

P U B L I C    H E A R I N G

before

THE GOVERNMENT FEDERAL AND INTERSTATE RELATIONS  
and  
VETERANS AFFAIRS COMMITTEE

on

SENATE, NO. 1202

(Creates a Department of Regulated Commerce which would  
consist of a Division of Public Utilities, a Division  
of Banking and a Division of Insurance)

Held:

May 26, 1976

Senate Chamber

State House

Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Raymond Garramone (Chairman)

Senator Joseph L. McGahn

Senator Joseph W. Tumulty

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SENATOR RAYMOND GARRAMONE (Chairman): It is now 10:35. I would like to commence with the Public Hearing on Senate Bill 1202, which is Senator Merlino's bill and which, we are all aware, consolidates various divisions of the present government into one regulated commerce department. We are seeking the pros and cons and the merits and the deficiencies in this legislation and, hopefully, when we have collected this data, the committee can make a report and take some judicious action on the measure itself.

In terms of procedure, I would appreciate it if those who wish to testify, if you haven't checked in with Jim Carroll, our aide, would do so. If you have a statement, we would appreciate receiving your statement. If you can bear with us - our attention span is not the longest - possibly you can summarize your statements, touch on the cogent points that you choose to make and we will attempt to give everyone an opportunity to speak on this, if he choses to.

So, on that note, Senator McGahn, if you would care to add anything further--?

SENATOR MC GAHN: No.

SENATOR GARRAMONE: I would then like to commence with the public hearing. If we can find Senator Joe Merlino, I think we would like to have him speak first.

SENATOR JOSEPH P. MERLINO: Good morning.

SENATOR GARRAMONE: Do you have a few words on this measure, Senator?

SENATOR MERLINO: Well, only if you insist. I think most of the words are set forth in the bill.

Senator Garramone, Senator McGahn, it is nice that I am able to sit here in my own seat and tell you about the DORC bill. Everyone knows that these are hard times for the State of New Jersey, financially, and we are not in a position to deliver any new service or new programs to the people because the money just isn't there, -- it is not being made available. Instead, we have to reexamine the kind of government we are already providing and ask ourselves, "Does it accomplish, for us, what the public needs to have done and could it be more efficient, and to what groups does the existing structure of government give influence?

This kind of thinking about administrative organization is not what brings crowds to their feet. I notice we don't have an overwhelming audience here today, as was here yesterday for the SCI hearing. What we do here with this bill won't change a single vote in 1977. It is a rather dull subject. But it is something we must do and those of us who have served on the Joint Appropriations Committee know how bewildering the bureaucracy is and so does Governor Byrne, who promised in 1973, amongst many things, to get a dollars worth of service for every dollar in tax, a comment to the economy and efficiency that has been obscured by the tax controversy which we are still involved in and it looks like we will now spend another long, hot summer here in this comfortable chamber to try to solve that problem.

But, this bill represents the first serious effort in many years to consolidate related departments in this state. We are talking about consolidating three of the smallest departments in state government. Banking has a fiscal year appropriation for '76 of about \$2.7 million; Insurance has about \$3.1 million; and the PUC, exclusive of the Public Broadcasting Authority, about \$3.1 million. Almost every division in Institutions and Agencies Department has a far larger budget than do these three Cabinet departments have, combined.

These departments, Banking, Insurance, and the PUC, share a common purpose: to regulate the major sectors of our economy. They are the only departments that exist to regulate commerce. For that reason, they seem to be natural for consolidation.

Historically, two of them have been joined. Banking and Insurance used to be

one. They were only split in 1970 and, if I may add a note, a split which I strongly objected to and voiced opposition to when I was a member of the other House.

But the reasons for reorganizing the three regulatory departments into one Department of Regulated Commerce go beyond this. They involve issues of access and impartial and fair regulation. That is what this is all about- regulation. Really, it is nothing else. I see no reason why banks should have a cabinet member or why insurance companies should have a cabinet member. The regulator can, perhaps, develop too great a sympathy for the regulated and given our existing structure, the industry can have considerable "access" at middle levels.

Some of the mild criticism that I have received - or mild comments that I have received - concerning this bill, I received initially when the bill was introduced and I issued a statement which went along with the introduction of the bill. I want to make it clear here and now that I am not fingering anyone or any group. I think the terms that I have used previously and what I am using here now in no way reflects on any group, or particular group, or individuals about access or anything else of the sort.

The same personnel that must work with an industry can be called upon to hear a case against it. What DORC will do is separate the analysts and administrators from the hearing examiners. The latter would be separated out into a distinct and professional Division of Administrative Law Judges, patterned after the Federal administrative law judges. These judges would be, necessarily, attorneys at law of the state and they would act just as the administrative law judges in the Federal system. Judges would be the hearing examiners for all cases brought by or against an industry - on a rate case, for example, or petitions to change a bank's location, or a bus route, or the other functions now carried out by the three separate departments of government.

At the present time, in all three departments, staff persons are often asked to sit and hear a case and report on it to the Commissioner. Only the Commissioner can make a decision. In DORC, the administrative judge would hear the case and render the decision. The complainant could, if dissatisfied with the decision, still appeal to the board of the DORC commissioners for review. But he will have had a full-scale and definitive review by an impartial judge. That first review will not be by political appointees.

Because the judges will be hearing cases pertaining to all three industries, they will be less likely to develop accommodations with anyone. For that reason, I believe DORC will give the consumer a stronger hand. It is for that reason too that I believe some industrial sources are concerned about this bill.

The DORC bill establishes Banking, Insurance and Public Utilities as separate divisions within DORC, along with a separate division for the administrative law judges. The State Energy Office, now in the PUC, would be a separate agency within the Department. The Real Estate Commission, which has recently been criticized for a pro-industry bias, would be transferred to the Division of Consumer Affairs.

The new department would show some modest savings to the taxpayer, but that is the least argument for the bill. It is not a consolidation that is being sought just to save some money. We should consolidate these departments in order to have fairer regulation of the industries concerned, and to deny them any special access to their regulators.

I hope this committee will see the wisdom of this approach. I am looking to your releasing the bill within a -- as quickly as possible, hopefully within the next several weeks so that we can, perhaps, get the bill ready for action.

I have distributed a copy of my statement. I didn't necessarily follow it



completely. I would like, however, to make one or two additional comments on the board members of DORC.

The very first article - "These three members will be appointed for a term of six years" - this would, more or less, insulate them from all the political pressure that we hear of, particularly the denying of rate increases just before an election or a favorable ruling in favor of a particular class before an election, purely on the basis of political judgments. I think regulating these industries for the benefit of the public and not the industry, is the goal - of course, without doing any injustice or harm to the industry.

As I mentioned briefly, the Energy Office will certainly be -- Right now, it is an administrative unit. Its powers are conferred by emergency legislation, which expired last year, and this bill establishes the office's statutory powers and gives it a few more. In particular, it gives the agency the right to subpoena people and subpoena records and testimony. I think it gives it the muscle which it needs.

That, gentlemen, is all I have to say. I would like to welcome Senator Tumulty. He is here too now.

SENATOR GARRAMONE: Would the record show that Senator Tumulty has joined us, please?

Senator Merlino, would the substance of your affirmation of this bill be that it is a device to regulate the commerce industry but it also has a sense of economy? Are these the two main thrusts?

SENATOR MERLINO: The economy is--

SENATOR GARRAMONE: That is a minimal consideration?

SENATOR MERLINO: It is minimal.

SENATOR GARRAMONE: It is not going to save any money. It is not efficiency in government that we are driving at. It is not the purpose at all.

SENATOR MERLINO: It is efficiency in government. When we speak of efficiency, we don't necessarily always mean that we spend less money. There certainly is not a fiscal implication. The purpose of the three departments is to regulate industries and these are industries which all directly affect the consumer, the people of the state, and I think when we are talking about efficiency, our thrust is toward the efficient operation of these regulatory agencies. This could be best had and accomplished through a bill such as this, which would combine all three agencies.

There is a minimal saving of money in the first year. I would think that there would be no saving at all; in fact, it might even cost a couple of dollars more in the third of fourth year. But, that is not really the concern.

SENATOR GARRAMONE: All right. So, it is not economy, it is greater productivity for what we are spending. Our number indicates we are spending between \$9 and \$10 million and there are some 600 employees. These are the approximate statistics that we have, Joe. Do you think that it may suffer in that there is less visibility between those who are being regulated and the department that is regulating them - which exists today when you divide this function. Do you think this is a deficiency in the bill?

SENATOR MERLINO: No. Not at all.

SENATOR GARRAMONE: You don't? Not at all?

SENATOR MERLINO: No. I think it will really mean a -- I think once the bill becomes operative, the industry will -- You know, when you try to take something away it appears to be a little harsh. I think once it gets rolling, the industry will also recognize the benefits.

SENATOR GARRAMONE: The reason I asked that question is, obviously, there has

been some criticism about "super agencies" and consolidating all of these smaller groups into one, large, massive bureaucratic function. There is some criticism directed that once you create this, do you intend to insulate the bureaucratic functions from those that they should be helping?

SENATOR MERLINO: I would hardly think so. The very purpose of this bill is not to insulate but to have greater control over the regulations and also to derive a greater benefit for the people of this state. The purpose of all three of these departments is the service that they each give to the people of this state.

SENATOR GARRAMONE: Another question, Senator. The Commissioners, I gather, are part-time - the three Commissioners. Was this intent of the legislation?

SENATOR MERLINO: No.

SENATOR GARRAMONE: It is meant as a full-time job but there is no pay? It is not a paid function, at least from what I gather in the bill itself?

SENATOR MERLINO: It doesn't say, one way or the other, because it is assumed that they would be full-time.

SENATOR GARRAMONE: All right. Assume that they will be full-time, but there is no provision for any salaries they may be entitled to. Who of the three Commissioners would sit in the Cabinet? Would all three sit in the Cabinet, or--

SENATOR MERLINO: I assume the Chairman would sit in the Cabinet as the President of the PUC now sits.

SENATOR GARRAMONE: I have just one other observation, Senator. I notice in reading your bill there are some 17 pages and approximately 10 are devoted to the Energy Office, which would suggest that this may be the only vehicle to describe what it is they should be doing. Is that one of the considerations?

SENATOR MERLINO: Well, for the simple reason that the legislation which established the Energy Office expired last year. Right now, I really don't know what they are doing. I think the reason why we are more definitive about the Energy Office is because we want everyone to know what they are there for.

SENATOR GARRAMONE: But they do take a substantial portion?

SENATOR MERLINO: I think that is a rather fair assumption. They do. I think there are those of us who don't consider - now that we can buy gas at any price - the energy crisis over, by a long shot.

SENATOR GARRAMONE: One other question, Senator. The Division of Administrative Law Judges, now that is a political appointee, certainly the Director will be. He, in turn, has the power to staff and appoint a full-time grouping of law judges. What sort of role will they have and where do they fit in this whole judiciary scope in our government? Are we getting a whole new family of judges into the system, is this what we are doing?

SENATOR MERLINO: Well, really, you are supplanting those people who are now hearing the complaints. The PUC conducts -- as a matter of fact, I think you have to wait months to get on the docket for a hearing at the PUC and then wait many more months for a decision. This is, really, defining them as administrative judges and taking them out of the catch-as-catch-can principal now for hearings before these various agencies.

Yes, it is a new administrative law section and it is one which is sorely needed in this state.

SENATOR GARRAMONE: But you don't foresee - it may be premature at this time to anticipate whether they would assume all the benefits that would be given to the judiciary in this state. Would they fall into that category do you think?

SENATOR MERLINO: There is no reason why they shouldn't if they are going



to be full time and act as judges.

SENATOR GARRAMONE: Well then, would the Chief Justice be involved with them, would you foresee, at some time?

SENATOR MERLINO: I can foresee that that would happen, the same as we now have bills, I think, in both Houses concerning our State Court of Tax Appeals. They are part-time judges. They are now going to be considered, perhaps -- they should be full-time and have the same prerogatives and responsibilities as, I think some of the bills say, a Superior Court judge. But, they would sit only and solely on tax appeals. These judges would be strictly and only administrative law judges.

Another question that we have here concerns even the Department of Labor and Industry where the work of the judges involves workmen's compensation. There have been several suggestions that they too--

This is one of the -- When you start looking into the bureaucratic structure, you run into a lot of problems and you can see that, perhaps, for the sake of efficiency -- not fiscal efficiency necessarily but productivity -- it may be one judicial system involving everyone who sits as a judge. We should be concerned in that direction. But, you will find that the thrust of the opposition to this is from those who are there now. They know what they are doing now. They know where they can go and can't go and what they can do and can't do and giving something up is rather difficult.

SENATOR GARRAMONE: Senator McGahn.

SENATOR MC GAHN: Senator, is this an entirely new concept? Is there any track history for a department of this scope in the United States today?

SENATOR MERLINO: Well, it is not brand new. I think the State of Virginia has already embarked on it. But I don't think that this Legislature should be concerned about being a pioneer into something good.

SENATOR MC GAHN: Is there any potential for a conflict of interest, where you have a super agency regulating banking, insurance, and utilities and when, in some instances, you have insurance companies insuring the utilities and in other instances the banks are lending money to utilities, and as far as interest-setting rates or rate structure is concerned?

SENATOR MERLINO: I think this is one of the prime reasons for the consolidation of the departments because, you know, I don't mean to belittle the role of the industry but our primary concern is the service which these industries render to the public. Our concern is how the regulation of the industry affects the public. I can see no conflict because an insurance company, which is being regulated, also insures the bank, or the bank building, or insures the power plant, or the bank finances the edifice that houses the insurance company, or in some way finances the power plant, or whatever physical facility they may have. I think this is all the more reason why the regulation should be under one roof.

SENATOR MC GAHN: I have no further questions.

SENATOR GARRAMONE: Senator Tumulty.

SENATOR TUMULTY: Senator, can you think of any three divisions of government more concerned with the public interest today than banking, insurance, and public utilities?

SENATOR MERLINO: Directly, no.

SENATOR TUMULTY: And don't you think that the complications that we have in our ordinary life today are certainly more and more due to the intervention into the affairs and the operations of the utilities, which is occurring as far as the Public Utility Commission is constituted? There are more and more rate cases. There is more and more interest by the Public Utilities Commissioner into the activities of

the public utilities, isn't that true?

SENATOR MERLINO: That's true but I think it is because of a very serious combination of things. Number one, there is the state of the economy and then there is the so-called energy crisis, which precipitated the escalation of the utility rates, which most of the public finds hard to accept - I don't mean accept philosophically, I mean accept it economically. I think the public is now more aware of the rate setting role of the PUC because of the constant controversy and because of the economic conditions. The public, generally, is very much more aware.

SENATOR TUMULTY: And as to the banking industry, which is becoming more and more involved as a result of branch banking and banks opening all over the state, bank holding companies - certainly, the operations of the banking industry are becoming more and more involved and require more and more supervision.- right?

SENATOR MERLINO: Absolutely, yes.

SENATOR TUMULTY: And the same would apply to insurance.

SENATOR MERLINO: Even more so now with -- Again, the insurance industry pretty much runs parallel with the public utilities.

SENATOR TUMULTY: Would you be willing to say, at this time, that these three branches of government are operating in an efficient manner?

SENATOR MERLINO: No, they are not.

SENATOR TUMULTY: Why?

SENATOR MERLINO: Because I think they are operating independently from each other and, just as you just said in your questions to me, they touch more and more on the general public with their rates--

SENATOR TUMULTY: What would the operations of the banking department have to do with the public utilities?

SENATOR MERLINO: I think they all regulate the very same concern of the general public - what they pay for services. The bank renders you a service; they lend you money or they give you a mortgage and you pay interest. I think the public is entitled to a fairer shake in the regulation of that industry.

It is the same way with the insurance industry. We don't really know why one of the insurance companies refused to write any more insurance in New Jersey. They are pulling out. I think if we had a better overall look at the industry, perhaps these companies may be very entitled to rate increases, but I think that as we, as legislators, haven't been able to sell the tax reform to the general public, I don't think the agencies as they are set up now are able to sell their role in regulating these industries to the public. I think if they had a more coordinated and consolidated regulatory agency, the people of this state would be better for it.

SENATOR TUMULTY: Well, I am trying to find out how the average bank depositor is getting more protection if the banking department is a part of the same division as public utilities and insurance.

SENATOR MERLINO: Because I think the interest--

SENATOR TUMULTY: What does the other two divisions have to do in furthering the efficiency in the banking department?

SENATOR MERLINO: Because I think in the general regulatory operation they would. I think they would be removed-- Right now, who regulates the banking industry? The Division of Banking. I think the way they are set up now, they are too accessible to the industry. They are more accessible to the industry than they are to the general public.

SENATOR TUMULTY: Well, we have a Public Advocate. He is pretty active, isn't he?



SENATOR MERLINO: And most of the members of the Legislature are trying to destroy that activity by cutting their funds, or doing everything else possible.

SENATOR GARRAMONE: This point you make, Senator Merlino, that the existing agencies are more accessible to the industries they regulate than they are to the consumer, why do you think that is happening and why would it not occur in a larger super agency?

SENATOR MERLINO: Because there wouldn't be the proximity - the easy accessibility. You take the Real Estate Commission - I think they are made up of all real estate brokers, or people who are involved in one way or another in the real estate business.

Banks are a rather elitist and aloof industry. The way they are fighting a bill which would have them account for the placing of mortgages in urban communities -- I think there is enough evidence to show that they appear to be over and above the--

SENATOR GARRAMONE: Do you mean they are not in the mainstream of what is going on in the state itself?

SENATOR MERLINO: I think that is a mild statement. I would accept that.

SENATOR GARRAMONE: Just one other question--

SENATOR MERLINO: I will go even further than that. You know, you take, in the legal profession, all judges are separate and removed from the mainstream of the law practice. They no longer participate in the every-day practice of law. They are separate and apart. And I think the regulatory agencies should also be separate and apart.

SENATOR GARRAMONE: I have heard the criticism - "Sometimes you can't operate in a vacuum, you have to be sensitive to what is going on in the contemporary life one lives in."

SENATOR MERLINO: I am sure they would never permit - that is, the industries themselves - the regulations to be operated in a vacuum.

SENATOR GARRAMONE: One last question, Joe. I see in the fiscal note that accompanies this bill - "The merger of the Departments of Banking, Insurance, and Public Utilities could result in an estimated salary savings of \$222,000 due to the abolition of positions." What positions were contemplated being abolished?

SENATOR MERLINO: I said, I think the fiscal saving is negligible. I don't know the positions, but they would be-- There is a work sheet here and it would show some of the salaries that would be abolished.

First of all, right now we have a Commissioner of Banking and a Commissioner of Insurance. They each get \$41,000. And we have management positions in both departments which would tend to be shuffled around, or be removed, or such. There is a saving, approximately, of \$222,000. If we don't save a dime, you know, I don't believe that should be our primary concern. Even if it costs us a couple of dollars more, that is no reason for either being for or against the concept of this bill.

This bill is strictly intended to more efficiently operate these regulatory agencies, that is efficiently in the form of giving the people of the state of New Jersey a better shake in these regulated industries.

SENATOR GARRAMONE: There are no further questions. Senator, we thank you very much.

SENATOR MC GAHN: Senator, I heard you make a statement that generally speaking today, judges disassociate themselves from their law practice. I am sure this is probably true in the entire state of New Jersey but, unfortunately, in South Jersey there seem to be judges who are sitting on the bench - who are from a law firm - and who simply "happen to be retaining" that law firm which handles tort liability insurance cases and they represent the insurance case. Now, I am sure that nothing can be taken from this, as far as implication is concerned, but I thought it

would be worth while to tell you that South Jersey is different from the rest of the state.

SENATOR MERLINO: Well, I leave that in your domain, Senator McGahn. Unfortunately, I am from Mercer County; we are neither North nor South Jersey.

SENATOR GARRAMONE: Do you feel that is unfortunate that you are from Mercer, is that what you are saying, Senator?

SENATOR MERLINO: No, no. Fortunately.

SENATOR GARRAMONE: Fortunately.

SENATOR TUMULTY: I am from North Jersey and, God knows, we are different from South Jersey or any other place.

SENATOR GARRAMONE: Before this breaks into a polarized discussion, I want to thank you very much, Senator.

Mr. Louis Applegate, New Jersey Chamber of Commerce.

LOUIS APPLEGATE: Good morning, gentlemen. My name is Louis R. Applegate. I am the Director of Governmental Relations for the New Jersey State Chamber of Commerce.

The State Chamber of Commerce set up a task force on 1202 some time ago and I have a statement which I would like to read. It is only four pages. I hope you will bear with me.

Basically, the proposed Act would abolish the existing Departments of Public Utilities, Banking, and Insurance and merge them into a single Department of Regulated Commerce, headed by a Board of Commissioners - three - appointed by the Governor. The now distinct cabinet-rank heads of the existing Departments would become division directors reporting to the Board of Commissioners.

Various arguments of the proponents of this measure have included these: Benefit of "consolidated management"; centralization of "economic regulation"; ability to "develop procedures to speed the pace of decision-making"; reduce the "regulatory lag"; effect tax savings; serve the public interest; provide for higher calibre hearing officers; and provide quality regulation.

The Chamber Task Force approached its study with the attitude that the legislation should receive favorable consideration if it could be demonstrated that the proposal would meaningfully decrease the cost of regulating the industries involved while assuring quality regulation or result in substantially improved regulation.

