New York side to get into some central point. We're talking maybe \$3 billion, \$4 billion to do that.

Today if you add-- You can add three cars to the trains going to New York -- to the Port Authority trains going

to New York, but they have no platform space for them. And I think the turnaround time is something like two-and-a-half minutes. That's pretty fast. Now if they put-- Now they want to cut that down, and the Port Authority is building others -- I understand that the platform, so you can put three more cars on. That means the turnaround time would be maybe a little bit longer. But how do you get these trains in and out? And once you reach that capacity, I don't care how many trains you put on, how many buses you put on to bring the people to railheads, they can't go anyplace when they get there, because you can only put so many on the roads -- so many cars, so many rail cars.

We have a problem, but nobody is facing up to it. Oh yeah, we are beginning to see bills such as this, but this is just a pebble in the ocean. This is somebody someplace. And I agree with the comment that was made by somebody: We need somebody in this State -- I think it was even my comment; at least it sounds like me-- We need a transportation czar; we need somebody who has jurisdiction over every phase of transportation and every network in the State that has to do with moving people and moving cars. Until that time comes, you are going to do your thing, and I am going to do my thing, and they're going to do their thing, and they will never be tied in together.

But I think what you are doing here -- what we are trying to do here is a step in that right direction, if we can just bring it out more forcefully to get it done.

MR. WALSH: Mr. Chairman, I think one thing that perhaps hasn't been pointed out, which I think you are just starting to allude to, is the fact that when you have gridlock, that the cost of, let's say, a bond issue like this -- you can compare it with other bond issues -- that the payback could be much greater, considering the fact that you have people who may opt not to live here, or businesses which may not opt to locate here, or maybe even planning the worst, to move out of here.

ASSEMBLYMAN MILLER: The economics.

MR. WALSH: Because of the fact that the quality of life, the desirability of the area has gone down. And there was thought-- A few years ago, we were competing very well with New York, but New York has certainly done as well, if not better than we have, as far as mass transit is concerned. And that's a very big plus when you are trying to sell someone on moving to a certain company, or even having a company stay. There is a lot of competition, and we have to stay competitive, or we are going to start losing out, and then you hit the downward spiral, and then you end up having to kick even more and to try to stop that.

ASSEMBLYMAN MILLER: I understand. And then again, getting back to the New York situation, New York uses our entrances into the tunnel and the highways, whether it be the Garden State or the Turnpike, as part of their parking lot, because they are gridlocked in New York. You can't do-- New York which does not want-- They don't want another tunnel for cars or trucks; they don't want another one, because where do they put the cars when they get there?

Today, you have 1800 buses going through the tunnel, I understand, taking 75,000 people into New York. The other 25,000 are all the cars creating the problem. You know-- And then they don't have the deck space in New York at the terminal building and other places to handle what is coming in. It is a tremendous problem, and the economies are certainly going to be felt in this State. Not so much that the people are going to go to Pennsylvania or Connecticut; they are going to go Midwest or someplace else, because we just can't keep doing what we are doing in this State and in the metropolitan area.

Central Jersey-- They don't appreciate this so much, because they can travel back and forth within their immediate area. Philadelphia area, Camden area, yes, I think they appreciate it, but we just don't see-- Oh, the person going to

the shore on the weekend, they can appreciate it, because they are stuck in the line of traffic. But, that's only once a week, if that, where the person getting up every morning to go to work and has to put up with this-- It's pretty rough.

Then you have the situation -- I'm up on my soapbox-- Then you have the situation, the Boonton line and the Montclair line. If the Boonton line can cut through at Montclair, about 1200 feet of track, people from that area can go into Newark, rather than the way they have to do it now. But there is 1200 feet of track right through the high-rise apartment of low-income families. The Montclair politicians don't want you to touch that, because they are all votes. It might even wind up where New Jersey Transit has to build an apartment to take care of these people so we can get the tracks through.

Where does it stop? Then we have the West Shore line, that Ben here -- Ben Mazur -- has been asking for; I have been asking for; Pat Schuber has been asking for. We are trying to get that in, so we can get that down to the Hudson River to get the people over. The funds just don't seem to be there -- the action. Yeah, there has been some action on that, but not fast enough. It should have happened yesterday, to keep the thing moving, and it isn't happening.