However, we find that the proposal cannot be justified by budget savings - and parenthetically, I think Senator Merlino acknowledged that - which, by estimate of representatives of the State administration would run between \$50,000 and \$500,000 and which, at the highest end of the range, amounts to less than 2/100 of 1% of the current budget. In fact, however, such savings - small as they are - are illusory because costs of regulating these industries are largely paid by fees assessed against the regulated companies.

Further, it is our opinion that merging these departments into a regulatory megastructure would not, in and of itself, improve the quality of regulation either for the consuming public or for the regulated industries. The departments as they stand have distinctive functions; to combine them into an arbitrary and unnatural consolidation and to add another layer of bureaucratic administration would likely serve to lengthen the decision-making process and increase the "regulatory lag". The businesses involved are highly diverse; the only commonality involved is that they are "government regulated". Each of the areas under regulation continues to grow more complex and this evolving complexity requires greater specialization rather than more generalization.

It is argued by the proponents of merger that certain overhead administrative

functions could be consolidated in the interest of reducing costs; their argument is answered by their recognition and admission that such "administrative consolidations" can be accomplished administratively - and without this or any other new legislation. We strongly urge that, wherever such desirable and viable consolidations can be accomplished administratively throughout the entire State government bureaucracy, it be done without delay in the interest of efficiency and budget savings.

The up-grading of hearing officers is a good and desirable objective. We suggest that operating efficiencies and the provision of quality personnel can be accommodated within the present organizational structure.

The consumer's interests are best served in an atmosphere of mutual respect between the regulated and the regulator, a balanced approach to the regulatory process and a reasonable understanding on the part of the regulating officials of the industry regulated.

In this time of a lagging economy manifesting itself in persistently high unemployment in our State, when the Governor's Economic Recovery Commission, the Administration and the Legislature have recognized - hopefully, not too late - the importance of the private sector economy to the quality of life in New Jersey, the "Regulated Commerce" proposal will down-grade the cabinet level positions of the three departments involved, removing them from access to the Governor, at a time when the chief executive should be directly and personally involved in restoring and maintaining the State's economic health, and removing from the Governor's attention problems of important segments of our economy.

The proposal would reverse a decision made only in 1970 to separate the supervision and regulation of the insurance and banking industries into two departments of the State government so that closer and more specific attention could be given to these important areas. Passage of time has proven that to be a wise decision because of the expansion and growing complexities of these industries since that time.

We suggest that to improve the regulatory process, generally or in any specific area, more would be accomplished by looking at the personnel involved rather than toying with the structure. The public interest will be served and the administration's goal of "public assurance of independent regulation" can be met with proficient people using efficient procedures within the existing organizational structure.

Therefore, it is our opinion that Senate Bill No 1202, will serve no useful purpose and, in fact, may serve as a regressive step in bringing about a sound and expeditious regulatory process. Therefore, we oppose passage of subject legislation.

To our knowledge, neither the sponsor nor the proponents of this legislation have sought to consult with representatives of the regulated industries concerning ways of providing more efficient, quality and expeditious regulation. The State Chamber's Task Force stands ready to work with the State administrative representatives as well as the Legislature toward that end. Thank you.

SENATOR GARRAMONE: Does the State Chamber have some suggestions in terms of improving the quality of the industry?

MR. APPLGATE: I am sure that our Task Force, which is made up largely of members that are in the industries being regulated, does have suggestions. Some of them may come out as you hear their representatives today.

SENATOR GARRAMONE: If you have something that you have developed, we would like to receive it.

I noticed you didn't address yourself to Article 5 and 6, which would encompass the State Energy Office within this legislation, and the division of Administrative Law Judges.



MR. APPELEGATE: Yes. In the past, the State Chamber, since the Energy Office came into existence, has favored putting it in Labor and Industry. I believe there is legislation that Senator Dodd had that we supported and it got waylaid along the way. But, that has been our position, that it should properly be in Labor and Industry because that is where most of the operational impact is.

SENATOR GARRAMONE: I see. Do you have any comment on the creation of the Administrative Law Judges?

MR. APPELEGATE: No, we do not. I do not feel -- I am personally not, of course, up on that and the Committee did not comment on it in the report. But I can take that back to them and ask them about it.

I would assume that they are working well with the existing system - not that it can't be improved.

SENATOR GARRAMONE: Senator Tumulty.

SENATOR TUMULTY: Mr. Applegate, do you have any criticisms to make of the functioning of the separate departments, as they are presently constituted?

MR. APPELEGATE: Only the general criticism that industry and business has today: We feel we are emeshed in regulations, whether it is environmental, whether it is consumer protection, etc. We don't say that this is all bad. We just say that the guy who is regulated seems to be the guy who is trying to make a living operating a business, no matter whether it is small, modest, or large.

SENATOR TUMULTY: Do you agree at all with the logic of Senator Merlino's reasoning that the merger of the three would increase the efficiency?

MR. APPELEGATE: No. We have no hope that will actually occur, as we have viewed bureaucracy in the past several years.

SENATOR TUMULTY: I think we can rule out, on Senator Merlino's own admission, that it is a question of fiscal economy.

MR. APPELEGATE: Yes. I think we were generous in our statement when we said \$200 to \$500 thousand.

SENATOR GARRAMONE: Thank you very much.

MR. APPELEGATE: Thank you, sir.

SENATOR GARRAMONE: We will attempt to honor the commitments we made so that the people who have other time commitments can appear before us. To the best that time permits, we shall do that.

Mr. Kenneth Albers, President, Savings Bank Association of America.

K E N N E T H F. X. A L B E R S: Good morning. If I may, I would like to read our statement, which is also fairly brief.

SENATOR GARRAMONE: That's a promise?

MR. ALBERS: That's a promise.

My name is Kenneth F. X. Albers. I'm a resident of Glen Ridge, New Jersey and I am President of the Provident Savings Bank, headquartered in Jersey City. I am appearing today in my capacity as President of the Savings Banks' Association of New Jersey, an Association of all twenty mutual savings banks with 130 branches in 17 counties in the State and total assets in excess of \$6 billion. All mutual savings banks are state chartered and are regulated by the Department of Banking of the State of New Jersey. Incidentally, no Mutual Savings Bank has a Federal Charter option. All are State chartered.

The proposed bill in consolidating the Departments of Banking, Insurance, and Public Utilities and establishing an administrative law division to conduct all hearings, seems to be moving contrary to events in the United States. As our society has become more complex, the need for in-depth knowledge has grown. Rather than seeing

an expert in many fields we see further and further specialization - this is true in the professions of medicine, dentistry and law. I assume many of you, gentlemen, are attorneys by profession and know first hand the necessity for specialization in that profession.

Is Banking becoming less complex than everything else? - of course not. Banking is more complex now than it has ever been and it will become even more so in coming years. On the national front, Congress is wrestling with the first major overhaul in the banking profession since the depression days of the 1930's. We don't know as yet what the outcome will be, but we do know that the final result will be a drastic change from the existing financial structure with banks, savings and loans and credit unions being granted rather different, sweeping powers. This hardly seems to be the time to reduce banking expertise in the State of New Jersey.

Has automation reached banking? It is only starting. The computer has great application to the banking profession. Right now, for instance, social security recipients have the option of having their check sent directly to their account in a bank or savings and loan. Before this year is out, the Treasury Department will be sending not checks but tapes to the banks - and the banks will have these tapes communicate with computers to record and credit the receipt of thousands of social security payments in seconds. And what of point of sale terminals, fully automated teller machines, bill paying by phone, shared facilities, and the various other types of electronic funds transfers that are starting to emerge not only in other parts of our country but also right here in New Jersey? This hardly seems to be the time to reduce the banking expertise in New Jersey.

This very legislature, in February, 1970, recognized not only these factors but also the importance of statewide branching in New Jersey which commenced in the late 1960's and voted to separate the Department of Banking and the Department of Insurance to make certain that these traumatic banking changes were carried out with the maximum benefits for the citizens of New Jersey and the least harm to the financial institutions of the State. The legislature was indeed prudent and recognized the need for more expertise, not less. The field of insurance seems ever so complicated what with the commissioner trying to solve the problems of GEICO withdrawing from New Jersey. I serve as a member of the Board of Trustees of a hospital in New Jersey and I can give first-hand testimony to the complexity in computing and the confusion which reigns concerning budgets - Blue Cross reimbursement, etc. While my knowledge of the area of public utilities is limited, I imagine they have similar deep, complex problems. This hardly seems the time to reduce banking expertise, insurance expertise, and the utility expertise in New Jersey.

Why should the Legislature reverse itself and combine departments, which in its wisdom it had separated only a few years ago?

While the proponents of this legislation have not advanced this theory, is it possible that the Department of Banking has not functioned well on its own?

The opposite is true. Our Department of Banking is among the most progressive of the entire United States. This Legislature heeding the advice of the Department of Banking, last year passed a bill prohibiting interlocking directorates on boards of financial institutions to insure active competition. The press only last week reported that the Federal Trade Commission was moving against interlocking directorates. We are among the first in the country with this progressive legislation.

The banking press is full of accounts of lawsuit after lawsuit in various states. Are point of sale terminals branches or not? What about automated tellers? Our Department of Banking issued a clear statement early in the game with the result that

New Jersey is not one of the legal battlefronts of the United States on this issue.

This Legislature, less than one year ago, at the counsel of the Department of Banking, passed a bill authorizing, among other things, many branches. We are one of the first states in the United States to adopt this forward-looking concept.

The Commissioner of Banking in the State of New Jersey has been recognized by his peers - the Conference of State Bank Supervisors, an Association of all 50 state banking commissioners in the United States, has elected our Commissioner from New Jersey 2nd Vice President of that esteemed association. I want to stress, gentlemen, that the Commissioner was elected by his peers to that national association, not by the bankers of the State of New Jersey. As an aside, it is my hope that the new Commissioner, whomever that may be, will be a person of similar integrity and quality.

The Department of Banking of New Jersey is obviously one of the better departments in the entire country, innovative, forceful in the public interest, and able to make difficult decisions and take swift action when the circumstances warrant. A state chartered bank in Northern New Jersey got in trouble. The Department took the bank over on a Friday afternoon - because it was insolvent - had several banks enter a bid for the bank, selected the best bid and on Monday morning that bank opened as a branch, or branches, of the successful bidding bank, with a minimum of confusion and no loss to the citizens of the State of New Jersey.

Swift, decisive action was needed and was had. Under the proposed legislation is that possible? Three commissions must meet, two of whom are totally unfamiliar with the problem. It must be discussed and presumably a majority decision must be reached. I submit, gentlemen, that the probability is, under the proposed legislation, that the bank in question would not have opened on Monday morning with the resultant turmoil, confusion, and panic among the depositors.

I wish to call your attention to the fact that the Department of Banking costs the taxpayers of New Jersey zero now - nothing. It is self-sustaining, supported by assessments of the banks it regulates. It is rather difficult to conceive a cost savings to the taxpayers given these circumstances. The fiscal note attached to the bill, dated April 6, 1976, proports an annual savings of \$37,448, if this legislation is enacted.

In view of the overall state budget, it is my opinion that this savings is miniscule. And since the Department of Banking is self-sustaining, none of that savings would come from this area.

The principal new idea advanced in this legislation is the advent of "Administrative Law Judges" to conduct hearings. While hearings may be a normal part of the Department of Insurance and the Department of Public Utilities process, it is not in the Department of Banking. Hearings are held, for practical purposes, only when branch applications are being contested. These hearings are conducted by banking specialists for the Department. They understand the issues involved because they work with them every day in the week. Can you imagine an Administrative Judge in the morning hearing a bank branch dispute, in the afternoon hearing a hospital contesting its budget allocation, the following morning hearing a rate increase request for a public utility and that afternoon reviewing an application for a nuclear facility, and so on? It seems to me to be the "Jack of all trades" with the inevitable "master of none."

The Savings Banks' Association of New Jersey is opposed to this legislation on the grounds that the professions involved are each complex, separate, distinct from each other and each with far-reaching effects on the citizens of New Jersey. I submit,

gentlemen, that the departments, as presently constituted, are more knowledgeable and able to act more swiftly in an emergency than a cumbersome structure of three commissions, two of which know little if anything of the activities and departments of the other.

For a gain of \$37,448, I think the citizens of New Jersey are far better off with the present system and, in the long run, will save much more than that.

We thank you for this opportunity to testify and we sincerely hope that you gentlemen will agree with our point of view. Thank you.

SENATOR GARRAMONE: Are there any questions?

(no questions)

If not, we thank you very much for appearing.

MR. ALBERS: Thank you very much.

SENATOR GARRAMONE: Mr. Eric Helsing.

ERIC HELSING: Good morning. Because I have already submitted my statement and because of the long list of speakers, I will not attempt to read my statement here. In addition, because of some of the comments that have already been made, including those of Senator Merlino, I will not go into the fiscal aspects of this proposed legislation.

SENATOR GARRAMONE: Mr. Helsing, would you indicate to us whom you represent?

MR. HELSING: Yes. I am Vice President and General Counsel of the Mutual Benefit Life Insurance Company and I am here today representing both that company and the American Life Insurance Association, who have 381 member companies across the United States.

Both the Mutual Benefit Life and the Association oppose this bill. Again, rather than go through all the reasons that you have already heard come out in discussion, I would like to emphasize one main point and that is, we feel, from the insurance standpoint, that the regulators of the industry, in the interest of the public as well as our industry, should be as expert as possible in matters involving insurance. We do not feel that this bill moves in the right direction in providing for that kind of quality, responsible, and specific regulation that the public needs and that the industry should operate under. Thank you very much. (see page 1x)

SENATOR GARRAMONE: Mr. Helsing, just one question. Do you feel that the regulators of an industry should be exclusively proficient in that industry or should there not be some public participation?

MR. HELSING: Public participation?

SENATOR GARRAMONE: Who have no expertise within that field. For instance, in the banking industry, should there only be bankers or should there be some persons without this expertise involved in the regulatory function, on a policy level?

MR. HELSING: I would think the regulators of the banking industry, or the insurance industry, or the public utilities industry would be, primarily, experts in those particular industries, due to the complexities of those industries in this day and age and because of the swift-moving new aspects of those industries that we see every day.

SENATOR GARRAMONE: In other words, you would prefer to see, exclusively, only members who have that discipline or that training sitting in this particular role?

MR. HELSING: Yes.

SENATOR GARRAMONE: You would. Okay, fine. Are there any questions?

(no questions)

Thank you very much.

Robert H. Deacon.



R O B E R T   H .   D E A C O N: I am Robert H. Deacon, President of the New Jersey Bankers Association, and President of the Bank of Mid-Jersey, Bordentown. The membership of the Association includes all of the 206 commercial banks in the state, both nationally and state chartered, and all of the 20 mutual savings banks.

The New Jersey Bankers Association is opposed to the proposal that the New Jersey Departments of Banking and Insurance be merged with the Public Utility Commission into a Department of Regulated Commerce.

With New Jersey's State Government in a budgetary crisis, it is no time to experiment with the two Departments - both Banking and Insurance - which provide net revenue to the State annually. In his budget for fiscal 1977, the Governor estimates Department of Banking revenues of \$2.75 million and expenses of \$2.65 million. The Governor has estimated the restructuring might save up to \$500,000. The Office of Fiscal Affairs estimates potential savings at only \$37,000. We submit there would be no saving at all, and in fact there would be added costs, both in scrapped stationery, supplies, etc. and, more important, in personnel inefficiencies due to unclear lines of authority and in lowered morale from a merged and downgraded department. No saving in merger, and strong possibility of losing the capability of returning net revenue - with the inevitable wrangling and debate over allocating overhead costs.

The major industrial states, as well as the majority of all 50 states, are characterized by a separate Department of Banking - like New Jersey now has. All five states with the largest banking assets (as well as seven of the top eight) have a separate Banking Department, headed by a Cabinet member. Both our sister industrial states, New York and Pennsylvania, have autonomous Banking Departments.

Conflicts of interest would surely result from a Department of Regulated Commerce, with three Commissioners ruling on banking, insurance, and public utility matters. Decisions on public utility bond issues, and permissible fees, would impact banks as bond holders. Decisions on insurance companies' blanket bond premiums, or eligible coverages, would make drastic revisions in bank costs and coverages. And bankers' blanket bonds may well be the next major problem after malpractice insurance.

The merger proposal for the three departments claims economies by having a common division to handle hearings on public utility, insurance and banking problems. Public utility rate cases require expertise in the energy problems of gas and electric supply. Insurance matters include Blue Cross-Blue Shield rates and need expertise on hospital and medical costs. Actions on bank charter, merger and branch applications require

knowledge of the interaction of Federal and State law and regulation, economic and banking trends, and marketing techniques. The present situation of economic distress, with high unemployment, energy shortage, and escalating medical costs is no time to experiment with untried techniques. Instead, what is needed is experienced personnel in a seasoned supervisory structure to deal with present stresses in money, energy and insurance. The Department of Banking, Department of Insurance, and Public Utility Commission should continue in their present, viable forms.

The Department of Banking has strengthened its supervisory posture, and devised techniques to provide prompt regulatory decisions in the six years since it and Insurance were divided into separate Departments in 1970 by action of the Legislature. The current move to put them back together, adding in the PUC, would superimpose three Commissioners (generalists, to adapt to the multiple problems of banking, insurance and utilities) over an existing framework of Departmental personnel from all three existing agencies. For more than a decade the Banking Department has had a full time professional Commissioner with financial expertise. This would be lost under the proposed change.

The Governor has made a major point of S.1202's creation of a system of administrative law judges which would take over the present function of banking department hearing officers. He points out that these judges would make over \$40,000 per year while he said the hearing officers get about \$14,000 each. (Actually they start at just over \$15,000 in their Civil Service category, which provides also that they must be attorneys.) This is a strange kind of economy with the state in a budget crisis. What are the functions of

these \$40,000 or \$14,000 officials? They hear applications for new state bank charters. They also hold hearings on a few full branch applications, but only when another financial institution has objected. The more modern mini-branches and communications terminal branch offices authorized by the State Legislature in 1975, as well as uncontested full branch applications, fall completely outside the hearing procedure (as do applications at the Federal supervisory level). The real surge in new bank charter and full branch applications is over. It came in the period 1969-1974 for branches and 1964-1974 for charters, resulting from the banking laws and the liberalizing changes made by the State Legislature in laws passed in 1969 and 1973. And the 1975 law will accentuate the change away from the charter and branch applications which would be the only banking province of highly paid judges.

Major legal and regulatory questions don't now, and wouldn't under S. 1202, go to the hearings. They are acted upon by the Office of the Attorney General. So, the major reason emphasized to support S. 1202 is to have higher paid state employees take over a function of relatively minor importance because the volume of applications requiring hearings is markedly reduced and will go even lower.

People familiar with our American financial structure speak of the dual banking system. Simply stated, we have two kinds of commercial banks: national banks, chartered by the Federal government through the Comptroller of the Currency, and state banks, chartered by the 50 states, in our case, by the Commissioner of Banking. In New Jersey, 50.4% of our banks are national banks, and another 49.6% are state-chartered commercial and savings banks. But the national banks average larger in size, with 54% of the assets compared to 46% for the state-chartered institutions. For commercial banks only, state banks have only 33% of the assets.

My bank, the Bank of Mid-Jersey, is a state-chartered bank formed in 1851. But every bank, or group of bank organizers, has a freedom of choice between state and national charter. If any state bank feels that the Banking Department has been downgraded to a bureau or division level, and has lost its independence of action and ability to supervise banks by being buried in a bureaucratic hierarchy, it can - by vote of its directors and stockholders, and a visit to the Comptroller's Office - apply to convert to a national charter, without even a visit to the State department. It is that simple, and dual banking is a major reason for the strong and viable capitalistic free enterprise system in this country.

The downgrading of the Department of Banking, as proposed in S. 1202, would clearly result in state banks converting to a national charter. The only question is - how many? Over time, there would be a real possibility of a Department of Regulated Commerce with no commercial banks to regulate. Already the percentage of national banks in New Jersey is double the national average.

A recent statement by Washington economic consultant Carter H. Golembe, frequently an adviser to the Conference of State Bank Supervisors (the national organization of state banking commissioners) covered plans for revising the regulation of banks. He said,

"A fundamental question which underlies the current dispute involves regulatory styles; namely, whether banking regulation should continue to be exercised in the unique regulatory style which has been developed over a century and a half, or whether that style is to be largely abandoned. The question is worth some discussion since it is one with which the industry will be faced over the next several years.

"At the risk of some oversimplification, the heart of the matter can be approached immediately. A primary (though not the sole) purpose of banking regulation is to prevent bank failures. This fact alone sets bank regulation apart from virtually every other type of regulatory activity. It makes it different, for example, from utility regulation where the basic objective is to protect the public against unreasonable pricing procedures by natural monopolies. How different banking regulation is from utility regulation can be seen from the fact that the only prices traditionally regulated in banking are those which banks pay - i. e., in the form of interest on deposits - rather than those which banks charge." He added that the objective of such regulation has been to prevent banks from having excessive expenses, which might bring the risk of failure - which would have deleterious impacts on bank depositors and on the nation's money supply and its economy.

The interest rates which a bank may charge, of course, are controlled by a number of State laws setting legal interest ceilings.

The Department of Banking is named after the most important segment of its duties - but it also is responsible for supervising and enforcing laws on many aspects of financing and consumer protection in New Jersey. It supervises, in addition to banks, savings banks, foreign banks, business development corporations, savings and loan associations, building and loan associations, check cashers, check sellers, credit unions, foreign money remitters, insurance premium finance companies, pawnbrokers, provident loan associations, secondary mortgage loan licensees, small loan licensees, home repair contractors, home repair salesmen and home financing agencies, motor vehicle installment sellers, sales finance companies and cemetery associations.

The proposal in S-1202 is cosmetic - to give the appearance of consolidation and economy in government. The result would be destructive, tearing down a developing professionalism, and changing a structure about which there has been no industry or public complaint.

We oppose the proposed three-way merger because we see no economy, no efficiency, no improvement in Governmental services resulting from it. We urge no disturbance of banking - an income producing department. Thank you for allowing me to make this statement.

SENATOR GARRAMONE: Mr. Deacon, one of the points you raised in your presentation is one that Senator McGahn raised with Senator Merlino, namely the conflict of interest that would result from the consolidation. Would you care to expand on that just a bit more?

MR. DEACON: You have a department that will be ruling on insurance and we are involved, of course, in purchasing insurance on a large scale. It could be a conflict in that way. But the main issue that I was talking about was the bonds - in the public utility bond area. I don't believe that was brought up. It could have been brought up this morning.

We are one of the major purchasers, through many areas of the bank and the trust departments, of bond issues and there seems to be a conflict that could develop, we believe - the Association believes.

SENATOR GARRAMONE: You would be prohibited from purchasing them?

MR. DEACON: No, I am not saying that we would be prohibited, but you have a department that is making a determination of our income from those bonds - or stocks - as well as controlling us, possibly, from buying or selling.

SENATOR GARRAMONE: All right. Just one other question, what is you feeling about having non-professionals sit on the higher levels of these regulatory agencies who do not have a discipline in banking or insurance?

MR. DEACON: With the complexity of banking, as it is today, I think this would be extremely bad. That is what I am trying to bring out: what would happen. I believe that if this did happen, there would be a large number of state banks that would move to a national charter because they would not be receiving a give and take with people who would know what the complexity of banking is about.

SENATOR GARRAMONE: You don't think that this could be self-serving, do you?

MR. DEACON: No, not in my feeling. I have been on both sides of the coin, actually, with the Department of Banking, in relationship to public complaints in the areas where they feel banks aren't treating them right. I don't feel that it has been, in any way, self-serving. I really feel the Department of Banking serves the public stronger than the banking industry, but they know the banking industry problems and this is the point that, I think, we would like to get across.

SENATOR GARRAMONE: Senator Tumulty.

SENATOR TUMULTY: Mr. Deacon, do you have any criticism to make at the present time of your relations with the Banking Department and the handling of your applications for new branches or any other administrative matters that you have contact with them about?

MR. DEACON: I, myself?

SENATOR TUMULTY: Is their service efficient?

MR. DEACON: Speaking as the President of an individual bank that deals with the Department, I certainly feel that they do an excellent job at the present time, yes.

SENATOR TUMULTY: No long waits on applications?

MR. DEACON: No. I have not.

SENATOR GARRAMONE: There are no further questions. Thank you very much, Mr. Deacon.

MR. DEACON: Thank you.

SENATOR GARRAMONE: Joel Jacobson, President of the Public Utilities Commission.

J O E L J A C O B S O N: Senator Garramone, Senator Tumulty and Senator McGahn: I appreciate very much this opportunity to appear before you and I also appreciate your cooperation in permitting me to have a flexible time. As you know, the Governor's Cabinet is meeting this morning and for that reason I was unable to be here as early as I would have liked.

My approach to this bill is based upon the thesis that there is considerable logic to placing all the regulated industry under the administrative discharge of one state agency. So, I approach the bill looking upon it favorably and urging its adoption.

One of the problems we have in regulation is the proliferation of avenues to pursue by the regulated industry. As a result of that, we are often faced with the charge that the agency is guilty of regulatory lag, which is the industry's phrase - it sounds like a medieval disease - for the fact that we take so long to make decisions. I have my own reasons in analyzing regulatory lag, which are not particularly germane to this hearing.

Another problem is that we have, in the regulatory process, either inexperienced personnel or personnel less qualified than they should be. It is my judgment that this bill would serve to attack several of the problems concerning the efficiency of the agency whose obligation it is to regulate industry.

I support the concept of providing a single new entity under which all rate-making operations shall take place. This would provide for the centralization of the economic regulation expertise. It would develop procedures to speed the pace of decision-making - frankly, one of the major areas in which I think we need improvement - and it would develop a corps of independent hearing officers who are capable of reaching and making very important decisions.

I would like to, for a moment, spent a moment on that. I find it totally incongruous for judges in this state, who make something like \$40,000 a year, to be spending several days a week deciding \$500 damage suits while \$14,000-a-year hearing examiners are spending months deciding multi-million-dollar decisions. This is totally incongruous in my judgment.

We anticipate the wisdom and judgment of the judges in the first instance - and I have no desire to criticize nor do I have any evidence that there should be criticism. I would hope that we could guarantee, in the second instance, that decisions that are being made and which vitally affect the economic interest of every citizen in the state, are being made by men and women who, by recognition of their status and by



guarantee of their caliber, are able to render the decisions that have such an important impact.

I know that the bill is being attacked - perhaps criticized is a more accurate word - by some who are motivated by parochial interests. If that concept was ever sound, I certainly think it is outmoded today and that the overriding concern of regulatory agencies should be the public interest, not the special concerns of a special segment of our economy, whether these concerns are divided by geographical terms, historical terms, or economic terms.

The idea of having one agency regulate all industries to be regulated is logical, will provide a more efficient discharge of operations, and is wise.

Now, with regard to specific provisions of the bill, I would like to stress, in my opinion, the wisdom of providing for commissioners who are serving six terms and therefore are beyond the recall of an executive for normal operating reasons. This provides for the independent judgment that is required in reaching these decisions. In my opinion, I would hope that the bill could be amended to provide that same status for the directors of the three divisions, which are being set up - Insurance, Banking and Public Utilities.

I think the same philosophy that provides the commissioners with independent judgment should apply to the director and that, rather than serving at the pleasure of the Governor, he or she should also be serving a fixed term.

I have mentioned this to the Governor and I have been assured by the Governor's office that there is no objection to this particular amendment.

Two, I would also stress the importance of minority party membership among the three commissioners, as we currently have on the Public Utility Commission. It is a fact that must be faced that the wisest decisions are not necessarily those that are most politically acceptable. We hope at a time where there are most difficult areas for those in government to respond to-- And if you have received as much criticism as I suspect we have, you would know that it is not possible to be politically popular. As a matter of fact, we would hope that courage would be the motivating influence rather than political expediency. Certainly, the fact that it would be bi-partisan representation will give us the opportunity to determine these difficult problems on the basis of merit, not political motivation.

Third, I think the process can be considerably speeded up by the fact that the commission can certify to itself any case it so desires and let the decision of the administrative law judges apply where it does not.

At the moment, our Commission is faced with the obligation of deciding the most minute detail as well as the most complicated rate case. It would be my hope that we can spend more time on the complicated rate case and ignore - or at least pass by - some of the insignificant, routine problems that often face us, but which still require our decision. Under the process of the administrative law judge, it is possible for this to take place. When a decision is made by an administrative law judge, it can stand. If the commission has any reason to review it, it has the opportunity to review it, as it can also certify to itself any case before it.

It is my opinion that this will facilitate and improve the regulatory process. It will also avoid the clutter of the cases on the legal calendars of so many courts now, where we can have this additional appeals process.

Just one last point - I believe the Energy Office belongs in the Department of Regulated Commerce, as I believe it belongs now in the Department of Public Utilities. This is a most important area of new regulation. It must be responsive to the needs of the community. It must be under the direction of a cabinet office and, in my opinion,

this would be the proper place for it.

In summary, therefore, gentlemen, I merely indicate to you there is logic to putting all regulated industry into one agency. We believe it will expedite and improve the processes and will provide the citizens of this state with the opportunity to reap the benefits of regulation, which is, after all, the purpose of it. Thank you very much.

SENATOR GARRAMONE: Joel, the thrust and I think the essence of the goal of this bill, which you enunciated, was that the public interest would be better served. If it achieves that, then the bill has great validity. But does it not diminish an individual like yourself, if you were part of this family of a Division that has been consolidated? Doesn't it diminish your effectiveness because you do have high visibility, in terms of the people, in a very sensitive area - the PUC function and responsibility? Do we tend to maybe insulate getting at who is the head of these commissions when we create these layers of bureaucratic insulation?

MR. JACOBSON: Could I answer your question by making it less personal and more objective? If I can paraphrase your question, you are saying would a commissioner, under this new bill, be less responsive to the public will?

SENATOR GARRAMONE: Yes.

MR. JACOBSON: My answer to that would be no. First I don't believe that the high visibility of a commissioner is necessarily good. There is no way to avoid it but I don't believe that is a factor in the compounding of intelligent decisions.

I would hope that all of our decisions are being made on the basis of the record developed in each individual petition and that we are free to follow the truth wherever it takes us.

Now, I know, as the Supreme Court knows, that sometimes these decisions follow the election results. I would genuinely hope that this is not the case in regulations and that political considerations are not to be considered, but merely the facts in the case, as they have been presented on the record, and the ability of the commissioners to do two things: First, to identify the public interest - I find this one of the most difficult things to do - and then, secondly, to serve it.

SENATOR GARRAMONE: You mention that you have examiners doing rather substantial and responsible work and getting paid \$14,000 a year. Possibly the corrective measures should occur within the mechanics of the division itself so that they are compensated for being selected to do this rather important work. Do you feel that is a direction that maybe should be considered?

MR. JACOBSON: Well, all I can say, sir, is that the pleas that have been made by me and my predecessors for many years, have fallen upon deaf ears in that certain agency which controls the purse strings, which I shall not name.

SENATOR GARRAMONE: Are you talking about the Joint Appropriations Committee or some other agency?

Senator McGahn.

SENATOR MC GAHN: Mr. Commissioner, would you address yourself to the remarks that the previous speaker made concerning a possible conflict of interest controlling these three departments of Banking, Insurance and Public Utilities?

MR. JACOBSON: Senator, --

SENATOR MC GAHN: Do you see any potential conflict of interest?

MR. JACOBSON: I'm sorry, I didn't hear the previous speaker but if you are asking me a question about the conflict of interest, I really don't see any. As a matter of fact, I think it would improve the regulatory process.

One of the frustrations that I sustain in the Commission is the necessity of

providing the utility with its legitimate revenue requirements but being unable to control the cause - or cost - of many of those burdens that they must assume. Now, the public clamor, of course, attacks the symptom, which is the Commission, not the cause, which is the higher cost. And, just to pick an example, perhaps the Commission could regulate the rate of interest being charged by some banks on utilities, since they finance their securities. Perhaps it could be more intelligently determined in the interest of the consumer and not necessarily in the interest of the industry.

I make no positive judgment about that. Obviously, each case would have to be determined on its own merit. But I see no inconsistency in permitting a regulating agency to, in fact, regulate and not, as we have to do so many times, merely pass along and in the process assume the brunt of all the attacks - which we are getting used to by the way.

SENATOR TUMULTY: Commissioner, what is the compensation of the commissioners to be under this proposal?

MR. JACOBSON: I don't believe the bill spells it out. I would suspect it would be at the same level that it currently is.

SENATOR TUMULTY: You would recommend compensation?

MR. JACOBSON: Would I recommend compensation? Oh, yes, I would.

SENATOR TUMULTY: As I understand it, there is no state in the Union where this type of entity is now functioning, is that correct?

MR. JACOBSON: No, sir, that is not correct, the State of Virginia--

SENATOR TUMULTY: There is no performance record that can be--

MR. JACOBSON: I answered your question. There is a state which has such an operation - it is the State of Virginia.

SENATOR TUMULTY: Well, how is it functioning?

MR. JACOBSON: Well, if you listen to the gentlemen who comprise the Virginia Corporation Commission, they think it is magnificent.

SENATOR TUMULTY: In talking about efficiency, you don't mean the cost is going to be reduced?

MR. JACOBSON: No, I do not anticipate any substantial savings in cost.

SENATOR TUMULTY: There is no possibility of that at all?

MR. JACOBSON: I do not anticipate any significant savings in cost.

SENATOR TUMULTY: The cost might be increased, am I right?

MR. JACOBSON: I don't believe it would really affect cost.

SENATOR TUMULTY: If we are going to hire judges at \$40,000 a year, the cost will increase.

MR. JACOBSON: That's possible. That would be a justifiable increase in cost.

SENATOR GARRAMONE: I think on the matter of the State of Virginia, we do have data.

Joel, one other question. The great concern with the PUC and the great furor we have is, the almost astronomical increases in the rates of energy - electricity and gas. How can you better handle that problem if you are submerged within this group, or can you?

MR. JACOBSON: Yes, sir, I think we can because the bill is providing for the employment of the expertise which, frankly, is not present in the quantities that we need it today. I think the bill provides for it.

By the way, Senator, this is just an aside - and I am going to grab this opportunity to say this - before I became a member of this Commission - two years ago - I used to make great speeches attacking the Commission and the entire process - great speeches. I tell you that immodestly. I, today, hear those same speeches and I

realize that the people making those speeches are as ignorant of the facts today as I was then.

What I am indicating to you is that there are complex problems which require the Commission to make certain decision on. I would hope that I could have the opportunity to bring this to the attention of the Legislature. I have asked Senator Feldman and Speaker LeFante for the opportunity to come before you, merely to present the facts and then there can be intelligent judgments rendered as to how we proceed to correct some of the problems.

But nobody, in my opinion, can shoot from the hip or respond emotionally and try to resolve some of these difficult problems. They are tough. They are hard and they must be understood before they are responded to.

SENATOR GARRAMONE: But there is no guarantee that getting into an agency of this magnitude is going to make that solution any easier to find, though. What you are saying is that you just need more expert opinion and the problems are difficult.

MR. JACOBSON: If you are saying the wisdom of determining a particular rate petition will not be changed by this - the process will be the same - the response I can give you is that there will be more qualified people making those decisions and they will be making them quicker, which, in part, will be resolving some of the problems.

SENATOR GARRAMONE: But do you feel that you could get this sort of professional help and assistance if you were granted the funds you were asking for, within the boundaries of the existing PUC?

MR. JACOBSON: It would certainly help, yes, sir.

SENATOR GARRAMONE: Okay. Fine. Are there any other questions?

(no questions)

Thank you very much, Mr. Jacobson.

MR. JACOBSON: Thank you very much, sir, I appreciate it.

SENATOR GARRAMONE: William Hyland, Attorney General, State of New Jersey.

W I L L I A M H Y L A N D: I am here today to support Senate Bill 1202, which would create a Department of Regulated Commerce. I think that many of you know that my background in government included some seven years as the President of the Board of Public Utility Commissioners and a fair amount of exposure to administrative agency matters in my private practice, aside from that.

My support is reflective. I had something to do with the conception of this idea several years ago and I have not changed my mind about the improvements in the regulatory process that I think this would help to bring about.

I would like to point out that we are talking about three departments that, in a rough way, I have approximated have a total of 500 employees. So, while the emphasis in this bill is not on cost saving, I do think, in an era when we are certainly charged with the responsibility of making government as efficient as we can and streamlining it - to use a more popular term - that a Public Utility Commission that has in the area of 200 employees, an Insurance Department less than that, and a Banking Department less than that, each headed by a member of the Cabinet, we would, in fact, be doing something very sensible and we would be helping this state government to become more efficient by combining those basically commercial regulatory functions in one department. It would still only be one-tenth the size of my department at the present time, so we are not talking about anything that is unmanageable.

Mr. Justice Jackson, in 1952, noted that there had been a history in this country of a rise in the number of administrative bodies. The history of regulation is one that saw regulatory commissions begin to come into effect in the middle of the



19th century. For the most part, they were railroad commissions - so called. And in New Jersey, under Governor Woodrow Wilson, we enlarged the concept of the regulation of business, as it applied in the Public Utility area, beyond the railroad involvement to include supervision over all of those businesses that were conventionally described as Public Utilities.

Mr. Justice Jackson noted that the increasing tendency to relegate business - governmental supervision of business - to administrative bodies had been a most significant legal trend in the 50 years or so, beginning in 1850 until he made these comments in 1952. He suggested that more values today are affected by the decisions of administrative agencies than are those of all the courts.

So, we have to think very seriously, I think, about the governmental apparatus that we have set up in New Jersey and elsewhere to make those decisions.

I think all of you are aware that until fairly recent years, and beginning with the enabling legislation that came into being after the 1947 Constitution, the insurance and the banking industry was regulated by one department. There was a great deal of sentiment a few years ago to split that regulation in half and to create separate departments. I really don't think that was a response to anything but the pressure of those particular industries that felt, in that fashion, that they would have a more predominant and a more influential role in the governmental process.

I think to the extent that that may have come into being, it has not been consistent with the public interest and what we should be concerned about is having checks and balances built in to the administrative process so that the public interest is protected and I am not saying just the consumer interest because I feel very strongly that regulation of business must involve a balancing of the business with the consumer interest.

It is absolutely impossible and it would be demagogic for regulators to hold out to the public the notion that the cost of utility service, or the cost of insurance, and what have you, is going to become cheaper in the face of increases in the cost of everything else; that just isn't happening. I am very impressed by the responsibility of Commissioner Jacobson, as the head of the Public Utility Commission, in responding to the consumer concerns by making himself available to hear their arguments and taking the Commission out into the grass roots area - as he has - but still recognizing that his decisions have to be made on the basis of a record. Because a regulatory agency is somewhat legislative in character but its characteristics, more and more in the 20th century experience with those agencies, have moved in the direction of a quasi-judicial function - decisions that are reviewable by the courts and, therefore, decisions that have to be made based upon a record.

When I was on the Commission, we were fortunate to be in an era when rate decreases were the order of the day, except in the motor bus industry and in the water and sewer industry. Any one of the major rate applications today, if granted, would wipe out the \$80 million in rate relief that we were able to order during the seven years that I was on the Commission.

So, the question of regulation has become more complicated. The demands are more severe. The problems are more difficult to solve. Consequently, I think one of the most important features of this bill is the professionalizing that we are attempting to give to the hearing procedure. This has been begun in the Public Utility Commission, through the creation of the hearing examiner position and, perhaps, in the other agencies as well - but I don't know them as well as I know the Public Utility Commission operation.

Therefore, the provision in this bill that creates a Division of Administrative

Law Judges is, I feel, one of the most positive changes that the Legislature could make in the area of regulatory reform.

I think that by establishing a separate division of administrative law judges, the quality of decision-making will be improved because we will encourage the creation of a corps of examiners that will be far more independent and, in many instances, more skilled than those hearing cases today.

When one considers that rate applications today, before the Departments of Public Utilities and Insurance, routinely involve hundreds of millions of dollars, the upgrading of the status of the hearing examiners, as President Jacobson pointed out, becomes very important and it has the potential, as we improve the quality of the hearing process, of paying for itself many times over in savings to New Jersey's rate-payers.

I believe that a group of trained and experienced administrative law judges should prove more efficient in trying proceedings and, thus, result in savings through more thorough review and a reduction of regulatory lag. And, having a team of law judges available to all three proposed regulatory divisions should also allow for a more rapid processing of pending matters.

I note that the Director of the Division may appoint temporary law judges in the event of an exceptionally heavy case load.

One criticism that has been levelled at the idea of one team of law judges hearing utility, insurance, and banking matters is the suggestion that the three regulatory areas present very different problems and, therefore, no administrative law judge, or board, can be expected to master all three. I remind this committee, if that should be necessary, that we ask that same kind of broad skill and expertise from our appellate courts and, to a degree, from our trial courts, but, particularly, the appellate courts when they review appeals from the Departments of Public Utilities, Insurance, and Banking, in addition to adjudicating all of the other matters brought before them. I am confident that we can find people who have the skills to deal broadly with these problems and who will develop and further improve those skills as they have experience in dealing with these cases.

With regard to appeals, I would like to call the committee's attention to another important aspect of the bill. That is, the authority of administrative law judges to render final decisions in matters before them. This will not only reduce the delay in those matters where no party contemplates an appeal but where an appeal is taken, the first step will be review by the Board of Commissioners, thus relieving some of the burden on our courts.

It might occur to someone to question how we can contend that time will be saved if we had this intermediate review, that is the review between what could be a final regulatory decision and the review by a court. One of the problems that I found in serving on the Commission and in practicing extensively in the administrative law field is, very often you were at the disposition of a single individual - the hearing examiner, or a commissioner of banking, or whatever it might be. And built into his decisions would be many of his own notions that wouldn't appear on record but would be his own philosophy about how a business or an industry should be run. And if a litigate, either rate counsel or now the public advocate, or someone representing a company - a regulated company - should disagree with that viewpoint, he found it necessary to go immediately into the law court - that is to the appellate division - for review where, quite frankly, the skill, the experience - most of the time I have been concerned with this problem - has been very limited on the part of those judges. There are very few judges in the appellate system - the Appellate Division or the

Supreme Court of this State - who have had any regulatory experience whatsoever. And there has been a general dissatisfaction with the appellate decisions that have come out of appeals that have been taken from regulated agencies because the Appellate Court for the most part can only deal in whether there has been an abuse of discretion by the regulator, or by the department. There is very little opportunity for a full, substantive review of the questions that have come before the tryer of the case.

Now, in this instance where the initial right of review would be to the Board of Commissioners, you would have a cross-section of people with different ideas, with a developing skill and experience as they serve for longer periods of time and I think you would have, to the benefit of everyone concerned, a more useful, a more productive, a less controversial outcome where the need for review was felt.