I have yet to vote for a tax in this State, and I have been here eight years. I refuse to vote for a tax -- I don't care what it is -- because there is too much waste. But there is one tax I will vote for, providing it is dedicated for public transportation. That I will do, but nothing else ever, because I see too much waste around me -- too much.

Now that I have said that, I am not running for Governor. (laughter) Anybody else? (no response)

MR. WERTZ: Thank you, Mr. Chairman.

ASSEMBLYMAN MILLER: If not, this meeting is adjourned. Thank all of you.

ASSEMBLYMAN MAZUR: Thank you. A very good meeting,  
Mr. Chairman.

ASSEMBLYMAN MILLER: Thank you, thank you, thank you.

**(HEARING CONCLUDED)**

# **APPENDIX**



New Jersey Railbanking Legislation - A-2425

Assembly Bill 2425 would permit the New Jersey Department of Transportation to "acquire by purchase, condemnation ... or otherwise ... any current or former railroad right-of-way [not in use] or part thereof ... for transportation purposes." (Section 4(f)). It is plain that this provision is unconstitutional. Indeed, its unconstitutionality is conceded by the State's Senior Legislative Counsel, E. Joan Oliver, who concluded that the argument that the "operation and cessation of railroads has been preemptively regulated by Congress for many years" is correct.<sup>1/</sup> Nonetheless, this bill recently was passed by the Assembly.

There can be no serious doubt that the bill is unconstitutional. 49 U.S.C. §10903 et seq gives to the Interstate Commerce Commission ("Commission") exclusive

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<sup>1/</sup>Memorandum dated February 16, 1989 to Assemblyman Littell. Ms. Oliver goes on to point out that the Department of Transportation, in implementing this legislation "would have to comply with any federal laws, rules and regulations concerning the takeover of railroads." This conclusion, also correct as far as it goes, does not, of course, alleviate the fact that the legislation is unconstitutional on its face.

jurisdiction over abandonments of rail lines or discontinuances of rail service. Further, 49 U.S.C. §10501(d) states that

"The jurisdiction of the Commission... over transportation by rail carriers... is exclusive."<sup>2/</sup>

The ICC's exclusive, plenary, preemptive, and absolute jurisdiction over railroad abandonments dates back to 1920, when Congress enacted Section 1(18) of the Interstate Commerce Act. It provided that

No carrier by railroad... shall abandon all or any portion of a line of railroad or the operation thereof unless and until there first shall have been obtained from the [Interstate Commerce] Commission a certificate that the present or future public convenience and necessity permit of such abandonment...

Insofar as pertinent here, the 1920 provision has remained substantively unchanged in the 68 years since its enactment.<sup>3/</sup>

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<sup>2/</sup>This section permits state authorities, "to the extent... authorized to administer the standards and procedures of this title..." The proposed bill is plainly in conflict with the standards and procedures of the Interstate Commerce Act and New Jersey has not sought, nor could it receive, Commission certification to enforce the proposed bill.

<sup>3/</sup>When the Interstate Commerce Act was recodified in 1980, Congress specified that no substantive changes were intended. Section 2 of Pub. L. 96258, June 3, 1980, 94 Stat. 427.

The exclusivity and preemptive nature of the ICC's jurisdiction over abandonments is well documented.<sup>4/</sup> Thus, not only may a railroad not abandon its own line without Commission approval, but also a third party (e.g., a shipper, another railroad, a property owner, or a state or local governmental entity) may not take action that would cause or result in the abandonment of a railroad line, unless the Commission first approves its abandonment. In

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<sup>4/</sup> Speaking of the supremacy of the ICC's abandonment jurisdiction, the Supreme Court, in Hayfield Northern Railroad v. Chicago and N.W. Transp. Co., 467 U.S. 622 (1984) said that:

[The] Pre-emption doctrine stems from the Supremacy Clause of the United States Constitution and invalidates any state law that contradicts or interferes with an Act of Congress. Pre-emption arises in a wide array of contexts, from circumstances in which federal and state laws are plainly contradictory to those in which the incompatibility between state and federal laws is discernible only through inference.