I would also like to comment on the section in the bill concerning the State Energy Office. As you all know, for the past year and one-half I have served as Vice Chairman of the Governor's Cabinet Energy Committee, having recently turned these duties over to President Jacobson. I can assuredly tell you today that the energy crisis is still very much with us. The Committee has dealt with a host of problems until now and it faces a host of critical decisions in the near future. What is our projected electric demand? And should it be met with nuclear power? Where can terminals for the importation of liquefied natural gas be safely located? What is the proper state reaction to the prospect of oil rigs off our shore? These are problems that should demand the attention of an agency that has the time and the resources to deal with them.

The present State Energy Office has been in a very uncomfortable position, I think, since its creation. It has never had legislative authority to effectively deal with these and other matters and has been assigned to the Public Utility Commission, but in such a fashion that it - in my opinion - doesn't have the opportunity to compete within that department for the resources that it should have to deal with the energy subject.

So, Senate bill 1202 will give the State Energy Office the lead responsibility to begin meeting some of the challenges that I have described. These challenges are raised not just by utilities and oil companies operating in and around New Jersey. I remind you that the Federal Energy Administrator has stated that another oil embargo is a possibility. I think you will recall how effectively the Energy Office dealt with the embargo-caused difficulties two years ago. But we can't afford the luxury of thinking that it can't happen again and that we can improvise some of the measures that were improvised two years ago. We can't afford the risk of being ill prepared to respond to future critical shortages of fuel.

The United States Congress has also challenged the states, through the Energy Policy and Conservation Act of 1975. Under that act, the administrator of the Federal Energy Administration can prescribe guidelines by which the states shall reduce actual energy consumption in 1980 below the projected consumption for that year by 5% or more. The authorities provided for the State Energy Office by Senate Bill 1202, will enable the Office, in my viewpoint, to begin coordinating efforts toward meeting the goal that has been set for us by this Federal legislation.

In New Jersey, I think, we are more dependent than the nation as a whole on the more expensive forms of energy. As you know, we produce no energy of our own in New Jersey. Natural gas, imported oil, oil generated electricity - these are all contrived forms of energy and not natural to our state. In addition to meeting the specific challenges that I have outlined above, a state energy office as a clearly defined agency of government would have the means to reduce the cost of energy in

New Jersey, or at least to work toward that as a challenge and as an assignment.

All of these challenges are enormous and the delay in reconstituting the State Energy Office will only hinder the State's efforts to meet them.

I realize that I have concentrated on the utility and energy aspects of the proposed department, but they are the areas with which I have had the most experience. The State Energy Office is a unique aspect of the Department of Public Utilities and of the proposed Department of Regulated Commerce and I hope I have emphasized this adequately.

But my comments on the proposed changes in administrative hearings and appeals are intended to apply equally and positively to all three areas of regulation, Banking, Insurance, and Utilities. I urge your favorable consideration of what I think will be a very positive piece of legislation that is likely to provide this State with the more effective regulation of commerce that we must have in the decades ahead. Thank you very much.

SENATOR GARRAMONE: You emphasize the regulatory processes would be improved by this particular bill and one of the dimensions of that improvement was the professionalism of the hearing procedure. The question I have in that regard is, are you in some measure now introducing a judicial and an executive, or administrative function, within the same umbrella of activity? You made mention that generally the hearing examiners don't have the expertise to prepare that body of record that sometimes comes before an Appellate Court. Is it the thrust here to maybe create highly professional, judicial types so that they do serve a judicial function within an administrative or executive role? There seems to be a little confusion in my own mind. How do you maintain these checks and balances?

ATTORNEY GENERAL HYLAND: I think the function of the Administrative Law Judges would be basically quasi-judicial. I don't see these judges as performing administrative functions or management functions in the sense that some of the hearing examiners in the Public Utility Commission have done in the more recent past. Even now, notwithstanding the creation of the hearing examiner positions, typically, if you had a case there, you would sit before an examiner who is an accountant, or who is an engineer, or who might be a rate analyst, but, let's say, fundamentally, an accountant. These people would have administrative, management responsibilities within their own bureaus and divisions, aside from the fact that they would be sitting on these cases.

Those functions very often interfere with the processing of cases and the writing of decisions, in my judgment. That shouldn't be. The people who sit in judgment in these cases ought to have the opportunity to focus exclusively on those quasi-judicial matters that are coming before them so that they are not distracted, except by the distractions of work load, or case load, so they can get decisions out. It is counter-productive to the public when a rate increase that is needed is not granted promptly because that is where deterioration of service sets in and then the next case usually brings a higher request for relief than otherwise would have been necessary because somewhere along the way there has been slippage in the rate of return that should have been earned or service that should have been created, or what have you. So, it is decidedly in the public interest to have these cases disposed of promptly.

I think that can be done more effectively by stripping away from the hearing examiner, or the Administrative Law Judge, as he would be called, anything except the responsibility for sitting on cases and writing decisions. This is exactly what the Federal agencies have done, as you know.

SENATOR GARRAMONE: Couldn't that possibly be done within the existing

structure of, let's say, the PUC or these other agencies - give the hearing examiner just the exclusive function and maybe improve the caliber of hearing examiner? Would that serve the same result?

ATTORNEY GENERAL HYLAND: I think it could be done. Are you saying could you do it and still maintain the three departments as separate entities?

SENATOR GARRAMONE: Yes. I am concerned about visibility and identity. I am a little concerned if we submerge the sense of identity. I think, or it would appear to me that the public would like to know who heads a particular department - "Who can I go to?" Now, concievablely when you create a consolidation of this nature, there will be a focal point. There will be an individual, but does it get diffused if I have a rate problem, or an energy problem, or a banking problem?

ATTORNEY GENERAL HYLAND: It should be diffused, Senator. You say, "Who can I go to?" You should not be going to anybody.

SENATOR GARRAMONE: Well, you are losing responsibility or pinpointing--

ATTORNEY GENERAL HYLAND: I don't think so. I think what you are doing here is creating a corps of people who will decide cases based upon a record, who will be free from the influence of the industry, or the pressures of the public. They are equally bad. Those cases ought to be decided on the basis of a record so that they can be reviewed in a court at some point.

I see no problem in submerging the identity of the people who are making the decisions. But, bear in mind that the industries still retain an identity and, in a way that they may not realize, I think they may have an opportunity to see their interest reflected in these cases because each division would be run by a director and under my concept of this operation, taking it into its fullest stage of development, the staff of the division of insurance, or banking, or public utilities, ought to be participating in the cases, ought to be putting an affirmative case on, which is done very, very seldom.

I recall that when I was on the Commission we adopted a regulation requiring an exit door in all of our passenger buses, notwithstanding - as the industry was in the practice of developing - the availability of push-out windows. We felt that invalids and others would have difficulty in the event of a fire or some other calamity to a bus, in getting out of those windows and dropping eight or ten feet to the ground and so on. We felt very strongly about the need for a rear or a side emergency exit. The industry, in the person of General Motors and I think Trailways, and some other bus companies, objected to that regulation and when it was put into effect, took it into the courts where a case was decided, I believe, in 1964 by the New Jersey Supreme Court, invalidating the regulation and remanding the case back to the Public Utility Commission for further proceeding, the defect having been, in the judgment of the Supreme Court, that we, the Public Utility Commission, did not put experts on to support the need for an emergency door. We never proceeded further with that case. We didn't have those experts within the Commission. Many of the people in the Motor Bus Division were busy hearing cases, sitting on ICC matters, and things of that kind, and just didn't have the time to devote themselves to the development of the safety and the engineering skills that would have made it possible for us to produce our own case, to support our own regulation.

Now, in the Federal agencies, the Federal Power Commission, for example, the Commission puts a case on before an Administrative Law Judge that represents the best thinking of those government regulators who are acquainted with the needs of the industry, the needs of the public, and over a period of time, develop skills. But they have to put that case on before the Administrative Law Judge and they have what



they call an exparte rule which, incidently, I would like to see built into this legislation, that prohibits communication on a case matter between the staff of the commission - or the members of the commission - and the Administrative Law Judge, because one thing the public will never know is whether some influence, either witting or unwitting, is brought to bear on a hearing examiner by some other staff member, or some commissioner, or some outsider who is really not involved in the case.

I think there will be much greater confidence on the part of the public in the decisions that come out of regulated agencies, where there is the feeling that skill has been developed and the hearing examiner, or the administrative law judge - as we call them - is insulated from pressures, except those that are evident from the record.

SENATOR GARRAMONE: The thrust seems to be the creation of this administrative law judge as really the main good out of this legislation.

ATTORNEY GENERAL HYLAND: No. I look upon the legislation as doing three things. First of all, creating greater efficiency by taking three very small departments that are all basically regulatory in character and putting them together.

SENATOR GARRAMONE: You have added the State Energy Office, so, in a sense, you have four.

ATTORNEY GENERAL HYLAND: All right. I am not as used to thinking of that but that is true, there really are four. In putting them all together, you will still have a department that is smaller than most of the other departments. So, it is certainly not unmanageable.

The second thing that you are doing is developing within that department a group of administrative law judges who will have, in time at least, the skill to sit on a banking case, or insurance case, or a public utility case. Regulation is not that complicated, you know. There are certain common attributes in business - in regulating insurance companies as contrasted to regulating a utility. And I am sure that these judges will develop a skill and they will be less "married", if you will, to a particular industry or vocation if they do rotate and they sit on different kinds of matters.

So, that is the second thing that I see.

The third thing I see is that you develop an initial stage of review before a case has to go into the judicial system where, by and large - and I don't mean this critically because our judges are drawn from all kinds of specialties, they were formerly criminal lawyers, or prosecutors, or real estate lawyers, or whatever, very few of them have come out of the field of regulation because there aren't that many lawyers involved in the field of regulation - the Appellate Courts are, in this state and most states, unskilled in dealing with regulatory matters. So, you do introduce, through the right of appeal to a Board of Commissioners, an initial administrative review so that if the fellow who heard the case and decided it was just off base, there is an opportunity to rectify that, much more readily than by putting a case in the Appellate Division where the standard, basically, is whether or not the governmental agency abused its discretion. It is pretty hard to prove that was the case.

SENATOR GARRAMONE: This bill does provide an intermediate step in that you can go before the Board of Commissioners, as I understand it.

ATTORNEY GENERAL HYLAND: That is what I am saying, yes.

SENATOR GARRAMONE: Before you get into the judicial review.

ATTORNEY GENERAL HYLAND: Before you get into the judicial review you have an intermediate administrative review by the Board of Commissioners.

SENATOR GARRAMONE: As you are developing your support of this measure, what I

envision here is there would appear to be a great need for a Division of Administrative Law Judges having a higher priority than consolidating all of these groups. Because it seems to me you place the emphasis on, "you have to do your regulation and do it well and do it efficiently, and do it thoroughly" and this is the group that is going to do it.

ATTORNEY GENERAL HYLAND: But why create three separate divisions? Because under our Constitution you could not have a group of Administrative Law Judges serving various other departments and not being part of those departments. If you are going to go to the specialist hearing examiner, as the PUC already has - but this would take it a step further - if you are going to do that and inject that function into each of these three departments, you are doing a very wasteful thing, in my view.

SENATOR GARRAMONE: I think that is part of my confusion - getting back to what I view as an administrative function, yet a judicial function, yet you are neither.

ATTORNEY GENERAL HYLAND: Senator, I respectfully disagree. They don't have an administrative function.

SENATOR GARRAMONE: No, they don't but they fall within the purview of an administrative department because their decisions are subject to the review of a political appointment - the commissioners, the three of them.

ATTORNEY GENERAL HYLAND: I see.

SENATOR GARRAMONE: You have this sort of side-tracked on this--

ATTORNEY GENERAL HYLAND: I have no problem with that because the decisions today are all made in the first instance by the political appointee - the Commissioner of Banking, the Commissioner of Insurance, or the Commissioner of Public Utilities.

SENATOR GARRAMONE: I just want to point out the complexity of this.

ATTORNEY GENERAL HYLAND: I think it is simplification.

SENATOR GARRAMONE: I have taken enough time. Are there any other questions?  
(no questions)

We thank you very much.

James Davies, First Vice President, Independent Mutual Insurance Agents Association.

J A M E S     H.     D A V I E S: I want to thank you for inviting me here. My name is Jim Davies. I am an independent insurance agent from Scotch Plains, New Jersey, and I am testifying today on behalf of the Independent Mutual Insurance Agents Association of New Jersey, a professional trade association representing nearly 4700 independent insurance agents and their employees, presently doing business in this state. I am currently the first Vice President of this Association.

Our Association is opposed to the bill on both economic and practical grounds. The economic have been fairly well covered at this point. However, as the bill is presently written, it calls for the establishment of a large and complex new bureaucracy which will apparently just be superimposed upon the existing departments of insurance. We think that this will wind up costing the New Jersey taxpayers a very considerable and unnecessary sum of additional money.

From a purely practical standpoint, these functions of the three departments are opposed to each other in terms of interest of the various groups involved. For example, the separation of banking and insurance activities was of sufficient concern to the legislature to enact Senate Bill 1285 during the last session. Two of you gentlemen were co-sponsors on that bill. Senator Merlino was the sponsor. This prohibited banks and other financial institutions from engaging in the general insurance business. The insurance business, much like banking and public utilities, has become so technical in nature that it would seem impractical, if not impossible, for one board to be fully competent in all areas. It should be noted that only a few years ago the Departments of Insurance and Banking were statutorily separated. Before we return to a system that so recently was considered unsatisfactory and unworkable, there must be sound evidence that the old system will be improved upon, without imposing still another marked massive bureaucracy upon the original framework.

I would like to comment in general upon some of the testimony. New York recently had super agencies. Washington is a super agency. It is rather obvious that through the political process the people are fed up with super agencies. I believe that the consumer has a right to deal in a flexible manner with a smaller agency and people whom he can talk to, as opposed to being involved with one large agency whom he cannot get through the front door to.

It was also brought up by Senator Merlino, that there is a rate problem with regard to insurance carriers in this State. I don't believe this could be solved by a super agency. It is a technical problem involving a rating concept, and this can only be solved by professionals within their particular ranks.

Further, bigness has become the by-word of government, and as I said a minute ago, I do believe that people are fed up with bigness. They want people to respond to them, to small independent groups. I thank you for your time. I do believe that I represent or have talked to - as do many agents - consumers within the State of New Jersey, and I do believe that they are totally in opposition to this particular bill.

SENATOR GARRAMONE: Thank you. Are there any questions? (No response.) Thank you.

MR. CARROLL: Mr. Hugo Pfaltz, Banking Law Section, New Jersey Bar Association.

HUGO H. PFALTZ: Thank you, gentlemen, for your courtesy in appearing today. As I stated, my name is Hugo Pfaltz, and I am the former Chairman of the Banking Law Section of the State Bar Association, and I want to report that at the annual meeting of the State Bar Association on May 21st, the Section voted unanimously for a resolution in opposition to Senate Bill 1202. Now, unfortunately, our bylaws require that any such resolution, to be an official statement of either the Section or the State Bar Association, be approved by the Board of Trustees, and there was not time for this to be done, so the words which I will speak are technically on my own behalf, but you have the assurance that the resolution was voted unanimously, without a dissenting vote by any of the members present, at the Bar Association meeting.

I formerly sat where you gentlemen are, and I know the importance of brevity, especially at this hour, so I will be brief. I will speak in opposition to the bill. Now, others have spoken on behalf of industry or will speak and discuss the problems of downgrading of the status of the Department, and, Senator Garramone, you have mentioned the problems that you call visibility and identity for the public by the creation of such a super agency. These are significant points, and they undoubtedly will be handled by others. I am going to address myself to two specific areas: One, some technical objections which have somewhat been discussed already, and the other is basic policy question.

First, I would like to get on to the technical objections. The structure of this organization creates a board of three commissioners. Whatever you call it, these three men will have the supreme power, not only administrative control of the agency, but the power of appeal which has been mentioned several times. But what is going to be the quality of these men?

I think the bill is particularly defective in this respect. It identifies that two will be from one party and one will be from another, and that the appointments will be for six-year periods, which will outrun the time of any governor who appoints them, necessarily. Perhaps this is to take them out of the political process, and remove them from political control, as some have mentioned, but doesn't it also open up the avenue for them being patronage positions? In this respect, it has already been mentioned that the bill is silent as to whether these individuals will be paid a salary. If you review the fiscal note, you will see that they are not included as salaried positions under the fiscal note. So that the \$37,000 savings presupposes that they will not be paid. Now, if they are paid on the level of \$40,000, any savings goes out the window. And I assume that unless these individuals with all this power are to be compensated directly in the form of salaries, they would be compensated indirectly in the sense of political patronage, which is a void left in this bill that definitely has to be filled.

Moreover, are these individuals to be full time or part time? The bill is strangely silent on this very important question, and we are all aware of the spectacle of a few years ago of a former Senator who received an appointment, an embarrassing appointment, where he was able to continue his own private law practice, and at the same time drawing a rather significant salary.

I suggest to you that under the law as it presently exists, these positions would be part time, and I call attention to New Jersey Statutes, Section 48:2-1, which was amended with respect to the Public Utility Commissioners in 1973, to insert the words, that the position had to be full time. This is an ambiguity which exists under the present legislation, that gives me great pause, namely, what will be the status of the super agents of the super regulatory body?

Now, these could possibly be corrected by amendment and by clarification, but assuming that was done, I still voice serious objection on a policy basis to the type of regulations. This is called the Department of Regulated Commerce, and the acronym is DORC. That may be appropriate. All commerce in New Jersey is now regulated to some degree. As a lawyer, a doctor, a builder, anything, you are regulated, and traditionally regulation of commerce has been under a federal program, under the commerce clause of the United States Constitution. However, and I think somebody has mentioned the historical development. There have been areas of commerce regulations which have been traditionally left to the states. These have been area industries which are now sought to be consolidated in this particular bill, but these two fall into distinct categories, and the regulations are for distinct purposes. We have the categories of banking and insurance. Now, the traditional reason for regulating banking and insurance is to protect the people who have deposits in the banks or people who have insurance policies, those who pay in continually for their insurance policies want to be sure that when their house burns down that there is a fund there to pay them for their loss, or those who make deposits in their bank accounts want to be sure that when they want to withdraw the money it will be available to withdraw.

The thrust has been in a regulation of banking and insurance to eliminate excessive competition which could lead to bad investments. In other words, control is to prevent competition, to make these people invest soundly and securely to make sure that the element of return which they make is balanced by the safety which the investments are made in for the protection of people who deposit in banks or buy insurance policies. That is the reason why these hearings that you have been referring to on questions such as bank charters or bank locations are not for the purposes of stimulating economy, are not for the sake of making money, but to make sure that whatever is done will be progressive, and it will be secure, and it will be safe for the institutions seeking those new offices or those new charters.

Likewise, in insurance policies, the concern is that the policies are actuarially sound; that the rates are sufficient to generate the funds that will pay off, if people are insured, when that time comes; and that the investments which these companies make are secure and sound, so that they will be available when needed to pay the insurance beneficiaries.

However, turning to the other side of the regulated group, the public utilities, that is gas, water, electricity, telephone, railroad, bus garbage, and now the new category of energy, the problem is somewhat different. The problem is that you have a monopoly, a given monopoly which has already been established, and the purpose of regulation is to make sure of two things: One is that the service will be delivered. When I flick on my light switch, my lights will go on. And, secondly, that the rates charged because of the monopoly that has been generated will not be unfair to me. After all, once a company gets its electric wires into my house, and I want to have electricity, if there was no control over the rates that they would charge, there would be no limit as to what they could demand of me. So the question is quite the contrary with respect to regulating utilities as opposed to regulating banks and insurance companies, and I think that may be the reason why you see the people who have been associated with the utilities industry favor this concept.

An example, of course, is the recent development along this line, the problem of energy. Once we had a shut off of gasoline supplies, a monopolistic situation developed, and the problem was how to ration out the available energy to the people at that time. And that problem may be passed, temporarily, because competitive forces have brought back an adequate supply into the market. However, new shortages may be developed, as has been alluded to, and we may have new shortages in areas such as housing, and the like, where there may be a



cry to subject these to regulations. Now, as a policy matter, I say that the blurring of these two bases for traditional regulation would be extremely dangerous. The need for caution, and the need for conservatism in the Department of Banking and Insurance, in that area, if that concept is applied to the area of utility regulation, energy supply and the like, it would lead to a stifling of development. The concept of putting the breaks on; don't let them do that; don't let them experiment, that is the concept of safety which is so important in banking and insurance.

Conversely, if we try the concept that is needed in the utility area of rate control over a monopolistic situation, and apply that to the area of banking and insurance, where actually healthy competition is valuable and can thrive, we would then turn the screws down on the proper functioning of both banking and insurance. In insurance, of course, we have the world's largest insurance company home based in New Jersey, an area where we do not want to put the kind of controls that may be necessary on a public utility, electric or gas company.

And I think that this also dramatizes the conflict aspect which has been alluded to. You have these two basic propositions, one of controlling rates for the benefit of service to the public, and the other of careful control over competition and security for the benefit of the banking and insurance industry.

Now, as has been mentioned before, banks and insurance companies are major purchasers of the bonds issued by our public utilities. On the one hand, you would have the regulator wanting to drive down rates, keeping rate arbitrarily low, making capital investments, possibly, in unsound utility corporations and the like for the sake of keeping rates down on utilities and also for the sake of the utility aspect; but on the other hand, what about the safety of these issues as placed into the portfolios of banks and insurance companies? I think this conflict has already been brought out, so I won't dwell on it any further, other than to say that it heightens the policy difference between the regulation of banking and insurance on the one hand and utilities on the other, and for this reason, regardless of any corrections which may be made in this bill to clarify those significant technical difficulties that we find with respect to its operations and purposes, particularly as related to the commissioners, we oppose the policy behind it on the grounds that it is mixing apples with oranges. Thank you.

SENATOR GARRAMONE: Thank you.

MR. CARROLL: Mr. John P. Dineen, Health Insurance Association of America.

J O H N P. D I N E E N: Senator, I will be very brief. I represent the Health Insurance Association of America, also known as HIAA, which is a trade association of over 320 insurance companies writing accident and health insurance in the State of New Jersey. Actually, not all of our companies write business in this state, but a good number of them do. And many of these companies doing business here are accordingly very heavily regulated by the Insurance Commissioner's Office already.

After review of Senate Bill 1202, the Association does not see that the bill will benefit the public, nor contribute to better regulation of health insurance companies. The creation of a super agency contemplated by the bill can, in our view, mean only a more complex regulatory scheme, and be disruptive of the present efficient pattern of regulating insurance companies in New Jersey.

The Insurance Department is presently headed by an Insurance Commissioner who is a member of the Governor's cabinet. As such, the Commissioner, with the expertise of his office, and professional staff, is in a position to convey directly to the Chief Executive Officer the most informed view on insurance matters. Under Senate Bill 1202, the Commissioner

is removed from this position and unable to directly contact the Governor on insurance issues. We believe that this creates an unnecessary downgrading of the industry, one of the most important industries in the State.

The bill also contains the potential for dismissing experienced career employees of the insurance department, a result which we feel must be avoided.

Finally, we believe that the regulatory matters encountered in supervising public utility, banking, and insurance, and energy are so diverse that the inherent generalization in the bill would not be practical and would create undue regulatory confusion.

For the foregoing reasons, we recommend that the bill not be enacted.

SENATOR GARRAMONE: Thank you. I would like continue the meeting at two o'clock. We will adjourn for one hour. Thank you.

(Whereupon a luncheon recess was taken.)



AFTERNOON SESSION:

SENATOR GARRAMONE: If we can have your attention, I would like to start our hearing this afternoon. Will you please call the first witness?

MR. CARROLL: William Wackenfild, Prudential Insurance Company.

W I L L I A M   W A C K E N F I E L D: Thank you. Senator Garramone, Senator Tumulty, I appear before you this afternoon as a representative of the Prudential Life Insurance Company of America, a New Jersey based mutual life insurance company. We are here in opposition to the DORC bill, and rather than summarize a prepared statement, which I filed with the Committee, I would like to give you some brief comments on the testimony that you heard during this morning's hearing.

The proposed merger is not a result of complaints from the New Jersey consumer public. There has been no outcry for the merger of the PUC, the Insurance Department, and the Banking Department. Quite to the contrary. You heard testimony this morning, that the average citizen of New Jersey, the consumer, is opposed to this particular bill. The first that anyone heard of the bill was when the Governor announced it in his annual message to the Legislature back in January, and at that time, the bill or the idea of the merger was given to the public as one of numerous ideas that the Governor had to save the State considerable sums of money. A detailed examination of those proposed savings has discovered that there are none, or if they do exist, they are miniscule at best. This is largely the result of the fact that the three industries to be merged, the utilities, the banks and the insurance companies pay for their regulation by a series of fees and other items that are charged to them.

Now, for example, the insurance industry, with which I am most familiar, pays more than \$50 million a year in taxes to the State of New Jersey. In addition, it pays \$4 to \$5 million in fees. The discussion this morning revealed that the State of New Jersey will spend barely \$3 million on the Insurance Department during the next fiscal year.

What I heard Commissioner Jacobson, and former Commissioner Hyland saying this morning was that they have been trying to bring to the PUC expertise and a better procedural method that they have been denied for many years. What I think they were saying was, they think they can find that expertise and get better procedure by merging the PUC with the Banking Department and with the Insurance Department. I think I heard them saying that the Insurance Department actuaries may, if this bill goes through, be spending their time worrying about the life expectancy of telephone poles rather than on the hospital reimbursement formulas to be used throughout the State.

The protection of the consumer is a primary interest and one of the leading arguments of this bill. If this is so, then I would suggest the legislature should finally give the PUC the additional funds and the upgrading of its administrative staff which Mr. Hyland and Mr. Jacobson both testified they are anxious to have, but that they have been denied. Once that has been accomplished and once they can show the increased efficiency, the increased performance, the increased benefit to the consumer, which they are after, then the Legislature could consider the merits of holding in the banking industry or the insurance industry. But to do all of this at one time will create one horrendous mess.

One of the primary purposes of the Department of Insurance is the solvency of insurance companies, so that they can protect the consumer and make them whole in the event of a catastrophe. The Department constantly does this for the 17 domestic companies and the more than 200 foreign companies, which the Department of Insurance is authorized to do business with in the State of New Jersey.

The current Commissioner has added to these financial responsibilities a very consumer oriented Director of Consumer Affairs. They are doing an outstanding job, and I think that it would be a mistake at this time to change a department which has only been

in existence for six years by itself. This is an important piece of legislation. It will affect every single citizen in the State of New Jersey. You heard mentioned this morning that everyone with a bank account has an interest in this bill. Everyone who is worried about the rates of the telephone, the electricity, the water has an interest in the bill. Every citizen of New Jersey who has a complaint about the service from their telephone company, their water company has an interest in the bill; so do four million residents of New Jersey who have health insurance policies; so do three and a half million citizens of New Jersey who have life insurance policies; so do more than three million people who have automobile insurance policies, not to say anything of the 50,000 agents throughout the State of New Jersey who sell all these various types of insurance.

We appreciate the opportunity of appearing before you this afternoon, gentlemen, and if I can answer any questions, I would be happy to do so.

SENATOR GARRAMONE: Thank you, Mr. Wackenfield. Are there any questions?

SENATOR TUMULTY: No questions.

SENATOR GARRAMONE: Thank you. (Prepared statement appears on page in the Appendix.)

MR. CARROLL: Mr. Edmond V. Lawlor, Jr., New Jersey Savings League.

EDMOND V. LAWLOR, JR: Senators, my name is Edmond V. Lawlor, Jr., I am President of the New Jersey Savings League. I have a prepared statement, but in the interest of saving time, I thought I would go to a few of the high points. A number of the points in the statement were made by previous people testifying.

The New Jersey Savings League represents 99% of the assets of all the associations in the State. We have 239 savings and loan associations in New Jersey, and they have assets up to \$14 billion.

This bill should not be passed for a number of reasons. First of all, we feel it is too much of a concentration of power in the hands of too few people. Also, we think the timing of the passage of this measure could not be any worse. Right now, as you know, we have a very high unemployment rate in New Jersey, and at this point, the housing sector of the economy is in deep trouble, and that sector relies a great deal upon the savings and loans of this State for their financing of construction of housing. The savings and loan industry needs the support of the strong banking commissioner. We need that support for a number of reasons. First of all, with regard to state legislation, as both of you men know, we come before you and ask for changes in legislation, changes in our law, and oftentimes, that change is supported by the banking commissioner. We feel that it is necessary to have someone of cabinet rank to come before the legislature and plead the cause for change in the legislation when it is in the public interest.

Also, with respect to federal legislation, someone of cabinet rank going down to Washington and pleading the New Jersey cause is a lot more effective rather than someone who might be a third or fourth assistant head in the department of savings and loan, or however we organize under the new system.

We feel also that with respect to the federal programs, that as far as supporting mortgage lending in the State, we would do much better if we do have a spokesman in the form of a cabinet officer, rather than just someone who is, as I say, an official of lower rank.

Also, we feel that we need strong supervision. The case of the bank of Bloomfield was referred to this morning. No one did mention the fact that if it were not for the Commissioner's action in that particular case, people would have lost a great deal of money. Many organizations, individuals, and corporations maintain accounts in excess of the \$40,000 insurance of accounts, and that money would have been lost had it not been for the quick action of the Commissioner.



Another factor which we wish you would give consideration to is the fact that unlike the banks in New Jersey, the savings and loan associations are predominantly state chartered. Out of the 239 associations, there are only 22 that are chartered by the federal government, and for that reason, we feel that with the \$14 billion dollar industry, the Legislature and the Executive Branch of the government has a very strong hand on that important segment of the economy, which finances 50%, at least, of all the home mortgages made in New Jersey.

We feel that it is important for these associations to remain state chartered institutions, because the control of these institutions then remains with the State government. We feel that if this Bill were passed, the confusion that would result could cause a number of the associations to convert to federal associations, thereby losing control to the federal government.

We also feel, and this point was made before, that because of the complex nature of our industry, that this is a special kind of supervision, and we need people that have experience in our line, rather than people who do not know anything about mortgage financing and the savings and loan business itself. For example, just briefly, there is a system that is developing in New Jersey, and throughout the country, which provides for electronic funds transfers between financial institutions, and in many cases, between employers. It is very complicated, and it is actually moving ahead here in New Jersey now, and it provides a method by which salaries can be deposited directly, much like the Social Security checks, into the depository that is designated by the employee.

This is a very complicated area, and the consumer must be protected in this area, and we feel that we need people who know what is going on to be very close to it, to monitor it very carefully as it develops. I think the recent experience in some of the financial institutions throughout the country will bear me out on that, that we do need that type of supervision, so that the public interest will be protected.

As Mr. Wackenfield said, there seems to be a need for a change in the PUC structure, and perhaps the Energy Office, but we feel that the change should not be made in the Savings and Loan Division of the Department of Banking. The savings and loan hearing officers are, as this bill requires, attorneys at law. They do nothing but hear these cases, nothing else. They don't have any other administrative responsibilities. I don't mean that they don't have anything to do, but they do only that. They, as I said, are attorneys. They are qualified, and they are just, as Mr. Hyland said this morning, completely devoted to the handling of these cases, and nothing else. They make a record. They make recommendations to the Commissioner. They don't make the decisions. The Commissioner makes the decisions. But as far as the Savings and Loan Division is concerned, what Mr. Hyland is looking for, already exists, as far as the hearing officers are concerned.

So, in conclusion, we would urge that the present system be left intact, so that the diversified functions of the Public Utilities Commission, the Department of Insurance, and the Department of Banking will continue to be supervised by experts, each of whom are directly responsible to the Governor, and through him to the people of the State. Thank you.

SENATOR GARRAMONE: The hearing officers in the savings and loan, how many are there? Do you know?

MR. LAWLOR: Two, Senator.

SENATOR GARRAMONE: That is a part-time function?

MR. LAWLOR: Full time. They are attorneys at law. And, Senator, there has been some talk about industry communication with these people. I have been in the savings and loan, with this organization, for 22 years, and I have met one of the hearing

officers today for the first time. I had never met him before.

SENATOR GARRAMONE: Do you know of any record of reversal of their decisions in the appeal courts? Have they been appealed, and if so, what has been the disposition?

MR. LAWLOR: They have been appealed, and I know of no case offhand in which the Department was overruled by the court. There may be one, but I don't know of one offhand.

SENATOR GARRAMONE: Is there anything in this legislation that would enhance the role of savings and loans in terms of providing funds for the home market in New Jersey?

MR. LAWLOR: Nothing, sir.

SENATOR GARRAMONE: All right. Senator.

SENATOR TUMULTY: Mr. Lawlor, do you have the same hearing officers for the savings and loan as they have for savings banks and commercial banks?

MR. LAWLOR: Yes, sir.

SENATOR TUMULTY: I can think of one case in which the hearer was sustained, at least. I am acquainted with it. The Banking Department was sustained, and it was brought to the Supreme Court.

MR. LAWLOR: There have been several cases where they have been sustained.

SENATOR GARRAMONE: Thank you very much, Mr. Lawlor. (Statement appears on page in the Appendix.)

MR. CARROLL: Mr. William Singer, Common Cause.

W I L L I A M     S .     S I N G E R :

My name is William S. Singer, and I am Vice-Chairman of New Jersey Common Cause. We wish to thank the sponsor of S 1202 for the invitation to speak today on the establishment of a Department of Regulated Commerce.

New Jersey Common Cause is not as expert as many others you have heard today on the matter of Executive Branch organization, but we are interested in reform at all levels of government, and we see several reform elements in this bill which we find appealing. We support the establishment of a board of Commissioners whose jurisdiction encompasses a spectrum of regulation wider than that of the single-industry Commissions now in effect. A broader perspective on all regulated industry might better serve the public interest than does the present piecemeal approach.

We likewise applaud the provision in this bill for statutory establishment of a State Energy Office and its duties and enforcement powers as they are delineated. We see a pressing need for energy planning, conservation, and research in alternative energy sources if the state and the nation are ever again to be secure in our energy supply. We

think, too, that the function of public education is a vitally important one, and we are pleased to see that this office would have that mandate. We also approve of the provision giving citizens standing to sue violators of Energy Office regulations. And the power to require energy impact statements on any construction or development is an essential element of effective planning.

A significant element of S 1202 is, we think, the establishment of a Division of Administrative Law Judges. We support this concept wholeheartedly. The setting of rates in all these industries and the resolution of contested cases are matters of extreme financial importance to all citizens of the state, and they should be adjudicated by impartial and professional persons. The principle behind this division represents a real procedural reform in state government. If the Division proves to be effective, the Legislature might consider applying the principle to other agencies, perhaps with a view to setting up an independent Department of Administrative Law Judges, which would consider all cases of administrative law pertaining to all agencies of the state.

We also commend the transfer of the Real Estate Commission and the New Jersey Cemetery Board to the Division of Consumer Affairs. The Division of Consumer Affairs does oversee most of the other regulatory boards and commissions in this state and is the proper department for these two boards. This transfer is consistent with other reform measures for boards and commissions presently being considered by the New Jersey Senate. Effective oversight is best accomplished by having all similar bodies under one agency's jurisdiction.

The one suggestion we would like to make on S 1202 is that it include a "sunset" provision. "Sunset", a new concept which has just been enacted in Colorado in regard to

regulatory agencies (at the suggestion of Colorado Common Cause) and which has found immediate popularity at all levels of government, provides that the Legislature will review each agency periodically as to its effectiveness and efficiency, and reconstitute it on a previously-specified timetable. If the Legislature declines to reconstitute it, the agency will be abolished a year later. The Department of Regulated Commerce seems to us to be a perfect beginning for the "sunset" principle in New Jersey: in establishing this new department to assume the functions of previous departments, the Legislature would be especially interested in reviewing it after a number of years to determine whether it had solved the problems it was designed to solve, and if necessary, to make changes in it. New Jersey Common Cause would be pleased to offer any assistance we can in designing a "sunset" provision for this bill.

Thank you.

SENATOR GARRAMONE: Mr. Carroll, the Committee Aide, reminds me that this is often referred to as self destruct.

MR. SINGER: Correct.

SENATOR GARRAMONE: Common Cause has been a great advocate of visibility and direct accountability between the public and elected officials. Do you see that this bill enhances that posture?

MR. SINGER: Well, in a way, I think it maybe lessens the impact that the industry will have on government, and makes it possible for the public interest to be better expressed by having the Board of Commissioners sort of being a level between the industry regulators, and the Governor, et cetera.

SENATOR GARRAMONE: But, couldn't it also work the other way, there could conceivably be a very cozy relationship between a secluded subdivision, if you will, and the industry it is regulating?

MR. SINGER: No, I think it would produce the opposite effect, because the Board of Commissioners would have day-to-day oversight of what was going on, and yet it would be divorced from any "cozy relationship" because they are not the prime regulators.

SENATOR GARRAMONE: I notice that you are also very supportive of the division of administrative law, and are suggesting conceivably that it be a separate division. Part of the discussion this morning concerned itself with whether or not this is a judicial process or is an administrative process, and thereby crossing into both camps.

MR. SINGER: Well, I think administrative law has grown over the last couple of years, certainly. It is a whole separate area, and I know in the federal government, they recognize it as a separate area. They have administrative law judges to hear cases, and I think maybe the State is going to have to recognize that we are going to have to set up some system to hear all these administrative cases, rather than tying up the judiciary.

Certainly, there is a judicial function to it.

SENATOR GARRAMONE: Well, would it be possibly more productive or efficient to set up a separate division doing just this, and letting the other divisions remain the way they are?

MR. SINGER: I still think that it will be interesting to see how it will work with just one area. Here you are taking regulated commerce. You have different branches that are very separated, and you are going to put them together and have some people overseeing those four. I don't know whether it will work to have the same administrative law judges overseeing, let's say, Civil Service or the Department of Transportation. I think it would be good to start in one area and see how it works with them overseeing these four.

SENATOR GARRAMONE: The building of fairly large agencies is not one to look critically upon, or do you think it should be?

MR. SINGER: I think it depends on whether or not it serves the public interest. We feel that in this way it does serve the public interest, but I don't see why the insurance industry should have a spokesman at the cabinet level, or the banking industry versus other industries that do not have a spokesman at the cabinet level. They are regulated industries, and they can be put together.

SENATOR GARRAMONE: Senator Mc Gahn, any questions?

SENATOR MC GAHN: No.

SENATOR GARRAMONE: Senator Tumulty?

SENATOR TUMULTY: What has your experience been, have you had any direct contact with the insurance industry, with the banking business, or public utility?

MR. SINGER: No, and that is what we said in the beginning, that we really feel that there are other people who spoke today who have a better insight as to the Executive Branch structure. We just felt that there were certain things like the Energy Office and the administrative law judges that should be stressed, and also the movement of the Real Estate Commission.

SENATOR TUMULTY: What is your expertise in this field? Are you just a technician? I mean, have you been trained? Do you have basically a theoretical background?

MR. SINGER: I am a practicing attorney in the State of New Jersey.

SENATOR TUMULTY: Do you practice before any of these bodies?

MR. SINGER: I can't practice before any of these bodies because of the conflicts law. My firm is in conflict to that of any state agency. I am a hearing officer in the Department of Civil Service, however.

SENATOR TUMULTY: You are a hearing officer?

MR. SINGER: Yes, sir, I am.

SENATOR TUMULTY: You were talking about energy plans as part of this concept. What advantages in energy planning is there in having this all merged into one division?

MR. SINGER: Well, it is my understanding we do not have a statutorily enacted Energy Office in the State of New Jersey at this time. It is only by Executive Order that the Energy Office exists.

SENATOR TUMULTY: Well, so, you could have a statutorily created energy office which might accomplish all of the things you want it to accomplish, without being a part of this overall super agency.

MR. SINGER: That may be true. I am not setting myself up as an expert on whether they should be together. I don't see any disadvantage to it, however.

SENATOR TUMULTY: You have referred to the sunset powers of the legislature. Of course, the legislature always has the power each year when it reviews the budgetary requests of various departments to review their activities.



MR. SINGER: Certainly.

SENATOR TUMULTY: So there is nothing special about that.

MR. SINGER: No, except that this would make the Senators and Assemblymen really sit back and take a hard look. It would make it a mandatory review.

SENATOR GARRAMONE: You are not suggesting that we don't take a hard look, are you?

MR. SINGER: Well, a harder look.

SENATOR GARRAMONE: Thank you very much.

MR. CARROLL: Mr. William Gural, Director of the Division of Rate Counsel, Department of the Public Advocate.

W I L L I A M G U R A L: Good afternoon, gentlemen, I am here for Commissioner Van Ness, the Public Advocate. My name is William Gural, and I am Director of the Division of Rate Counsel in the Department of the Public Advocate.

The Department of the Public Advocate is in general agreement with the legislation. The proposed bill is innovative and may well result in a saving of substantial sums of money. The Division of Budget and Accounting, in a preliminary study, has estimated that the creation of a Department of Regulated Commerce would save approximately \$500,000 in the present combined operating budget of \$13 million for the three existing departments.

As a new department develops, its professional staff begins to combine skills in public utilities and insurance and banking matters. Increased expertise will simultaneously grow and result in fuller and more expeditious hearings before the Division of Administrative Law Judges. The creation of a Division of Independent Law Judges is an important and laudatory aspect of the legislation. Clearly there exists a need for more hearing officers to diminish the severe backlog of cases that presently exists, specifically in areas of public utilities and insurance.

The Division of Administrative Law Judges should quickly evolve into a very specialized and qualified corps of hearing examiners who should provide interested parties and all our citizens with speedy and just dispositions of contested cases. Equally attractive is the creation of a State Energy Office with the authority to supervise virtually every aspect of New Jersey's role in energy conservation. The Energy Office is envisioned as an independent entity, having the power to establish an energy information system which will insure a fair distribution of available energy, to design a program for the conservation of energy, to monitor prices charged for energy throughout the State, to plan with other states and the federal government proposals to carry out energy conservation. The development of such an office would place New Jersey in the forefront of attempting to solve the critical problems of the conservation and use of energy.

Senate Bill 1202 recognizes the importance of public regulation of banking, insurance, and public utilities, those industries that so greatly effect the lives of New Jersey citizens. If the various components of the Department of Regulated Commerce act as one unit, exchanging information and expertise, then the economies perpetuated by this legislation will be realized not only by State government, but also by the consuming public.

That is the end of my statement, gentlemen.

SENATOR GARRAMONE: Mr. Gural, in your role in the Department of the Public Advocate, do you have contact with the PUC?

MR. GURAL: Yes, sir.

SENATOR GARRAMONE: In what capacity is that?

MR. GURAL: We appear before the Public Utility Commissioner in rate proceedings and when public utilities seek to discontinue services, we represent the public interest in those proceedings.