In Chicago and North Western Transportation Company v. Kalo Brick and Tile Company, 450 U.S. 311 (1981), the United States Supreme Court said that -

The Interstate Commerce Act is among the most pervasive and comprehensive of federal regulatory schemes and has consequently presented recurring pre-emption questions from the time of its enactment. Since the turn of the century, we have frequently invalidated attempts by the States to impose on common carriers obligations that are plainly inconsistent with the plenary authority of the Interstate Commerce Commission or with congressional policy as reflected in the Act. These state regulations have taken many forms. ...[In the case of abandonments the] breadth of the Commission's statutory discretion suggests a congressional intent to limit judicial interference with the agency's work.

fact, even a court of law (state or federal) may not grant relief that would have the effect of mandating or permitting an abandonment unless and until such abandonment is approved by the Commission.

Moreover, abandonment approval by the Commission under the Interstate Commerce Act is permissive. This means that a railroad is not required to consummate an abandonment for which it has received approval (or an exemption from the prior approval requirement). Village of Mantorville v. CGWR Company, 8 F.Supp. 791 (1934). Thus, not only is the Commission vested with exclusive jurisdiction to determine the lawfulness of a proposed abandonment or discontinuance, once such approval is gained, the statute leaves the decision as to whether and when to implement the authority to the railroad itself.

A long line of court decisions confirms the exclusivity of the §10903 process and the Commission's jurisdiction. These cases make explicit that state law is preempted. Thus, where the action taken by the state has the effect of reacquiring a railroad to do something that is subject to approval under §10903, and where the requisite Commission approval has not been granted, such state action is impermissible. In Kalo, supra, the Supreme Court held that state action or jurisdiction is barred when the Commission, in approving a railroad application for abandonment, must

address the same issues that must be addressed under state law.

Similarly, the United States Court of Appeals for the Fifth Circuit has held that a Louisiana municipality cannot, by ordinance, require a railroad to abandon a line of railroad without prior Commission approval under §10903. New Orleans Terminal Company v. Spencer, 366 F.2d 160 (5th Cir. 1966). The same concept precludes a state from condemning a railroad line prior to Commission abandonment approval.

The Commission has summarized the state of the law explicitly and succinctly:

States may not exercise eminent domain powers as a vehicle to circumvent a federally mandated statutory scheme where we are granted exclusive jurisdiction to require a railroad to cease operations over one of its rail lines or to transfer the line to a new operator. There is no legal capacity in any State to alter the status of a common carrier insofar as its interstate obligations are concerned. Such capacity lies wholly within the Federal jurisdiction.

Feeder Railroad Development Program, 365 I.C.C. 93 (1984), at 95, citing Boston & Maine Corp. Discontinuance of Service, 324 I.C.C. 418, 451 (1965).

This conclusion also extends to situations where a state or other entity seeks to cause an abandonment of a railroad line over the objection of the owning carrier. See Thompson v. Texas Mexican Railroad, 328 U.S. 134 (1946). That is, while an entity other than the owning railroad can

petition the Commission for the abandonment of a line, no such entity, including a state authority, has the ability to declare it abandoned itself. Id.

In conclusion, it is apparent that A-2425 is unconstitutional on its face.

Testimony of Larry A. DeYoung  
Executive Representative for Government Affairs  
Consolidated Rail Corporation (Conrail)  
Before the Assembly Transportation and Communications Committee  
April 13, 1989

Conrail supports the overall thrust of A 2425. The bill is, with one exception, good public policy; its enactment will help New Jersey to preserve valuable infrastructure.

Conrail is concerned about the language granting the Commissioner Transportation the power to take by condemnation the right-of-way of "current or former" railroads. As the treatise which Conrail attorney John Broder, Esq., prepared and which I am submitting today states, the federal government has exclusive authority over existing railroads. We have repeatedly discussed this matter with New Jersey Department of Transportation staff members and thought we had reached agreement on language which would meet the State's needs, protect its interests, and avoid needless disagreement, only to have the Department later reassert the need for this particular type of wording. Since extensive case law demonstrates that the attempt to grant to the State the power of eminent domain over an existing rail carrier is unconstitutional, to protect the integrity of the program, we are submitting for your consideration amendments to permit the type of action the Department contemplates without risking needless litigation and delay to sound programs. With the inclusion of this amendment, A 2425 will have the full support of Conrail.

Suggested Amendments to A 2525 (2R)

On page five (5), lines six (6) and seven (7), remove "current or former" and insert after "right-of-way" in line seven (7) the following:

"either abandoned for common carrier purposes by its owner, if the owner is a railroad subject to federal jurisdiction, or not in use, if the owner is other than a common carrier railroad."

In line twelve (12), insert the following after "purposes":

"The Department of Transportation may acquire active railroad right-of-way with the concurrence of its owner, using the power of condemnation only if necessary to establish clear title."

The Board of Transportation  
Department of Transportation Management  
County of Morris

Courthouse, CN 900  
Morristown, New Jersey 07960

Frank T. Reilly  
Executive Director

Phone (201)285-1916  
Fax (201)326-9025



April 13, 1989

Statement on A-2425 Bridge and RR Right-of-Way Bond Issue Bill

The County of Morris and other counties throughout the state need additional bridge rehabilitation funds to meet the growing demands placed upon them for bridge repairs. The number of bridges and culverts for which the counties are responsible is staggering. In Morris County alone, the County is responsible for over 1,200 such structures. We support and need additional bridge rehabilitation funds.

We strongly support the portion of this bill that provides funding for the acquisition of railroad right-of-ways (ROW's). However, we believe these funds should only be used for abandoned railroad ROW's and exclude active railroads. These abandoned ROW's are extremely important in meeting short and long term transportation needs. (Other states do not have this unusual resource available and have spent hundreds of millions of dollars creating new ROW's).

We have one specific abandoned railroad ROW in northwest New Jersey that encompasses Morris, Sussex, and Warren Counties, called the Lackawanna Cut-off. It is a minimum of 100 feet wide and 28.5 miles long. This ROW was sold three years ago by Conrail to a private individual for \$1 million. We are currently concluding a \$125,000 USDOT (UMTA) study of this ROW. The study has very strongly recommended the ROW be preserved as a vital transportation corridor. Positive action must take place now to preserve this and other important abandoned railroad ROW's, which are about to be lost forever.

We respectfully request the rail ROW funds in this bill be restricted to use for "abandoned" railroad ROW's, not to be used by the state to purchase operating railroads. Also, we respectfully request the Lackawanna Cut-off be specifically named in this bill as one of the initial candidates for which these funds will be made available. Thank you.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Frank T. Reilly', written over a large, stylized flourish that extends to the right and loops back down.

FRANK T. REILLY  
Executive Director

FTR:jm

9X



STATE OF NEW JERSEY

DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
MEMORANDUM

Date: February 22, 1989


TO: Carolyn S. McCallum, Director Community Relations  
& Governmental Affairs Department of Transportation

FROM: Joseph L. Yannotti  
Deputy Attorney General

SUBJECT: Senate Bill No. 347

At the request of the Office of Counsel to the Governor, the Attorney General was asked to review certain amendments to the above referenced legislation, the Bridge Rehabilitation and Railroad Right of Way Preservation Bond Act of 1989. As initially drafted, the legislation authorized the Department of Transportation to acquire railroad rights-of-way that were "not in use". Augustus Naismith, Esq., local counsel for Consolidated Rail, wrote to Senator Weiss and suggested that the proposed legislation might conflict with federal law governing the abandonment of rail lines. Mr. Naismith suggested that the proposed bond act only authorize the acquisition of railroad rights-of-way if abandoned pursuant to federal law. We advised the Department of Treasury that the legislation did not conflict with federal law as drafted and, further, that Mr. Naismith's proposed change might be unduly restrictive. We suggested that the Department of Transportation be contacted to determine its interest in acquiring railroad rights-of-way, and that the legislation be modified to address the Department's intentions.

The legislation was later modified to allow the Department to acquire "current or former" railroad rights of way. Again, we do not see any conflict with federal law and the legislation does not appear to raise any legal problem on this point.

  
J. L. Y.

JLY/cmz  
cc: Gladys Rodriguez  
Office of Governor's Counsel

Dennis Crowley, Director of  
Legislative Policy  
Office of the Attorney General

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