SENATOR GARRAMONE: With the consolidation that is recommended, I gather from your statement, you feel that this would provide more expertise for these problems?

MR. GURAL: Yes, I think the staffs of these three agencies - it will take some time, but their experience and exposure to the various different types of industries will begin to overlap. For example, in public utility, accountants can be exposed to insurance accounting and banking accounting systems, and I think eventually a single individual will be able to assert his experience or his exposure to those three different industries in a given case or in a given proceeding.

SENATOR GARRAMONE: Would the creation of the Division of Administrative Law Judges diminish the role of the Public Advocate in this general regulatory field?

MR. GURAL: Yes, as expressed in this legislation, an administrative law judge will be in a position to issue a final decision, and if anybody is aggrieved, they may then appeal to the three commissioners. However, at the present time, the hearing examiners may only make a recommendation to the commissioners or the head of the commission, and usually that is a time lag. Regulatory lag is one of the complaints we constantly hear from the regulated industries, and this would eliminate that step.

SENATOR GARRAMONE: Would the suggestion of the Common Cause - the prior speaker, I believe, suggested maybe creating a separate division or department, not part of this particular group of administrative law judges - be a solution to this problem, if they were to sit in judgement of all administrative problems that might come up?

MR. GURAL: Yes, sir, I suppose that that might be worth --- I think that the administrative law judges uniquely fit within this group of regulated industries because that is where you have your hearing examiners, and where all the major administrative proceedings are taking place in these three industries.

SENATOR GARRAMONE: Thank you. Senators.

SENATOR TUMULTY: Mr. Gural, are you an attorney?

MR. GURAL: Yes, sir, I am.

SENATOR TUMULTY: How long have you been with the Public Advocate?

MR. GURAL: Since its inception in June of 1974.

SENATOR TUMULTY: Did I understand you to say that in your opinion the establishment of this super agency would affect economies?

MR. GURAL: Well, the reports we get from the Division of Budget and Accounting indicate that there would be a \$500,000 annual saving.

SENATOR TUMULTY: How much is the budget of the Public Advocate this year, do you know?

MR. GURAL: The Public Advocate, I am not familiar with it, sir. Our Division, does not have -- it is a zero budget. That is the only one I am familiar with.

SENATOR TUMULTY: It is several million dollars, is it not?

MR. GURAL: Yes, sir.

SENATOR TUMULTY: You know, it doesn't always go to show that when you create some super agency that you are going to save money, but you would be surprised if I told you that your superior appeared before this very same committee when the Public Advocate bill was first up for discussion and assured us that during the first year of its operation it would only run about \$250,000 and now you are up in the millions?

MR. GURAL: My Division of Rate Counsel is zero budget. We don't get a penny of the taxpayers' money. We earn our own money.

SENATOR TUMULTY: How do you operate?

MR. GURAL: Under the bill, we assess the industry for our services. We operate, basically, like a private law firm. We earn our fees.

SENATOR TUMULTY: Thank you.

SENATOR GARRAMONE: Thank you very much.

MR. CARROLL: James Sheeran, Commissioner of the Department of Insurance.

J A M E S     J .     S H E E R A N :

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I had misgivings, originally, about the wisdom of including such disparate entities as insurance, banking and public utilities under the same regulatory roof.

Admittedly, they are highly specialized areas of commerce, with their own often arcane concepts and special skills and vocabularies. It would seem at first glance that regulation of each would be best served without any gratuitous intermingling.

Moreover, I recall that there was much talk originally about the cost-saving features of the merger of the three departments, a view that I did not share.

But since the merger was first broached, I have had an opportunity to explore fully the rationale for it and acquaint myself with the proposed administrative framework for the Department of Regulated Commerce.

I learned that cost-saving is not the primary goal; indeed, not an important consideration at all. I also learned that there will be no intermingling of the three regulatory functions.

The integrity of each regulatory function would be preserved. The regulation of insurance would be left to the experts in the renamed Division of Insurance, banking to the Division of Banking, and public utilities to the Division of Public Utilities.

I did learn that the primary objective of the legislation is to project a concept of regulation which would provide a new and better structure for continuing and improving what I regard as the already high level of state regulation of the three industries.

The heart of the concept is the creation of a Division of Administrative Law Judges, who would serve as hearing officers for the new Department. We would expect them to be trained, competent lawyers with expertise in at least one of the three areas of regulation, or the ability to develop such an expertise readily.

In the area of insurance, entrusting all contested matters to the administrative law judges would provide a proper adversary setting for the hearing of complicated rating cases, in which the Division of Insurance, the Department of the Public Advocate and the companies would participate. I think the Public Advocate would be better able to sharpen and define his role as rate counsel in such a setting.

Relieved of the existing need to provide the hearing officer, the Division of Insurance would be enabled to prepare its own case for presentation at public hearings against that which is offered by the companies or even the Public Advocate. I can foresee a broadening of the base on which the decisions will ultimately be made, and the public interest can only thereby be well served.

At the top would be the three commissioners. I have learned that they would not be burdened with day-to-day administrative details. Instead their principal function would be to serve as an appeals board for determinations of the administrative law judges.

If you conceive of the three commissioners as analogous to our Superior Court Appellate Division, their role becomes more clearly and more significantly defined.

They would not be experts in the specialized areas of regulation, any more than we expect our judges to be specialists. We would expect them to be fair, impartial and independent.

I should like to discuss some of the specifics of the merger.

I think, for one, that the definition of "contested hearing" should be refined. The legislation, I understand, adopts the definition in the Administrative Code. But I think that there should be a clear delineation of the jurisdiction of the administrative law judges vis-a-vis the division directors so that the possibility of conflict and duplication of effort is eliminated. Many areas of regulation of insurance do not lend themselves

to a determination through the adversary process, and indeed because of the sheer volume could not be decided in that manner and must be disposed of by the staff.

I see no problem with the proposed funding of the new department. I understand that the fees now collected by each department would be available through the charging of fees for appeals to the full commissions.

I also understand that the merger would be effective 60 days after the bill is signed by the governor. Because of the considerable administrative detail involved, I would suggest that this period be extended to at least 120 days to make sure that the transition is smooth.

In conclusion, let me sum up by saying that in view of the fact that the three regulatory functions will not be intermingled, that we do not delude the public into thinking there will be massive savings through a merger, and because I accept the concept, embodied in this legislation, of a strong and independent decision-making process whose commitment will only be to the public interest, I am supporting the bill.

SENATOR GARRAMONE: Commissioner, would you feel that this proposed legislation would diminish the visibility of people like yourself who presently head these departments?

COMMISSIONER SHEERAN: Well, I think that that, indeed, is something that has to be taken into consideration. My opinion is that the integrity of the head official in any particular area of regulation should be preserved, not only for purposes of rate making, which I think is a fundamental area, but there are other areas of abuse that in the public interest ought to be addressed. For example, I have talked often about the classification system. I have talked often of the statistical agent being really controlled by the companies rather than the States, and areas of reform like that where people do not get a fair shake in insurance - the assigned risk programs, and the terrible inequities that exist there.

I believe that within the framework of this concept, and assuming that you get publicly interested people involved in that function, that they too can project those kinds of programs, and possibly eliminate the paper pushing that we are required to do. I find myself pushing papers from one side of the desk to the other. I think the industry is well qualified to keep me doing that.

SENATOR GARRAMONE: Well, are you saying that this expertise or professional talent that I gather you are looking for to reinforce what you presently have will take place within this proposed legislation?

COMMISSIONER SHEERAN: I see no reason why it could not be done. I think that we could handle that.

SENATOR GARRAMONE: What prevents it from being done now, let's say, within the individual departments if there is a recognized void in some area? Can an argument be mustered, "Why don't we reinforce this end of our operation?"

COMMISSIONER SHEERAN: Oh, I think we can stand reinforcement. I think our budget problems are obvious, and we all live within the budget constraints, but we are doing many things, I think, in the area of reform, and I must say that I have gotten the total support from the Legislature in those areas, such as the guaranty bill, and the work we have done on malpractice, and some of the other areas.

SENATOR GARRAMONE: You had mentioned earlier that the heart of the concept was the administrative law judges, and this has repeatedly come about in discussion all day. Would you feel that if a separate division, removed from the framework of S-1202, were created which would have this group of administrative law judges that your department would function more efficiently and more productively?

COMMISSIONER SHEERAN: I have no question that that would be an improvement.

SENATOR GARRAMONE: It would be an improvement.

COMMISSIONER SHEERAN: Yes, sir.

SENATOR GARRAMONE: Are there any further questions?

SENATOR TUMULTY: No questions.

SENATOR GARRAMONE: Thank you.

MR. CARROLL: Mr. Raymond Brower, President of the Bergen State Bank.

RAYMOND E. BROWER: For the sake of brevity, I will read my prepared short statement.

I am Raymond E. Brower, President of the Bergen State Bank located in Bergenfield, New Jersey, and also President of the North-East Jersey Bankers Association representing the banks in Bergen, Hudson and Passaic Counties.

I wish to thank you for the opportunity to appear before your Committee today to express our feeling on Senate #1202.

The Bergen State Bank is a relatively new State Bank having opened its doors for business in 1966, ten years ago, with total assets today of \$98 million dollars. We desire to remain an independent bank as well as a state chartered institution as we believe in the future of New Jersey and in our ability to serve its citizens.

We read Senate #1202 with alarm and its proposal to eliminate the Department of Banking by merging it into a new agency to be called the Department of Regulated Commerce which will also control the Department of Insurance as well as the Public Utilities Commission.

The logic behind this move makes absolutely no sense to us and appears to just create another "high-salaried" position over the present structure under the guise that it will be done to trim the budget and streamline government.



No one individual could possibly supervise properly these three departments, as the expertise required for each is so different. Also, the department's responsibilities are such, that supervision will overlap, creating conflicts within the control system, causing more undue pressure and chaos.

The end result must be that all three departments will be less efficiently run with another structure of hierarchy to report to, making the end result a disservice to our citizens.

The Department of Banking, today, is one of the few self-sustaining Departments in our State Government system and we further see this destroyed with a possible reduction of funds to perform a job that is so critical to the economic life of our State. We foresee added costs with the staffing of this new super-structure which will, no doubt, be passed on to the State banks in the system, further straining their ability to add to profits and capital during a period when inflation, increased taxes and rising costs of operation have already taken their toll.

The State Banking system is already overburdened with supervision by several agencies and we envision another layer on top of the present, meaning further delays in decisions affecting our growth, future and progress. It makes the converting to a National bank that much more desirable because of its ability to make decisions through the Office of the Comptroller alone without other agencies or local politics becoming involved.

We, the Bergen State Bank, as well as other State banks spoken to, are deeply concerned over this proposed additional layer of supervision and see as the only real solution, conversion to the National banking system. This then causes additional strain on the remaining State banks who are assessed for the cost of operation of the State Banking Department. The net results are obvious. At some point, the Department will no longer be self-sustaining and will have to look to the State Budget for additional operating funds.

Our State Banking system deserves better than this treatment as a second-rate citizen to be supervised by someone without the professional background or time to do the proper job. Banking is so critical and vital to the economy and growth of our great State that we cannot understand

the reasoning of this bill.

Please consider Senate #1202 very seriously and explore the consequences thoroughly that will result if it were to become law. It certainly is not in the best interest of the citizens of the State of New Jersey.

Thank you.

SENATOR GARRAMONE: I thank you for your statement. You heard part of the discussion during the day. What has developed is, there has been some heavy concentration on the Division of Administrative Law Judges. Do you have any thoughts about that, if that were created as a separate entity, if that would adversely affect the industry?

MR BROWER: I don't think it would be as efficient as the system we currently have.

SENATOR GARRAMONE: You feel that the hearing examiners that have this judicial power within the existing departments are adequate to do that job?

MR. BROWER: Yes, I certainly do. They are doing an excellent job now, and I think this would only create another super structure which would create some chaos.

SENATOR GARRAMONE: Fine. Thanks a lot.

MR. CARROLL: Mr. Richard Aronson, Administrative Law Section, American Bar Association.

R I C H A R D    A R O N S O N: Senator Garramone, I am here in my capacity as Chairman of the Administrative Law Section of the New Jersey State Bar Association. I might indicate that as of last Saturday, the annual meeting, I am no longer Chairman, but was and served in that capacity for two years.

I think that my background to some extent with state government ought to be expressed in a limited manner. I was a Deputy Attorney General for the State of New Jersey and served as Counsel to the New Jersey Secretary of State during the period of 1964-1966. I also, additionally, during that two-year period, served as Counsel to the New Jersey Division of Civil Rights and to the State Division of Pensions. I mention those, because quite obviously my main concern is the division of administrative law judges.

I have written an article - and there are many articles in this area, which I recommend for your reading, or for the Committee's reading - which can be read in no more than five minutes, which I wrote as Vice-Chairman of the Administrative Law Section. It is found in 96 New Jersey Law Journal at page 80. I am going to speak toward that article, but more importantly speak towards why I feel and why the Board of Trustees of the New Jersey State Bar Association feels that this amendment to law regulating state agencies is an imperative.

In January of 1975, the Board of Trustees of the New Jersey State Bar Association adopted a resolution indicating in concept only that an independent corps of hearing examiners within the structure of state agencies was something they very much favored. And I indicate that at the outset, because I want you to know that any of the remarks that I make beyond that that are addressed specifically to Senate Bill 1202 are those of a private practitioner and not the views expressed by the New Jersey State Bar Association. They approve the concept, and I can say to you unequivocally that it is well expressed in 1202. I think it can be bettered, and I am going to address myself to that.

Let me tell you from the private practitioner's point of view what it is like presently practicing before state agencies. Administrative law today has evolved to the point where, to a substantial extent, it is eventually going to take over insofar as the

majority of contested actions. It is going to be bigger within twenty or thirty years than the court system itself. There is no doubt about it. Because as we grow in numbers, regulation of consumer affairs becomes increasingly necessary, and it results in administrative hearings.

I don't have to tell you what state agency is today or what state government is today. It is consumer affairs. It is fair trade. It is civil rights. It is education. It is banking and insurance, and it is consumption of energy. It is rights of public employees. It is water resources. It is transportation, and I am sure I have forgotten more than 50% of it. It is all pervasive, and if we are going to move into the Twentieth Century in modern state jurisprudence, to be without an independent corps of hearing examiners, I say respectfully to this committee and I hope it is said to the Senate as a whole, is a mockery. Why is it?

I want to indicate to you that S-667, which became our Administrative Procedure Act, originally had a provision for a corps of independent hearing examiners within its provisions. And like all legislative provisions, and I have been through the legislative process, Senator Garramone, I know how difficult it is - you go to cocktail parties and you hear people complaining about leadership today. I get very upset, because I say to that person, why don't you run yourself? So I know that there is going to be discussion back and forth, and no matter how you feel, whether you are for or against that bill, within that deliberation or discussion your views or someone else's views have to get watered down. So I only indicate by way of background that this was to become part of the Administrative Procedure Act, but with legislative deliberation, and in an effort to get the bill through the Legislature in 1968, it was deleted. There have been 20 bills from 1956 through 1961 that have some provision for an independent corps of hearing examiners. What are the problems that are now existing?

We have the problem - and I am cutting across all state agencies now, and I am not going to start naming agencies - of the subordinate working within the agency. Can you imagine in a contested case, the fellow who sits on the same floor, or a floor below or above the fellow who has investigated and obtained the facts which eventually result in a complaint filed by that agency, not having some contact with the investigational arm. It is impossible to have an independent adjudicatory decision where the investigational arm is within the same agency. It is impossible to have an independent adjudicatory decision where the prosecutorial - and by that I mean the fellow, whether he is from the attorney general's office, or whatever, who is prosecuting the State's interest in that administrative procedure is part of the same agency or part of state government. What I am suggesting to you is, that the subordinate within the agency who is on the same payroll as the investigational arm sits physically within the same doors and who might even have the file, investigational in nature, during some part of the investigational procedures. That doesn't result in good results administratively. It is a far cry from New Jersey's best.

The Appellate Division and the New Jersey Supreme Court have not yet had the proper appropriate opportunity to speak unequivocally in this area, but there is one case that I would like to mention for the record, Santo versus Kugler, Volume 119, New Jersey super, page 377. It is an Appellate Division decision of 1972. It involved the invocation of a restraint by the court against the then Director of the Bureau of Securities, because they found that that Director was not only investigating but hearing disputes, and that combination of functions was something that had to be restrained. And yet the Bureau of Securities to some extent forgetting about what people might have been involved at that time, does some sort of a job trying to divide functions. I only state that because it is impossible to do. It just doesn't work.

The control by the agency is obvious. If an agency is promulgating a certain type of policy, well, it makes it a lot easier if the gentleman, who is going to make the findings of fact and conclusions of law, sits right there. The subordinate only recommends, and if he starts recommending or making findings that are against agency policy, he is going to be subject to a lot of pressure, if not having his employment terminated, so it just doesn't work.

You know, what bothers me here is that there was -- all of this tendency was predicted by the United States Attorney General as early as 1941. And if I can just very quickly, Senator Garramone, I want to read what the then Attorney General of the United States had to say. He said the following, in pertinent part, "... moreover, the consolidation of functions has done more than enable a single agency to act successively as legislator, investigator, prosecutor, jury, judge, and appellate tribunal. Agencies are empowered to act in several of these capacities at a single stage of proceedings. As investigator of an administrative agency, after making its own rules and regulations, may often summon witnesses and examine them in secret, a privilege otherwise accorded only to grand juries, and denied to such important officers as the attorney general and the officials of the Department of Justice, it may, under some statutes, visit or inspect premises without a warrant, a power accorded no other public agency except a judge or a jury. And then only after a case has been instituted and the parties apprised of the charges against him. It may threaten the imposition of penalties if its demands for information are not met, a power otherwise accorded only to judges, and then only after valid subpoenas have issued. It may threaten to prosecute and to judge a power otherwise divided between the Department of Justice, and the courts. It may threaten to withhold benefits, a prerogative otherwise accorded only to Congress. Though this is not the normal course of administration, the exercise of such power is restrained only by human forbearance." And that is some 35 or 36 years ago.

Why it is so necessary is the following: Someone asked before, "Well, how many decisions of the State Department of Banking or Insurance, I don't remember which one it was, had been affirmed by courts." That should absolutely not be considered at all. And let me tell you why. In New Jersey we live with the substantial evidence test, and what I mean by that is, if there is enough evidence in the administrative record below to substantiate the result reached by the agency head, no matter how wrong as a matter of policy the Appellate Division might think it is, or no matter how wrong, as a matter of fact it might think it is, if there is enough evidence to support that a rational mind could reach that conclusion, and would reach that conclusion, there is a presumption of regularity that attaches to that result, which makes it impossible for the practitioner who represents the private litigant, or for that matter, the intervenor on behalf of some public interest group, to upset that decision. So if you are going to talk about track records, and percentages of affirmation of appeal, that should not be the test. The test is, is New Jersey going to move to the forefront of having appropriate findings of fact, conclusions of law, by people trained who hopefully--and of course this is the optimum--will be on a separate and independent payroll than the agency which has the dispute to hear.

Let me tell you a little about administrative expertise. No greater bugaboo exists than administrative expertise. If a Superior Court Judge can sit and hear a matter involving technical tax or pension question, when these things seldom get to the State court, a man can usually pick up enough expertise to hear any dispute including public utilities action, or an action before that Division of Public Utilities, as it is going to be called.

In the first place, let me say that it can be remedied by this: You have the testimony of an expert from the agency who can testify as to what the words of art mean,

such as aggregate summary, or words which are technical in nature that might be in the pension field, final average salary. He gets on the stand and he says what that means. So there is no problem in understanding words of argument in the statute. You can rotate the hearing examiners, assuming this were a totally independent agency, in such a way as to build up expertise in one or two people in the utilities field. Thirdly, you can do it by direct hiring procedures. You can test, or by way of background, hire those people who have some knowledge in the fields of endeavor that are under consideration.

There have been actuarial studies done or rather fiscal studies done by Albert Bonacci, who was Director of the Division of Administrative Procedure as early as 1972. And that study showed -- and I represent that although it was not formal in nature, it did involve the canvassing of the state agencies -- that there would be tremendous money saved by the consolidation into one agency of all these hearing examiners. So whether it is consumerism by way of result that is our concern, or whether it is consumerism by way of fiscal soundness, this independent division makes all of the sense that it can.

This is a viable alternative. The optimum would be a completely independent bureau within state government, a division within state government. A separate hearing section within a department is fine. It is a good beginning, and I don't think you are going to get the optimum through at this point. You can always make these people Civil Service employees, so that the job is well done, subject to hearings, if there is a defalcation on their part. These are only suggestions.

I want to say something in closing. I have been before the Public Utilities Commission. I only cite this as an example, and not by way of criticism. You have to realize that in the majority the same utilities are appearing year after year, major utilities. I am not going to start naming them. They all come before that Utilities Commissioner. Consumer groups are not equipped financially to fight that battle. The Public Advocate has begun to do the job, but I want to indicate to you, from my experience, that it is not a true adversarial proceeding as we know it, simply because you have -- and I don't mean to impugn anyone's integrity at all -- the same individuals representing the utility, representing the Public Advocate. After awhile, when someone asks for a \$7 million increase, it becomes an accepted part of the practice that what they are really talking about is three and a half million, and before you know it, without really specific findings of fact, and conclusions of law that could be achieved by this independent hearing examiner, you have that type of result. You also have the type of situation where a hearing examiner could have recommended at certain times that the Public Advocate, for instance, go after the oil industry and find out why the prices were what they were. That type of fight outlook is lacking in some of the regulatory agencies, and I think it would be very much improved with this division of administrative law judges. I highly recommend it. I really think it is long overdue, and I want to thank you for giving me the opportunity to present this.

SENATOR GARRAMONE: I thank you. I sensed from your very strong delivery that a corps of independent hearing examiners is what you would like to see. Are you subscribing to this bill because there is built in some measure of this particular dimension?

MR. ARONSON: It is a beginning. I am not in a position to tell you how effective and important the consolidation of these particular agencies is. I haven't been in state government for ten years, and I have no right to speak toward that. But it is a beginning as far as ---

SENATOR GARRAMONE: You are actually separating the solution to what is considered a problem in that you would direct your emphasis upon the administrative law judge component of this bill.

MR. ARONSON: Yes, sir, but I just want to say quickly, I do have some familiarity with these agencies, and when you combine the two, I don't see how the consumer can be hurt, and I do see, respectfully, how certain public special interest groups are going to lose a certain amount of control, and that is what we are talking about here.

SENATOR GARRAMONE: You don't see a dilution of the leaders of these various agencies?

MR. ARONSON: Senator, with all due respect, I don't see any need for cabinet level heads of each of these departments.

SENATOR GARRAMONE: Their effectiveness is not diluted when you put them into a pool of two or three?

MR. ARONSON: Absolutely not. The administration is full of public relations people. If the Governor wants to project the Director of the Division of whatever, that can be accomplished. I remember that a lot of the divisions have their own public relations people. It is not going to be diluted at all. I think it is very much in the public interest.

SENATOR GARRAMONE: Fine. Thank you.

MR. CARROLL: Mr. Burt Ross.

BURT ROSS:

Mr. Chairman, Members of the Committee, I want to thank you for giving me this opportunity to make a few remarks on Senate Bill No. 1202. As Administrator of New Jersey's State Energy Office, I am in no position to comment on the merits or demerits of merging several departments of the State Government. I am, however, able to comment on Article 5.

Today, the State Energy Office exists by Executive Order only. Our office has no permanence, and our staff now down to six people, enjoys no tenure. Our powers are seriously limited. We can advise, consult, coordinate.

Senate Bill No. 1202 in Article 5, would give the State Energy Office a new meaning. It would revitalize our office by giving us significant authority. Practically identical to two pieces of legislation previously introduced by Senators Dodd and Feldman, Article 5 gives the Energy Office specifically enumerated authority to collect all forms of energy data, to design the program for the conservation of energy, to monitor prices charged for energy, to conduct research projects for the purpose of increasing the efficiency of energy, etc. But, just as important as this authority, is the power which Article 5 gives the Energy Office to implement this mandate. Article 5 gives us the power to conduct hearings and investigations, and to issue subpoenas if necessary. It gives us the power to adopt and promulgate rules and regulations necessary



and proper, to carry out the purposes of this Act. In short, Article 5 gives the State a strong and viable State Energy Office worthy of the difficult times in which we find ourselves.

I also want to point out that this bill would establish a close relationship between the State Energy Office and this Legislature. For one thing, the Administrator shall be appointed by the Governor, but with the advice and consent of the Senate. Secondly, the Administrator shall make annual reports to the Legislature.

In closing, let me say that I cannot think of a more constructive way of addressing ourselves to New Jersey's energy problems than by your giving favorable consideration to Article 5 of Senate Bill No. 1202.

I just wanted to add one point that was not mentioned, and that is that it does provide our office with the power to deal with emergencies, by the requirement that we establish contingency plans in case of emergencies, and I might add that, in my opinion, we are every bit as vulnerable as we were two and a half years ago, when the Arabs decided upon their embargo. As a matter of fact, with consumption rising and our imports rising, and with the economy turning around to the better, I would say, if anything, we are more vulnerable than we were two and a half years ago. So I think it is an additional power that is very important.

SENATOR GARRAMONE: Would you think that Article 5 of this bill could very well be taken in toto and maybe placed with another Department, like the recommendations of Senators Feldman and Dodd. They have a direction that they are suggesting for your department.

COMMISSIONER ROSS: Well, in a way this is a compromise, because Senator Dodd, I think, wanted it in the Department of Law and Public Safety, and Senator Feldman had wanted it in the PUC and that debate has been going on for two years during which time our office languishes by Executive Order only, with very limited jurisdiction. So I would hope that by the passage of this piece of legislation we would find a home that would be satisfactory to both diverging viewpoints, and finally establish a meaningful energy office.

SENATOR GARRAMONE: But in a sense, this bill does serve, at least, to fix you in a department or in a specific area.

COMMISSIONER ROSS: Yes.

SENATOR GARRAMONE: Well, thank you very much.

COMMISSIONER ROSS: Thank you very much, Senator.

MR. CARROLL: Mr. Ferguson, New Jersey Realtors Association.

EDWARD L. GOLDBERG: My name is Mr. Goldberg, and I am appearing on behalf of Mr. Ferguson. Senator, I appreciate the fact that you are taking time to allow me to appear before you to speak on this matter. I have a written statement that I would like to read, rather than speak extemporaneously and go into any long discourses.

MY NAME IS EDWARD L. GOLDBERG. I AM A LICENSED REAL ESTATE BROKER  
WITH OFFICES IN TRENTON AND PITMAN, NEW JERSEY.

I APPEAR BEFORE YOU TODAY AS PRESIDENT OF THE 13,000 MEMBER NEW  
JERSEY ASSOCIATION OF REALTORS, THE LARGEST ORGANIZED SEGMENT OF REAL  
ESTATE LICENSEES IN THE STATE.

THE NEW JERSEY ASSOCIATION OF REALTORS IS OPPOSED TO SENATE BILL  
1202, AS THE BILL RELATES TO THE NEW JERSEY REAL ESTATE COMMISSION.  
THE ASSOCIATION IS NOT GOING TO DEBATE THE PROS AND CONS OF THE PROPOSED  
DEPARTMENT OF REGULATED COMMERCE. THERE WILL BE OTHERS TESTIFYING TODAY  
AGAINST THE CREATION OF A SUPER AGENCY AS NOT BEING IN THE BEST INTEREST  
OF THE GENERAL PUBLIC. SENATE BILL 1202, IN ADDITION TO CREATING A  
SUPER AGENCY, CALLS FOR THE TRANSFER OF THE NEW JERSEY REAL ESTATE  
COMMISSION FROM THE DEPARTMENT OF INSURANCE TO THE DIVISION OF CONSUMER  
AFFAIRS IN THE DEPARTMENT OF LAW AND PUBLIC SAFETY.

NJAR FEELS IT IS INCUMBENT UPON THE PROPONENTS OF THIS MOVE TO  
DEMONSTRATE THAT GREATER EFFICIENCY, ECONOMY, AND SERVICE TO THE PUBLIC  
WILL BE THE RESULT OF THIS TRANSFER.

THERE HAS BEEN NO STUDY THE ASSOCIATION IS AWARE OF WHICH SUPPORTS  
THE MOVE ADVOCATED BY SENATE BILL 1202. TO THE CONTRARY, THE LAST IN-  
DEPTH STUDY OF STATE GOVERNMENT CONDUCTED BY THE "GOVERNOR'S MANAGEMENT  
COMMISSION" IN 1970 DID NOT RECOMMEND THE TRANSFER OF THE REAL ESTATE  
COMMISSION TO THE DEPARTMENT OF LAW AND PUBLIC SAFETY. COINCIDING

WITH THE GOVERNOR'S MANAGEMENT COMMISSION, THE LEGISLATURE IN 1969 CREATED THE PROFESSIONAL AND OCCUPATIONAL LICENSING STUDY COMMISSION TO STUDY, EVALUATE, AND MAKE RECOMMENDATIONS CONCERNING APPROPRIATE METHODS FOR OVERSEEING THE PROFESSIONS AND OCCUPATIONS WHICH REQUIRE SPECIAL REGULATION OR LICENSING.

THE LEGISLATIVE COMMISSION, CHAIRED BY SENATOR RAYMOND BATEMAN, IN ITS REPORT RECOMMENDED THAT THE REAL ESTATE COMMISSION REMAIN AS A DIVISION OF THE DEPARTMENT OF INSURANCE. BASICALLY, WHAT THE RECORD INDICATES IS THAT THE STUDIES THAT HAVE BEEN MADE DO NOT SUBSTANTIATE THE PROVISION OF SENATE BILL 1202 WHICH PLACES THE REAL ESTATE COMMISSION IN THE DEPARTMENT OF LAW AND PUBLIC SAFETY.

THE REAL ESTATE COMMISSION SHOULD REMAIN AS A FUNCTIONING COMPONENT OF THE DEPARTMENT OF INSURANCE.

LET US FOR A MOMENT REVIEW THE SCOPE OF THE RESPONSIBILITIES OF THE REAL ESTATE COMMISSION. IN 1975 THERE WERE 49,321 REAL ESTATE LICENSEES UNDER THE CONTROL OF THE REAL ESTATE COMMISSION. OVER 12,538 CANDIDATES FOR LICENSING WERE EXAMINED. 1,359 COMPLAINTS AGAINST LICENSEES WERE INVESTIGATED. 798 OFFICES WERE INSPECTED.

WHAT I AM POINTING OUT IS THAT THE RECORD OF THE REAL ESTATE COMMISSION IN REGULATING THE REAL ESTATE INDUSTRY HAS BEEN IN THE PUBLIC INTEREST THROUGH THE EXISTING STRUCTURE. THE REAL ESTATE INDUSTRY IS FAR TOO IMPORTANT A COMPONENT OF THE STATE'S ECONOMIC PICTURE TO BE A

PAWN IN A GAME OF MUSICAL DEPARTMENTS. REAL ESTATE IS UNIQUE AND DOES NOT FIT THE PATTERN ESTABLISHED FOR THOSE INDUSTRIES OR OCCUPATIONS NOW REGULATED WITHIN THE DEPARTMENT OF LAW AND PUBLIC SAFETY.

THE ASSOCIATION FEELS THAT WHAT SHOULD BE DONE IS TO RECOGNIZE THE IMPORTANCE OF THE INDUSTRY....NOT BURY ITS IDENTITY. NJAR FEELS THAT THE LEGISLATURE SHOULD SERIOUSLY CONSIDER IMPROVING THE OPERATING EFFICIENCY OF THE PRESENT REAL ESTATE COMMISSION BY RECOMMENDING THAT THE DEPARTMENT OF INSURANCE BE REORGANIZED TO GIVE THE IMPORTANT REAL ESTATE INDUSTRY EQUAL STATUS WITH THAT OF INSURANCE.

WE ENVISION A NEW DEPARTMENT OF INSURANCE AND REAL ESTATE REPLACING THE DEPARTMENT OF INSURANCE, HAVING ONE COMMISSIONER WITH OVERALL ADMINISTRATIVE RESPONSIBILITY AND TWO DEPUTY COMMISSIONERS RESPONSIBLE FOR REGULATING AND LICENSING THE TWO INDUSTRIES INVOLVED.

NJAR ASSURES YOU THAT THIS STRUCTURAL REALIGNMENT WILL RESULT IN GREATER OPERATING EFFICIENCY AND SERVICE TO THE PUBLIC THAN WHAT HAS BEEN ADVOCATED IN SENATE BILL 1202.

IN CONCLUSION, NJAR FEELS CONFIDENT, ONCE THIS COMMITTEE HAS REVIEWED ALL OF THE TESTIMONY AND THE FACTS AS PRESENTED, S-1202 WILL NOT BE RELEASED FROM COMMITTEE BECAUSE IT IS TOO COSTLY AN

experiment for New Jersey to entertain. What is needed is to improve the efficiency of the existing departments, not their abolishment. NJAR stands ready and willing to assist this committee should further input be required.

Thank you for this opportunity to voice the position of NJAR on this important piece of legislation.

SENATOR GARRAMONE: Thank you, Mr. Goldberg. You are suggesting that the Real Estate Commission have co-equal rights with insurance, I gather?

MR. GOLDBERG: That's correct. That has been our feeling for many years.

SENATOR GARRAMONE: How much of the activity of the Department of Insurance now is devoted to real estate activity, would you know?

MR. GOLDBERG: They are really almost a separate entity, from the way I understand it, and there is a gentleman here from the Commission who may be able to answer that more clearly than I could, Mr. Bill Comerford.

SENATOR GARRAMONE: All right, thank you very much.

MR. CARROLL: Mr. Jack Reagen

JACK REAGEN: Thank you very much for the opportunity to appear here. I am the recently deposed Secretary-Director of the New Jersey Real Estate Commission. I am still on the State payroll, but I was removed from this office in the last few weeks, as most of you know. I was invited to come here today to speak to the Committee by personnel administration to relate some of my experiences and to generate some input of my experience to you as you deliberate this matter of reform of regulatory structures.

I would like to address myself to three areas, if you don't mind, very briefly. One, why in my judgement the administration of the New Jersey Real Estate Commission, and therefore the regulation of this multi-billion dollar industry in the Department of Insurance, has not been as successful either as I believe it should be or as a legislature intended it to be.

Secondly, to give you some perspective on some conversations we had in my office with a manager of a large Department of Regulated Commerce in Pennsylvania, and some of the problems he is having contemporarily. And, finally, a perspective as to what might happen as a result of the transfer of the Commission to the Department of Law and Public Safety.

In the first instance, the matter of administration is paramount, in my judgement, to the success of the administrative law process in that the intent of the legislature should be carried out by an administrator who is cleanly separated from the administrative law body that is going to hear the cases that he generates. He should have the opportunity to carry out the intent of the legislature with respect to staffing. This has not been true in the Department of Insurance since 1975 when you gentlemen in the Legislature, in your wisdom, saw fit to give the New Jersey Real Estate Commission 14 new positions, 10 of whom were investigators and 4 clerical.

In the fall of 1975, we passed the new Interstate Regulatory Bill, which subdivided land sales, which encompassed also additional appropriations, which, as of the time I had left the Department, had not resulted in any yet new personnel to the facility. For whatever the reason, the process of impoundment at the Department level, and/or the transfer of positions, in my judgement, was prohibitive of carrying out the intent of the Legislature with respect to regulating the real estate industry.

There was a relationship between the Commission and the administrator of the Department in this regard, which generated this prohibitive environment, and that is one track that I think should be eliminated regardless of where these administrative law bodies are sent. There should be clean administrative breaks with respect to carrying out your intent with respect to appropriations.

Secondly, in the same area, as most of you know, my concern was and is that those who generate cases for administrative law bodies should have absolutely no interference with the investigatory processes leading to the generation of those cases by or from the law bodies involved. And I can assure you, gentlemen, without going into a lot of detail that the Real Estate Commission was involved, and its commissioners were involved, in the ongoing investigatory processes that ultimately would lead to cases before them sitting as a law body.

It was mentioned by the gentleman from the Administrative Law facility of the Bar Association before that this may be an inherent problem, just indigenous to structure, that cannot be overcome as long as administrative lawyers, if you please, or law bodies are administratively within the same structure as the staff that generates cases. Be that as it may, I think you can separate them as a matter of policy, and I recommend strongly that they be separated as a matter of policy. I cannot see how a body can sit as judge and jury which is inherent, I think, to the administrative law process, and be at all involved in a prosecutorial arrangement that brings cases before them. For, at best, they would be prejudice when they would hear the cases, and at worst, they would be tampering with the cases. I can't say too much in detail with respect to my perspectives on these matters, as the Attorney General is looking into this matter in depth, as most of you know. End of comments with respect to the administrative break, both as to fiscal and personnel activity on the one hand, and therefore carrying out the intent of the legislature, and secondly with respect to the right of the administrator of the facility to generate his cases freely without interference from the judges, if you please, who are ultimately going to hear them.

With respect to the large regulatory structure, we had Commissioner Robinson in our office for three or four hours from Pennsylvania, who now administers a very large Department of Regulated Industry in the State of Pennsylvania - I believe, both professions and industry.

There are two comments that I thought that he made that might be worthy of your consideration, Senator. One, that Pennsylvania in generating this kind of a department overstepped proficiency in two areas. First, they decided to have a central pool of investigators dealing with all of the investigations for the variety of professions and industries involved. He found objectively that this was a step in the wrong direction, or they had gone too far in centralization, if you please, in this area, because he felt that investigators, particularly those concerned with the generation of cases in administrative law, should be sophisticated in those industries that they were investigating. And he was suggesting to us that our situation here was better than theirs in that regard, and that he would go to Pennsylvania and advocate a separation of the investigative groupings, if you please, so that there would be more sophisticated knowledge of the industries being investigated.

Secondly, he also made a comment to us that I think is worthy of your consideration and those who administer state government, and that is that when you put these bastard departments together, because of the availability of the computer, some people in the Legislature presume that you can live without clerks. And he found, as an executive from the insurance industry, adjusted to the use of computerization, that he generated his own company, I gather, for having taken a capital gain, and then gone into State government, that we have to be very careful in that regard, and he found himself going to the Pennsylvania Legislature arguing that there should be more positions established for the variety of industries being regulated, so that the computer feed that is so necessary to modern management was properly handled. He said, "I have lived the horror of knowing that if you put garbage in, you will get garbage out. If you put nothing in, you get nothing out." And he said,



"We simply don't have enough clerical people in Pennsylvania to deal with this."

The third track, with respect to the transfer of the Commission to the Department of Law and Public Safety, in light of the environment that I have experienced within the Department where this has been administered in the last few years, I have no particular objection to the move. As a matter of fact, I would recommend the move to the Department of Law and Public Safety, if for no other reason than to take advantage of the computerization of licensure that is indigenous to that department. The Insurance Department today is limited as to its machine function to an IBM 403, which is a tab card operation, and it is a lot better than hand posting, and a lot of other methods, but not as good as computerization. And in that, one does have responsibility to both the licensed public and the general public in the regulation of these businesses, and I am suggesting the move to Law and Public Safety because of the availability of the computer that is now computerizing nursing licenses and a variety of others. It could add some proficiency and efficiency and economy to the generation of the 53,000 real estate licenses, roughly, that the Commission deals with annually. And in that regard, I think improvement could be made. In the process of dealing with the matter as to reform, in the longrun, I think the most important thing is that you get the administrative break, so that there is clear administrative responsibility separated from the administrative law responsibility and the judges involved.

I thank you very much for the opportunity of being heard.

SENATOR GARRAMONE: Thank you for your comments. Is there anyone else who wishes to testify at this public hearing?

MR. COMERFORD: Right here.

SENATOR GARRAMONE: May we have your full name, sir.

W I L L I A M C O M E R F O R D: William Comerford. I am the Acting Director of the Real Estate Commission. I thank you, Senator, for the opportunity to appear here this afternoon.

My name is William Comerford, and I am the Acting Director of the New Jersey Real Estate Commission. I am appearing here on behalf of the New Jersey Real Estate Commission, and of its staff. I am a career employee of the State. I have been for the past 13 years, and the last 10 I have served with the New Jersey Real Estate Commission, starting as an examiner and investigator.

The New Jersey Real Estate Commission has been and is an effective force in the regulation of the Real Estate Industry in the State. Contrary to some of the comments made in recent weeks, constituting unsubstantiated allegations, the New Jersey Real Estate Commission has been one, if not the strongest force, over the years in assisting and establishing stronger laws throughout the United States and establishing greater standards for licensure in this State.

They are recognized by their peers, NARLLO, otherwise known as the National Association of Real Estate Licensed Law Officials, as an active force in promoting higher standards for the industry. In recent months, this Commission has been responsible for new consumer legislation - the Guaranty Fund, for instance, which passed the Senate and is at present to go before the Assembly. A short time ago, Senate Bill 909 was passed unanimously by both the Senate and the Assembly. Today, this piece of legislation is known as NJSA 45-15-16.3. It has established a legal precedent that rental location agencies must be licensed. The famed Rentex case, which case has national recognition -- we are being called upon by other states at the present time to submit to them all the legal material used in that matter.

Further, in the past fiscal year, this Commission has saved the consumer approximately some \$400,000 plus, even though it does operate with an extremely small staff of 4 to 8

investigators covering the entire state. The details of the past fiscal year operations may be gained by perusal of the annual report of the Division of the New Jersey Real Estate Commission in the Department of Insurance.

It is the contention of this Commission that placing the Commission within the confines of a super agency, such as Consumer Affairs, will do nothing more than to insulate us from the consumer and make us less accessible and therefore afford less protection to the public.

The Real Estate industry is a vital industry to the State of New Jersey, and contributes large sums in wages and jobs to the citizens of New Jersey, and also produced as a result of license fees and fines in the last fiscal year, some \$1,165,000. If the Legislature wants to effect a better, more efficient department, it is suggested that they create the Department of Insurance and Real Estate under one Commissioner with a Deputy Commissioner of Insurance and a Deputy Commissioner of Real Estate to administrate the daily operations of the Department, rather than downgrading the Commission, as I believe it behooves the Legislature to upgrade the Commission to Department status and give it cabinet status.

That is all I have.

SENATOR GARRAMONE: I thank you for your comments. I gather you are reinforcing Mr. Goldberg's position, also.

MR. COMERFORD: Correct, I am.

SENATOR GARRAMONE: To give equal value to the Real Estate Commission.

MR. COMERFORD: Well, I think that as a matter of statutory law the Commissioner himself sets the policy and the direction that the Commission itself will take, and I think that the Commission, over the course of years that I have served with it, has done a fine job. Certainly there has been criticism, perhaps that is due to the fact that we have had a rather extremely small staff. Four to eight investigators covering the entire State of New Jersey is not a small task. At any time, if the Senator please, my office is open, and everything there is available for them to see.

SENATOR GARRAMONE: We thank you for that information.

MR. CARROLL: Mr. Richard Schaub, Commissioner, Department of Banking.

SENATOR GARRAMONE: Would you care to make a statement?

COMMISSIONER SCHAUB: No, I have no formal prepared remarks for today.

SENATOR GARRAMONE: Do you have any observations you care to lend to the situation?

COMMISSIONER SCHAUB: I have a very basic difference of opinion with the Governor on the merits of this bill, which I have expressed to him, and I think he is the proper forum for that expression, since I am a member of his cabinet. In addition to which I think all the key issues on both sides of the question have been adequately stated.

SENATOR GARRAMONE: Fine. We thank you. If there be no one else who would like to participate in the public discussion of S-1202, I am going to therefore conclude the hearing. We, of course, will notify all the participating witnesses when the Committee will be hearing this bill in our Committee schedule. I do thank you for appearing, and this public hearing is hereby concluded.

\* \* \* \*



STATEMENT OF THE AMERICAN LIFE INSURANCE ASSOCIATION

AND

THE MUTUAL BENEFIT LIFE INSURANCE COMPANY

This statement is submitted on behalf of the American Life Insurance Association whose 381 member companies have over 90% of the life insurance in force in the United States. It is also submitted by The Mutual Benefit Life Insurance Company, founded in 1845 in New Jersey and headquartered in Newark. We appreciate this opportunity to present our views on Senate Bill 1202, the Department of Regulated Commerce Act of 1976.

The Association and the Mutual Benefit Life oppose the passage of Senate Bill 1202. The Bill seeks to abolish the present three distinct Departments of Public Utilities, Banking and Insurance and transfer their duties to three divisions under a newly created, single Department of Regulated Commerce. Since we are primarily concerned with the regulation of life insurance, we will confine our comments on the Bill to those aspects of it which affect the Department of Insurance.

We support efforts to improve the quality and efficiency of regulation. Both the public and the insurance industry are best served with reasonable regulation from a strong, independent

and responsive organizational structure under State government. We also recognize the need for State government to seek ways to reduce the cost of government and to achieve budget savings when such reductions and savings are meaningful and do not unduly disrupt the necessary role of the regulator. In our opinion, Senate Bill 1202 will not achieve these desirable results.

A good example of improvement in regulation and the sensitivity of State government to the need for independent supervision of significantly different industries occurred in 1970. In that instance, only six years ago, the supervision of the insurance industry was separated from the regulation of the banking industry and two departments were created. Since 1970, those industries have continued to grow in size and complexity and we have seen an increasing need for more intense and knowledgeable attention to specific aspects of these industries. Senate Bill 1202 would move in the opposite direction.

In addition, while diluting specific supervision of insurance, the proposed Act would impose an additional level of administration at the top. Rather than streamlining regulation, it would seem that the regulatory process would be slowed and that the new bureaucratic layer would make the regulator even more remote from the regulated and less sensitive to the needs of the people of New Jersey.

We believe that the "cost" to the public of creating the proposed new Department of Regulated Commerce will be far greater than any anticipated savings in administrative expenses. In addition, we do not see how Senate Bill 1202 will achieve significant expense savings through reducing overhead administrative functions or otherwise. Since fees paid by insurance companies are the substantial source of funds for the costs incurred in supervision of the insurance industry, we fail to understand why emphasis is placed on "savings" in this area.

Both the American Life Insurance Association and The Mutual Benefit Life Insurance Company stand ready to help in efforts to raise the quality of insurance regulation in New Jersey. We do not feel that Senate Bill 1202 will accomplish that end or otherwise serves the needs of the people of the State.

J. Eric Helsing  
Vice President and General Counsel  
The Mutual Benefit Life Insurance Company

May 26, 1976





SUBJECT: STATEMENT RE SENATE BILL 1202, AN ACT CREATING A  
DEPARTMENT OF REGULATED COMMERCE AS A PRINCIPAL  
DEPARTMENT IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT

FROM: INDEPENDENT MUTUAL INSURANCE AGENTS ASSOCIATION OF  
NEW JERSEY, P.O. BOX 196, GLENMONT, N.Y. 12077

TO: NEW JERSEY SENATE COMMITTEE ON STATE GOVERNMENT, FEDERAL  
AND INTERSTATE RELATIONS AND VETERANS AFFAIRS, MAY 26, 1976

My name is James H. Davies. I am an independent insurance agent from Scotch Plains, New Jersey, and I am testifying today on behalf of the Independent Mutual Insurance Agents Association of New Jersey (IMA), a professional trade association representing nearly 4700 independent insurance agents and their employees presently doing business in this state. I am currently serving as First Vice President of this association.

The proposed bill, Senate Bill 1202, would set up a new Department of Regulated Commerce, which, in turn, would contain a Board of Commissioners, a Division of Public Utilities, a Division of Insurance, a Division of Banking, a State Energy Office and a Division of Administrative Law Judges.

Our association is opposed to the bill and the concept which it represents on both economic and practical grounds.

From the economic standpoint, we seriously doubt if any reasonable savings would result from the reorganization of the existing state departments into the new entity. For one thing, the bill calls for creation of a brand new super agency headed by a three-member Board of Commissioners, plus (and I quote directly from subsection 6.b. of the bill) "such officers, investigators, stenographic and clerical assistants and other personnel as may be required for the conduct of the department's duties".

In addition, within the new department, there would be created still another major new agency, the Division of Administrative Law Judges, which (and again I quote directly from the bill):

1. "52.b. Shall organize and reorganize the division and establish such bureaus as may be required or appropriated.
2. "52.c. Shall assign and reassign personnel to employment within the division.
3. "52.f. Shall appoint and maintain a staff of full-time administrative law judges who are qualified in the field of administrative law or in subject matter relating to the hearing functions of the Division of Administrative Law Judges and who shall receive such salary as shall be provided by law".

In short, this bill, as it is presently written, calls for the establishment of a large and complex new bureaucracy, which will, apparently, just be superimposed upon the existing Departments of Insurance, Banking and Public Utilities. We think that this will wind up costing the New Jersey taxpayers a very considerable and unnecessary sum of additional money.

From the purely practical standpoint, we seriously doubt the ability of any one group of people to effectively control such a wide variety of functions.

At times, in fact, those functions are diametrically opposed to each other in terms of interest of the various groups involved. For example, the separation of banking and insurance activities was apparently of sufficient concern for the legislature to enact Senate Bill 1285 during the last session, in order to prohibit banks and other financial institutions from engaging in the general insurance business. The insurance business, much like banking and public utilities, has become so technical in nature that it would seem impractical, if not impossible, for one board to be fully competent in all areas.

Furthermore, from the standpoint of insurance regulation alone, we are definitely worried by the implications of subsections 52.d. and 52.e., which relate to the "conduct of contested cases". We can see this interfering directly with the rate regulatory powers and functions of the present Commissioner of Insurance, with inexperienced and perhaps even unqualified Administrative Law Judges getting into the middle of this very sensitive act.

It should be noted that, only a few years ago -- in fact, earlier in this very decade -- the Departments of Insurance and Banking were statutorily separated. Before we return to a system that so recently was considered unsatisfactory and unworkable, we must have sound evidence that we will improve upon the old system and not merely impose still another massive bureaucracy upon the original framework.

[REDACTED],  
[REDACTED] There-  
fore we ask that you oppose this bill and, instead, if change is indeed deemed necessary, that you establish a special study commission of legislative and industry representatives to explore the ramifications of such a move in detail, giving particular attention to examination of those states which may already have such a combined setup.

[REDACTED]  
[REDACTED]

Thank you for permitting us to testify today. We hope that our comments will be of some value to you, and, if we can be of any further service, please don't hesitate to call upon us.

clv  
May 21, 1976

## STATEMENT

The Prudential Insurance Company of America, which is a New Jersey mutual insurance company representing some 50 million policyholders, opposes Senate Bill 1202, the Department of Regulated Commerce Act, because in Prudential's opinion that Bill will diminish the efficient regulation of the industries to be regulated thereunder, while producing no meaningful reduction in State administrative expenses.

Historically, the affected industries have shown continual growth both in terms of size and complexity. In recognition of that fact and of the pressing public interest to be served by the creation of an administrative structure which will provide efficient regulation of those industries, the current departmental structure was created in 1970.

Focusing upon the Insurance Department, with which Prudential is most familiar, the strengths of the present structure become clear. During its existence that Department's central objective has been the maintenance of solvency of insurers in order to guarantee that insurance companies will be able to fulfill their contractual obligations in New Jersey. A significant portion of the Department's efforts have been spent in analyzing and monitoring the financial condition of the companies doing business in New Jersey.

Additionally, a secondary, but important consumer-oriented regulatory trend has developed in the Insurance Departments towards the social issues of disclosure and of prohibition of unfair trade practices.

Prudential feels that because of the autonomy in the present structure, the Insurance Department has been able to be highly

responsive to the needs of the insurance-buying public in the State of New Jersey. If Senate Bill 1202 is enacted, that autonomy and the resulting responsiveness will be replaced by an amalgamation of departments and an additional level of each of bureaucratic and judicial procedure. Additionally, the present focus on solvency, disclosure and trade practices will be shifted to a legislatively-mandated focus upon rate-making procedures.

The proponents of the Bill essentially argue that the regulatory inadequacies created are justified by savings in State administrative expenses. Prudential observes that any such savings are largely illusory on the one hand, and on the other are so small as to be meaningless, even if the most liberal savings estimates are assumed to be accurate.

The savings are illusory because the costs of regulating these industries are largely paid by fees assessed against the regulated companies.

The savings projected even by the most liberal estimate amount to only 2/100ths of 1% of the present combined budgets of the existing departments.

Prudential urges that any improvements in the regulation of these industries can best be made within the existing administrative structure which is far more responsive to the needs of

the people of New Jersey than would be the proposed amalgamation of regulatory responsibility covering the existing Insurance, Banking and Public Utilities Departments, as well as the new State Energy Office and Division of Administrative Law Judges.

Prudential is prepared to provide its cooperation and expertise in working with State government's efforts to improve the efficiency of these important regulatory departments. However, the Company feels that those efforts would be most effectively expended within the framework of the existing structure which has exhibited its effectiveness and responsiveness to the needs of insurance consumers which includes virtually every resident of the State of New Jersey.

STATEMENT OF EDMOND V. LAWLOR, JR., PRESIDENT  
NEW JERSEY SAVINGS LEAGUE, FOR PRESENTATION AT THE  
SENATE STATE GOVERNMENT FEDERAL AND INTERSTATE RELATIONS  
AND VETERANS AFFAIRS COMMITTEE HEARING ON SENATE BILL 1202  
ASSEMBLY CHAMBER - 10:00 A.M. - WEDNESDAY - MAY 26

My name is Edmond V. Lawlor, Jr., I am president of the New Jersey Savings League. I want to thank the Committee for the opportunity to present a statement on behalf of that organization with reference to the bill which is the subject of this hearing.

The New Jersey Savings League is the trade association of savings and loan associations in New Jersey. Over 99.7% of the assets of the 239 associations in New Jersey are held by members of the League. Savings and loan associations in New Jersey hold approximately \$14.0 billion in assets; and \$10.8 billion of their assets are invested in mortgage loans, primarily on residential real estate. This amount is approximately equal to the total savings held. Savings and loan associations are the largest single lender on residential real estate in the State.

While the New Jersey Savings League recognizes that this proposal was made with a sincere desire as expressed in the Governor's Annual Message "to trim fat, tighten controls and reorganize" so as to reduce the cost and improve the efficiency of government,

New Jersey's savings and loan business firmly believes that in the long run the opposite result would be achieved. The short-term economies which may be brought about by the amalgamation of three existing state government departments would be far outweighed by long-term losses to the citizens of the State of New Jersey. In time, these losses will eventually have to be made up by an even greater utilization of state resources than is currently being expended in the operation of these departments.

The New Jersey Savings League feels such drastic changes should not be made in the Department of Banking--the supervisory authority which has a direct impact on the savings and loan associations in this state. The proposed Department of Regulated Commerce would concentrate, in our judgment, an intolerable amount of economic power in the hands of one or a few individuals who in many instances could have serious conflicts of interest.

#### HOUSING A KEY TO FULL EMPLOYMENT

Right now, the unemployment rate in New Jersey is 11.3 percent of the workforce. If there is a point on which nearly all economists agree, it is that economic recovery in the Garden State would be effectively stimulated by increased production of new housing. Housing is one of New Jersey's basic industries--recovery in the construction and real estate industry will bring with it recovery in many other areas in the state's economy. Not only would increased construction schedules help provide jobs for



the thousands of people in the construction industry who are currently unemployed, but subsequent new home purchases would spawn purchases of many additional consumer goods and services, providing even more employment.

In short, the multiplier effect that is set in motion by an increase in housing construction--although impossible to measure--is very easy to comprehend.

The governmental department which is at the focal point of this economic recovery is the Banking Department.

The Housing industry in New Jersey relies upon the savings association business for the largest percentage of funds required for the financing of the construction and purchasing of houses in this state (and other financial institutions for a lesser percentage of that financing). In order to continue to provide this financing for the housing industry, the savings and loan associations of New Jersey need the support of the Banking Commissioner, not only as the individual charged with supervisory control, but, more importantly, in his capacity as a cabinet member in the state government. It is one thing to be an expert in regulating an industry; it is quite another to transform that expertise by means of high level discussions with the Governor and Legislature into successful plans of action.

The importance of a voice at the top levels of government has been demonstrated by the present Banking Commissioner and his predecessors in the area of supervision, state and federal legislation, and through representation of the industry with the federal regulatory authorities.

As a department head and cabinet member, and only as such, the Banking Commissioner is able to ensure the safety and soundness of financial institutions in New Jersey, not only to protect the public, but also to make certain the institutions provide a continuous flow of funds for the financing of construction and purchase of housing.

#### THE NEED FOR HIGH LEVEL ACTION IN SUPERVISORY CASES

Largely because of the expertise of the Banking Department as presently constructed, New Jersey financial institutions, especially savings associations, are secure and sound. However, there are cases where financial institutions get into trouble.

A recent example of how the present departmental system functions speedily and effectively can be found in the Banking Department's quick action in salvaging the assets of the now defunct Bank of Bloomfield. Without the careful monitoring by the Department of this institution, a substantial loss would have resulted to people and organizations having funds deposited there in excess of the insurance provided by the Federal Deposit Insurance Corporation. Largely because of his position at the highest levels of government, the Commissioner was able to act as a liquidator, turning the Bank

over to another institution which successfully bid for the assets so that the accountholders were saved from loss. Without this action taken by a Commissioner with full powers and expertise, substantial losses could have been suffered by many people and corporations having accounts in excess of the \$40,000 insured by the Federal Deposit Insurance Corporation.

This one instance demonstrates that supervision of financial institutions is an ongoing process closely watched by the Banking Department's chief executive. Such close supervision cannot be successfully accomplished by a lower ranking official in a super agency because the fast action required demands both the power to act and an intimate knowledge of the operation of the supervised institutions.

THE COMMISSIONER, AS SPOKESMAN FOR THE  
GOVERNOR, ON BANKING, SPURS PUBLIC INTEREST

The Commissioner of Banking, once again because of his position in the government, is a key figure in efforts to obtain changes in laws which result in improved services to the public. The Legislature, in order to enact fair banking statutes, needs the technical input of the Banking Commissioner. But more than that, the Legislature needs the opinion, based on fact, of a member of the administration in office. It is one thing for a minor official to provide statistical information to a working committee; it is quite another for a member of the administration

to give the administration's point of view on important banking matters. In effect, the Banking Commissioner is the administration's spokesman before committees and the Legislature as a whole. If he were excluded from the high level decision making process and could speak only of technical matters, his influence, and therefore the influence of the administration over legislation, would be substantially minimized.

To replace this powerful voice with the head of the proposed super agency would have an adverse effect on the influence of the state's chief executive. For one thing, the super agency chief could not possibly take the time to appear before all the legislative committees on all the pieces of legislation that would effect his huge department. For another, he would not have the expertise in any one area to be of much help in proposing or amending legislation. Finally, if he were to send the Banking Division officer, the expertise might be there but the all-important influence would not.

Similarly, on the federal level, the housing industry in New Jersey and the savings associations which provide the financial support for that industry need an effective state government spokesman to present the administration's point of view to the members of Congress. The trade organization representatives of these industries are effective in conveying important information to our Congressional delegation on matters important to the industry. However, there is no substitute for an individual having cabinet officer credentials

when it comes to making an appeal for federal housing legislation which would help the people of New Jersey. Members of Congress, regardless of what state they represent, are far more responsive to state cabinet level officials than they would be to lower level officers or to industry representatives.

Just as an administrative spokesman with expertise in banking matters is needed to influence the course of federal legislation, so is such a spokesman needed to ensure that the Garden State is participating fully in the many federal mortgage lending programs.

One of the many other important factors which should be given consideration in connection with this proposal is the structure of the savings and loan business, as well as the banking business, in New Jersey from the standpoint of the nature of the charters under which they operate. At the present time, of the 239 associations in the state, 22 of them operate under the federal charter and the remainder are state chartered.

The main reason for this is that the legislature, down through the years, has seen to it that the "Savings and Loan Act", under which the state chartered associations operate, is modified periodically so as to make certain that savings and loans have the legal authority to render the services required by the people of the State.

Another reason that the majority of associations operate under the state system is the fact that there has always been a high quality of supervision in the Department of Banking.

SPECIALIZED SUPERVISION NEEDED AS  
FINANCIAL INSTITUTIONS BECOME MORE COMPLEX

Mortgage financing is an extremely specialized field which requires specialized supervision. The Department of Banking and the Savings and Loan Division within it, was established for the protection of the consumer. This protection necessarily requires a close and constant dialogue between the supervisory authorities on one hand, and managers of financial institutions on the other.

Decisions must be made by those authorities without the kinds of delays which cause inconvenience and sometimes financial loss to New Jersey residents. These decisions cannot be made by an overseer, but must be rendered by a high level authority with an intimate working knowledge of the financial structure of banking institutions.

While it is impossible in a memo of this kind to foretell the countless difficulties and inequities which would be encountered by the savings association business and the people of this state if the Banking Department became part of a super agency, we would like to give one example which may be illustrative of the problems we foresee.

Right now there is evolving in this state an entirely new method of handling financial transactions which is generally referred to as the Electronic Funds Transfer System. As with the very technical aspects of supervision and rate control of New Jersey's public utilities and insurance companies, the development of such a financial system must be carefully supervised by the state government to make certain that the interests of the public are served.

The new system will involve the direct deposit of payroll checks into employees' financial institutions and will give employees electronic access to their accounts.

At the center of this system are the automated clearing houses which already exist in ten states and are servicing institutions in New Jersey right now.

This is only one of the many extremely complicated technical areas with which the Banking Commissioner and his staff must deal. To place the ultimate decision making power in banking matters in the hands of a department head whose position is remote from the people responsible for the direct supervision of banking institutions would be courting disaster for the people of New Jersey.



The recent difficulties experienced by financial institutions throughout the country is, we believe, sufficient reason to justify the present strong supervisory structure which exists in the Department of Banking and its subdivisions.

Accordingly, and in the absence of any overwhelming rational purposes for the proposed merger, the New Jersey Savings League strongly urges that the present system be left intact so that the very diverse functions of the Public Utilities Commission, the Department of Insurance, and the Department of Banking will continue to be regulated by experts, each one of whom is directly responsible to the Governor and, through that office, to the people of New Jersey.

**STATEMENT BY EDMUND T. HUME, PUBLIC MEMBER,  
N.J. REAL ESTATE COMMISSION BEFORE THE  
SENATE STATE GOVERNMENT AND FEDERAL AND INTERSTATE  
RELATIONS COMMITTEE**

|| Senator Joseph P. Merlino introduced a bill in the Senate on February 19, 1976 which is identified as Senate Bill #1202. This bill is known, in it's short form, as the "Department of Regulated Commerce Act of 1976". It proposes to reduce the Departments of Banking, Insurance, and Public Utilities to Division level and add the Division of State Energy to a newly formed Commission to supervise these four Divisions. It further proposes to shift the Real Estate Commission and the Cemetery Board to the Division of Consumer Affairs in the Department of Law and Public Safety.

Because of its direct effect on the Real Estate Commission, the commissioners have discussed the merits of the bill and find it objectionable. We felt we should convey our thinking to you so that if any or all of us, individually or collectively, are quoted in public, our stand would be established on the record.

It appears to us that the reduction in status of the major industries of New Jersey, ie; Real Estate, Insurance, Banking and Utilities, in a period when the business climate is debilitating, is counter productive to the best interest of this State.

The change proposed in the Merlino bill is simply a realignment in jurisdictional authority. There is no evidence that this realignment will result in either increased efficiency or economy. To suggest that there is logic to this proposal, because a regulatory function characterizes each activity, is totally without foundation. To follow such logic, one could propose that it be supervised by a Division of Administrative Law, when, the Attorney General's office is discharging that job quite adequately at the present time.

May we further suggest, that if revision in Departmental structure is under consideration, that the Department of Insurance include in it's title Real Estate and a Deputy Commissioner assigned to each Division. The Real Estate industry of New Jersey is one of the most active business endeavors in the state. Elevating it to a co-equal status would give recognition of the State's concern over the development of New Jersey and assure our citizens of the concern for man's most prized possession, - - - his home.

5/26/76



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